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CONCEPTS FOR THE DEVELOPMENT OF THE GERMAN MODEL OF ADMINISTRATIVE PROCEDURE

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The purpose *of the article examines the doctrinal concepts of the development of the German model of administrative procedure.* ***Research methods:*** *the chosen topic of scientific research requires the use of various scientific methods and approaches to obtain analysis such as historical, systematic methods.* ***Discussion:*** *the analysis and research of the concepts of Otto Meyer on the administrative act, Walter Jelinek on subjective public law, and Max Weber on rational bureaucracy made it possible to assess the influence of their concepts on the development and formation of the German model of administrative procedure. The concept of an administrative act was taken as the basis for the future Federal Law on Administrative Procedure, in which the provisions on the administrative act received a detailed justification and consolidation. The concept of subjective public rights was very important for the administrative procedure in the matter of challenging an administrative act.* ***Results:*** *the above-mentioned concepts laid the foundations for the normative model of administrative procedure, which found its legitimate consolidation in the Law of the Federal Republic of Germany "On Administrative Procedure".*

Key words: *concepts; model of administrative procedure.*

Problem statement and its relevance. The development of new scientific ideas about the administrative procedure model, their implementation and legislative consolidation are impossible without studying the experience of doctrinal concepts and legal regulation, which have some specific features due to the influence of various factors of both historical and doctrinal and legislative nature. The German model has a well-established mechanism of legal regulation, which is the result of joint work of both German scientists and legislators, enshrined in the form of the Administrative Procedure Act. The emergence and development of the German model of administrative procedure was largely influenced by the work of German scholars in the field of administrative law and historical events in the legislative work of the Bundestag. Consideration of the issue through the prism of the historical and analytical approach will allow analysing key historical events and doctrinal concepts with a view to further scientific and legal generalisation.

Summary of the main research material. Otto Mayer is considered to be one of the founders of modern administrative law in Germany. His concept of "administrative act" influenced the modernisation of German law [1, p. 342]. In his pioneering textbook, the scientist developed a classical form of activity for unilateral legal measures of the state in relation to an individual, which he calls an "administrative act" by analogy with the French acte administratif. Dogmatically, an administrative act is a prototype of a court decision that performs a law-grounding function. Meyer believes that it is a legal form of activity that, like a court decision, gives governing bodies the ability to determine the rights and obligations of individuals, confirming the sovereign, authoritative nature of administrative action (influence, intervention and action, but without a court decision). Administrative acts, like court de-

cisions, must be strictly enforced until they are cancelled by an actus contrarius issued by a competent authority or court. An administrative act is a form of activity that is in line with the general compromise nature of constitutionalism and aims not only at the efficiency of administrative measures, but also at the protection of individual rights, as it is subject to judicial review. In Max Weber's abstraction, such a formal approach to an administrative act will be the highest manifestation of modern [2, p. 265].

An administrative act is conceptualised as a conceptual instrument that structures administrative activity and, at the same time, due to its normative nature, forms boundaries. The main advantage of its concept is that it makes it easier for governing bodies to fulfil their tasks and at the same time makes them more transparent, as well as controllable in court at the initiative of interested parties. This strengthens the legitimacy of the state's actions. Perhaps, this explains the success of the Mayerian concept of an administrative act, which was quickly accepted in theory and practice and later enshrined in the 1976 Law on Administrative Procedures (Verwaltungsverfahrensgesetz) [3].

Based on the Mayerian concept of an administrative act as "a power decision of the administration that establishes for individuals in each particular case what is fair and necessary for them", a legal definition was formulated, enshrined in Article 9 of the German Administrative Procedure Act (VwVfG): an administrative act is a decision, instruction or other power action of an administrative body aimed at resolving a specific individual case and having external consequences. According to the legal doctrine of Mayer, an individual administrative act regulates the rights and obligations of a citizen in their relations with the state [4]. Most obligations and rights enshrined in law are abstract until they relate to the rights and interests of everyone. An individual administrative act explains to both the citizen and the state how a rule is applied in a particular case. The function of an administrative act is to apply the abstract prescriptions of normative acts to specific life situations and specific individuals so that these prescriptions are binding on these individuals. In other words, an administrative act is a means of concretising and individualising laws (in the material sense). In both countries (France and Germany), this concept was a central element of general administrative law. It was taken as a basis for the future Law on Administrative Procedure, in which the provisions on administrative act were elaborated and further developed. In the current German Administrative Procedure Act, special attention is paid to the administrative act, the provisions of which will be discussed later.

German scientist Walter Jelinek continued Mayer's work, developing German administrative law in the XX century in the direction of judicial and administrative control over decisions made by public authorities using the developed concept of "subjective public rights". In his well-known work "The System of Subjective Public Rights", the scientist first examined the problem of subjective public law and proposed a legal and dogmatic classification based on the relationship between the individual and the state. He identified three groups of public rights: 1) political freedoms; 2) the right of an individual to positive actions in his or her interests by the state; 3) the right of an individual to participate in the governance of the state. In the structure of any subjective right, the scientist distinguished two elements - formal (will) and material (interest). V. Jelinek stated that subjective public rights, as well as subjective private rights, are subject to judicial and administrative protection [5, p. 164]. Subjective public rights in today's sense could not be perceived as a doctrine at all at that time since the state monopolised all sovereign power. It was only after Georg Jellinek substantiated the significance of subjective public rights derived from the voluntary self-obligation of the state that administrative and judicial control as an institution of legal protection, namely, the protection of individual rights, began to develop in Germany. This concept was very important for the administrative procedure in the matter of appealing against an administrative act. The concept of judicial control as an institution for the protection of subjective rights developed later led to the formation of a specific position: developed from the ideas of legal protection, namely in administrative legal relations, an individual is understood as a champion of his or her interests protected by law. Public interests that go beyond this are outside this concept. This provision leads to

important contradictions between German administrative law and the law of European integration [6].

It is also necessary to note the influence of another famous German scientist - Max Weber and his concept of rational bureaucracy. A distinctive feature of this type of domination is the existence of a system of formal rules that govern the activities of management personnel. These formal rules can be changed in accordance with the procedure. Whereas under traditional rule, the possibility of creating new legislation is limited by sacred tradition, under legal rule there are no restrictions on lawmaking, as long as the relevant procedures are followed. "The decisive feature for our terminology is that," writes M. Weber, "subordination is no longer based on faith and devotion to a charismatic personality or the personality of the ruler sanctified by tradition, ... but on an objective "official duty devoid of personal character, which, like the right to power, is a "competence" defined by means of rationally established norms (laws, regulations, rules) in such a way that the legitimacy of domination is expressed in the legality of general, formulated and promulgated rules". It is assumed that formal rules are to be followed, not the person in power.

In Weber's works, rationalisation was applied not only to the characteristics of bureaucratic administration, but also to legal procedure as a feature. The key dogmatic categories of German administrative law are based on the dogma of state law developed by professorial theorists. Having analysed the basic concepts of German scholars, we note that they not only influenced the development of administrative law, but also laid the foundations for the German model of administrative procedure.

Let us now turn to the main legislative acts that influenced the development of administrative law, and subsequently - the implementation and consolidation of the administrative procedure model at the legislative level [11].

With the end of the National Socialist tyranny and the enactment of the German Constitution (Grundgesetz), work began on the codification of German administrative law. A new understanding of the state was central to this process. According to the wording of the Herrenhimseer Project, "the state ... exists to serve the individual". In parallel with the constitutionalisation of administrative law, the Basic Law is expanding individual legal protection. This emphasises the importance of the principles of the substantive rule of law in "classical" German administrative law. The strengthening of the legal protection of the individual is reflected in the guarantee of legal protection under Art. 19 para. 4 para. 4 of the Basic Law (a), and in the establishment of a general reservation of administrative jurisdiction (b), as well as in the comprehensive subjection to administrative law (c) [9].

Constitutional provision 19 (4) GG guarantees comprehensive legal protection of the subjective rights of citizens who have been violated by an act adopted by a public authority through judicial review of that act. This provision reflects the fundamental premise of the German rule of law: there is no legal area in which a citizen has to accept a violation of his or her fundamental rights.

By establishing the guarantee of effective legal protection (Article 19 (4) of the Basic Law), the German legislator considers that subjective public rights can be effective only if their realisation is ensured in the event of a conflict. Therefore, the guarantee of legal protection allows to limit the arbitrariness of public authorities in relation to a citizen and to realise the "substantive right to truly effective judicial control". Proclaiming in Article 19 para. 4 of the Fundamental Law proclaiming legal protection against acts of state power as a fundamental right, the Constitution emphasises that the guarantee of legal protection is primarily focused on the ability of an individual to self-realise. For an individual, this is a fundamental right that is a "bastion of individuality". From this point of view, this provision contains a systemic decision of the constitutional legislator in favour of individual legal protection, which is essential for the entire structure of German administrative law. The legal guarantees aimed at ensuring comprehensive individual legal protection were also strengthened by the proclamation of the "right to the proper use of discretion", as well as the distinction between "discretion", on the one hand, and "undefined legal concepts", on the other, which has become widespread in the literature and court practice. Both have significantly intensified judicial control of public administration. To implement the provisions of the basic German law, the Code of Administrative Procedure was

adopted in 1960. After the adoption of this act, the issue of codification of administrative law in the form of a single act regulating the activities of all state bodies gradually arose.

Lorenz von Stein sought a comprehensive codification. However, his idea that the activities of the administration could be regulated by a single act was met with scepticism. A significant number of German scholars rejected this statement, as they believed that administration is focused on solving a specific case, so general rules will not be able to provide the necessary flexibility in the decision-making process [10]. Before the National Socialists came to power, there was an attempt to codify the "general part" of administrative law, but it was unsuccessful. German administrative law is the law of public administration, which is a function of the executive branch". Due to the complexity of German administrative law, which is divided into general and special administrative law, it was not possible to codify all procedural elements in one act." Additional obstacles to unification were created by the West German federal structure, which clearly divides governmental powers between federal authorities and the Länder. It was only in 1976 that the Law on Administrative Procedure (VwVfG) was adopted, which scholars call "a codification for the federal administration". The German model of regulating administrative procedure is associated with the Administrative Procedure Act, adopted in 1976. All states of Germany have adopted relevant regulations that regulate administrative procedure relations at the appropriate level, are based on the federal law and do not contradict it. The law does not regulate issues related to administrative justice. It clearly outlines the range of issues it regulates and specifies the scope of its action. It should be noted that each Länder has its own law on administrative procedure. Its provisions are largely like those of the Federal Act, as they simply refer to the federal law or repeat its content with minor changes in order to ensure a certain degree of uniformity in the enforcement activities of administrative authorities at the federal level. For these reasons, the legislature has shaped the general approach to administrative procedure in the VwVfG through basic principles, which, although broadly applicable, can be supplemented by provisions specified in Länder laws. The German Administrative Procedure Act transformed the doctrinal model of administrative procedure into a statutory model.

Conclusions. The VwVfG is the result of a long-standing effort, which began in the late 1950s, to simplify, streamline and unify German administrative procedures and basic concepts of administrative law. Sixteen years prior to the VwVfG, the German legislature passed the Administrative Courts Act (VwGO), which laid down provisions not only for the structure and procedure in administrative courts, but also for administrative and judicial review of final administrative acts issued by an administrative authority. The German Administrative Procedure Act was adopted by the legislative assembly in 1976 with the aim of: 1) to regulate the legal relations between administrative authorities and citizens, 2) to guarantee citizens access to the administrative decision-making process, and 3) to establish the necessary clarity and unity in the procedural area of law. However, some areas of administrative law, especially those characterised by a high degree of complexity in certain cases (such as decisions on land use planning and urban development) are subject to special legislative regulation. The purpose of this Law was to clarify the purpose of the administrative procedure for administrative bodies, their officials, legal practitioners, and citizens in order to correctly apply the provisions of this Law. This act led to the harmonisation of administrative procedure law, made constitutional restrictions on state action transparent and reduced the burden on the courts. At the same time, it increased the efficiency of governance and further protected the rights of citizens.

Thus, the doctrinal concepts played a key role in the development of the German model of administrative procedure and became the basis for the formation of the normative model.

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КОНЦЕПЦІЇ РОЗВИТКУ НІМЕЦЬКОЇ МОДЕЛІ АДМІНІСТРАТИВНОЇ ПРОЦЕДУРИ

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***Мета**: дослідити доктринальні концепції розвитку німецької моделі адміністративної процедури. **Методи дослідження**: обрана тема наукового дослідження вимагає використання різноманітних наукових методів і підходів для отримання аналізу, таких як історичний, системний методи. **Результати:** зазначені концепції заклали основу для нормативної моделі адміністративної процедури, яка знайшла своє закріплення в Законі ФРН «Про адміністративну процедуру». У цьому законі ці концепції трансформували адміністративну процедуру з доктринальної в нормативну модель. Закон ФРН «Про адміністративну процедуру» вчені називають «кодифікацією для федеральної адміністрації», завдяки здобуткам німецької доктрини. **Обговорення:** аналіз та дослідження концепцій Отто Меєра про адміністративний акт, Вальтера Еллінека про суб'єктивне публічне право, Макса Вебера про раціональну бюрократію надають можливість оцінити вплив їх концепцій на розвиток та формування німецької моделі адміністративної процедури. Вищеназвані концепції заклали основи для нормативної моделі адміністративної процедури, яка знайшла своє легітимне закріплення в Законі ФРН «Про адміністративну процедуру». Поняття адміністративного акта було покладено в основу майбутнього Федерального закону про адміністративне судочинство, в якому положення про адміністративний акт отримали детальне обґрунтування і закріплення. Поняття суб'єктивних публічних прав було дуже важливим для адміністративного процесу в справі оскарження адміністративного акта. У веберівських працях раціоналізація застосовувалася не тільки відносно характеристики бюрократичної адміністрації, а й до правової процедури як ознаки. Ключові догматичні категорії німецького адміністративного права ґрунтуються на вищеназваних концепціях.*

***Ключові слова:** концепції; модель адміністративної процедури.*

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