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Procedures for the Abolition of the Administrative Act on the Example of the Analysis of Japanese and German Legislation

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The adoption of the administrative act is carried out on the basis of clearly defined procedures in our legislation of the procedure. In particular, according to Article 53 of the law"on administrative procedures", an administrative act must be legal, justified, fair, clear and understandable. In the substantiating part of the administrative act, all the actual and legal basis of the adopted administrative act must be cited. Currently, we are witnessing that these requirements do not apply to administrative acts that are contrary to the interests of the person concerned, or impose a certain obligation or prevent the implementation of certain acts. In German administrative law, such acts are interpreted as administrative acts[1]. In this regard, we will consider the practice of accepting administrative acts in several developed countries. "Administrative proceedings in Japan took effect on November 12, 1993. It is legally regulated by the law" on administrative proceedings".

It should be noted that Japan is distinguished by the fact that the law "on administrative procedures" is modeled on the experience of the United States and Germany, and by the systematic establishment of the rules on the basic requirements of administrative procedures. Accordingly, we need to analyze the procedure of the possibility of listening, including the most basic of procedural requirements. The Japanese law "on administrative proceedings" regulates administrative proceedings, such as proceedings on appeals and applications to administrative bodies, such as obtaining licenses and permits by specific persons in a particular administrative area, and proceedings on various undesirable decisions made by administrative bodies in relation to specific persons.

Japan's "Administrative Procedures Law" is the first requirement for handling applications for the issuance of licenses and permits, which regulates in more detail the general standards specified in the law in administrative matters, such as the issuance of licenses and permits in various fields, which are applied to administrative bodies. It is required as a condition of the administrative procedures that the guidelines establishing the requirements, conditions and other standards have been adopted.[2]

In addition, the content of such instructions should be comprehensible and detailed, and should be published so that specific persons can get to know each other freely. The establishment of such procedural requirements clarifies the actions that the applicant must take in advance to obtain certain licenses and permits and how to respond to the submitted application, and reduces

[1] Tristan Barczak: Typologie des Verwaltungsakts. In: Juristische Schulung 2018, S. 238 (245).
[2] Yaponiya "Ma'muriy proseduralar to'g'risida" gi qonuni.: - 1993 yil.

the arbitrary decisions of administrative bodies. Of course, such guidelines should be open and accessible to any person.

The reasons for the rejection must be clearly stated in the decision on the rejection of the application, which is accepted on the basis of the processing of the applications. The Japanese Law "On Administrative Procedures" establishes the obligation to indicate the reasons for rejection in the decision on the rejection of the application accepted on the basis of the application submitted by a specific person as a prerequisite for administrative procedures.[3] The main reasons for this requirement are shown in the following:

First, if the administrative body rejects the submitted application, clearly stating the reasons for the rejection in the response will prevent the administrative bodies from making unreasonable arbitrary decisions. This ensures that administrative bodies make a decision with deep thought and responsibility.

Secondly, it provides the addressee with the necessary evidence and grounds to appeal the decision to a higher body or court.

As mentioned above, it is of great importance that specific persons apply to the administrative bodies for the implementation of relevant licenses and permits, certificates or other administrative acts of legal significance, to state the reasons for rejecting such an application. First of all, it does not correspond to the principle of correct procedure for an administrative body to simply reject an application submitted by a specific person on a specific issue. A specific person wants to know why his application was rejected based on legal and factual grounds. This causes the body that made the decision to appeal again to the higher body or the court in order to find out on what grounds its application was rejected on this issue. It leads to an increase in the volume of work of competent administrative bodies on such issues. Excess effort and resources are spent. The most important thing is that the interested person is confused, he cannot know whether the decision is justified or not, he cannot be sure that the right decision has been made. In order to ensure openness and transparency in the activities of administrative bodies, it is necessary to justify the decisions taken by the administrative bodies and to present such reasons to private individuals, and it is a decision arising from the basics of administrative procedures. Therefore, it is necessary to indicate the reasons for the rejection in the decision on the rejection of the application, which is accepted on the basis of the application process. It is necessary to consider two aspects. First, it is required to indicate the clear and legal basis of the refusal, and the second, on the basis of which evidence and facts, the decision to refuse was made. Article 6 of the Law of Japan "On Administrative Procedures" establishes the need to set general deadlines for processing applications.[4] Also, in Article 7 of the Law of Japan "On Administrative Procedures" there is a requirement to start processing the application immediately from the day the application is received by the administrative body. In practice, such a norm clarifies when the review of all applications that have met the general, formal requirements for application review begins.

Japan's Law on Administrative Procedures also sets other requirements for processing applications. For example, the law stipulates the holding of public hearings on issues affecting the rights and interests of third parties. It is established by law as a requirement of administrative procedures to listen to the opinion of the residents living near the factory that emits some harmful waste, the factory that is being designed for the construction of factories.

Hearing procedure The third procedural requirement of the unwanted decision procedure is the hearing procedure of the parties. This process can take two forms: a) hearing procedure based on oral feedback; b) the procedure for presenting reasons in writing.

[3] Yaponiya "Ma'muriy proseduralar to'g'risida" gi qonuni.: - 1993 yil.
[4] Yaponiya "Ma'muriy proseduralar to'g'risida" gi qonuni.:- 1993 yil.

The important procedural provisions of the laws on administrative procedures of the USA and Japan were discussed above. It should be noted that the legislation on administrative procedures in different countries may have different forms, but the main principles and methods are similar. The German experience is extremely important in researching the theoretical legal foundations of administrative procedures. Because the model of the German law is based on the law of Uzbekistan. That is why we will try to elaborate on the German law.

Before interpreting the provisions on annulment of an illegal administrative act in the German Administrative Procedure Act, it is appropriate to review the main provisions of these provisions.[5]

If it is not possible to dispute an illegal administrative act, such an act may be canceled in whole or in part, depending on the future consequences or retroactivity. An administrative act or a confirming administrative act determining the existence of a right or a significant legal advantage may be revoked in cases other than some exceptional cases.

If the administrative document offers a one-time or current obligation or a material obligation that is divided or is the basis for such obligations, the interested person relied on the validity of the administrative document and such reliance is required to be protected based on the public interest, such a document the mury document cannot be revoked. As a rule, if the beneficiary has taken advantage of the provided benefits or misappropriated the provided property, and it is not possible to cancel such actions at all or without causing serious damage to the beneficiary, the beneficiary's trust is entitled to protection. In the following cases, the beneficiary cannot apply for the right to trust and, as a rule, the cancellation of the administrative document will be retroactive. These are:

- If the acceptance of the administrative document was achieved by misleading, threatening or bribery;
- If the acceptance of an administrative document was achieved by providing serious lies or incorrect information;
- If he knew that the administrative document was illegal or did not know due to serious necessity.

In cases where an administrative body cancels an administrative document on its own initiative on grounds not provided for in Article 48, Part 2 of the German Administrative Procedures Act, the administrative body is obliged to compensate the interested person for property damage.[6] Because in such cases, the interested person acted believing in the power of the administrative document, and his trust deserves to be protected in comparison with the public interest. Damages will not be compensated in cases where the right to trust cannot be justified. The amount of compensation for property damage should not exceed the amount that the interested person cannot receive without canceling the administrative document. Property damage eligible for compensation is determined by the administrative body. An interested party may file a claim for damages within one year from the date of receiving the relevant notification.

If the administrative body takes into account the facts that require the cancellation of an administrative document that is contrary to the law, it is allowed to cancel the administrative document within one year from the moment these facts are taken into account. This provision does not apply in cases where the acceptance of an administrative document is obtained by intimidation, deception or bribery. A German jurist interprets the main provisions on annulment of an administrative document contained in the German "Administrative Procedures Act" as follows.

[5] Germaniya "Ma'muriy proseduralar to'g'risida"gi qonuni: - 1976 yil.
[6] Germaniya "Ma'muriy proseduralar to'g'risida"gi qonuni.: - 1976yil.

An administrative document is a traditional method of execution, an administrative document binds not only the citizen, but also the administrative body through certain obligations. As long as the administrative document has legal force, its participants are bound by the obligations created by the administrative document. This is how the legal guarantee is provided. But this word does not mean that the administrative body loses its voluntary actions by issuing an administrative document. In certain cases, it is possible to partially change or completely cancel the administrative document in cases of public needs. An administrative document may be revoked in cases where it creates illegal situations or conflicts with public interests. But in such cases, on the other hand, there is a need to protect the legal trust of a specific person who believes in the power of the administrative document. Therefore, the cancellation of the administrative document should be carried out on the basis of the mutual balance of these two interests.

The German "Administrative Procedures Act" and its systematic continuation in the Administrative Procedure Laws have established distinctive tools on this issue.[7] Below is an opinion on this issue.

First of all, the issue of annulment of an administrative document is determined based on the answer to the question of whether the administrative document has entered into legal force and has reached a high level of binding force. In this case, if the administrative document has entered into legal force, its cancellation may be carried out only in the cases provided for in articles 48 and 49 of the law.

In addition, it is possible to cancel an administrative document within the appeal process and, as a rule, no problems arise. Because in this case, the addressee is complaining about the administrative document, and in turn, it is impossible to create confidence in the authenticity of the administrative document. That is, in such cases, there is no need to protect the trust in the authenticity of the administrative document. If the administrative document is illegal and violates the rights of the claimant, it can be annulled by appealing to the administrative court.

In this case, even in cases where the claim is satisfied by the court, the issue of trust protection does not arise.

If the administrative body cancels the administrative document outside of the appeal procedure, then the same rule is provided for the existence of the authorizing basis when the administrative document enters into legal force and in the cases when it enters into legal force. In this case, the grounds can be found in special laws or under Articles 48-49 of the German Administrative Procedures Act. In this regard, the German Administrative Procedures Act distinguishes between the annulment of an administrative document and the annulment of an illegal administrative document. Canceling an illegal administrative document is called renunciation. Canceling a legal administrative document is called revocation. In this case, the rules for annulment of an administrative document may also differ due to differences in conflicting interests. For example, if an illegal administrative document can be revoked based on the general rule after it enters into legal force, a legal administrative document can be revoked only in special cases.

In conclusion, the analysis of the relevant laws on administrative documents of the USA, Japan and Germany shows that in these countries, the theoretical and legal foundations of the cancellation of administrative documents in these countries have been developed by legal scholars as a result of relatively deep scientific research, and the expert -accepted by scientists as a result of long debates. In addition, before and after the adoption of the law, a large number of theoretical and legal bases were developed in judicial practice regarding the correct understanding and interpretation of the law. Also, the practices of these countries are used in Uzbekistan.

[7] Germaniya "Ma'muriy proseduralar to'g'risida"gi qonuni.: - 1976 yil.

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