



DIGITALIZATION OF CONTROL AND SUPERVISION ACTIVITIES: RUSSIAN AND FRENCH EXPERIENCE

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The subject of the article is legal regulation at the transition stage from e-government to digital government in Russia and France.

The purpose of the article is confirmation or confutation of the hypothesis that in the practice of digital interaction between administrative bodies and individuals, there are problems that must be clearly identified and can be solved using the French experience of legal regulation of the digitalization of public administration.

The methodology of the study includes comparative analysis, description as well as particular academic legal methods (interpretation of legal acts, judicial acts and state programs of digitalization in Russia and France, formal legal method).

The main results and scope of their application. Russia and France are similar because of not only belonging to the continental legal system, but also existing in the transition stage from e-government to digital. Public administration and law in both countries have to cope with the challenges of digitalization. In this regard, the experience of implementing reforms in France, which is known for its administrative and legal traditions and successes, is of particular interest to the Russian Federation.

The legal support of public administration digitalization is clearly lagging behind the rapid development of digital technologies; moreover, new information solutions are significantly ahead of their legal implementation. A comparative analysis between the strategic plans of public administration, relating to digitalization of control and supervision activities in the Russian federation, and the e-government's present and future legislative framework, indicates a lack of coherence between the plans and their legislative counterparts. The initial implementation of public administration digitalization strategic plan through legislation on services is generally supported in the "Digital Public Administration" federal project through the legislation of services. At the same time, the draft of the new Federal law on state control (supervision) and municipal control in Russia offers its own information infrastructure for control and supervisory activities.

Conclusions. In order to overcome the fragmentation in the regulation of electronic interaction between private entities and public administration, the French experience of regulating the General principles of administrative procedures and guarantees of good public administration in a single act is very useful. Such an approach would also ensure compliance with the basic principles of proportionality and the prohibition of excessive formalism in the meaningful differentiation of errors and violations committed in the course of electronic communication. In addition according to French experience, it is necessary to maintain alternative ways of communication with administrative authorities including electronic ones, and consider any legislative exceptions. Also, it is necessary to define additional guarantees to citizens during interactions with technical support services; defining standards for the legal qualification of technical failures, pre-trial and judicial appeal mechanisms against automatically made decisions.

1. Introduction

Digitalization of control and supervision activities (CND), as well as many other areas of public and public life, has been on the agenda for several years. Anti-epidemic measures and restrictions related to preventing the spread of a new coronavirus infection have given this process an even greater acceleration. Thus, in accordance with Russian Government Resolution No. 438 of April 3, 2020, all unscheduled inspections permitted by law in 2020 for small and medium-sized businesses must, with some exceptions, be conducted using remote interaction, including audio or video communication.

The process of digitalization of the CND in the Russian Federation is taking place against the background of the penetration of information technologies into all areas of relations between public authorities, business and society. In this regard, it is hardly possible to understand and analyze both the process of digitalization and its legal consequences outside of this General context. It is no coincidence that "Digital public administration" is an integral part of the national project "Digital economy of the Russian Federation". Another important aspect that allows us to better understand the challenges that will be solved on the way to digitalization, better see the gaps, anticipate possible contradictions and conflicts, is related to the comparative approach. Studying international experience, in particular close to the Russian legal system and advanced administrative and digital against France, it is useful because it allows you not only to identify similar problems, and propose solutions. To achieve these goals, we will turn to a comparative analysis of the specifics of understanding and regulating the CND in Russia and France, consider how the challenges of digitalization in public

administration in both countries are reflected in the strategic plans and their legislative interpretation, as well as address the legal problems of digitalization of public administration and the CND and their solutions.

2. Peculiarities of understanding and regulating control and supervisory activities in Russia and France

Both in Russia and in France, control and supervision activities are considered as a type of administrative activity, a function of public administration that can be implemented by the administrative bodies themselves within their competence, as well as by other authorized entities. In both legal systems, there is a theoretical understanding that the CND is not an end in itself, but a way to protect rights and freedoms. Thus, in the definition given in article 1 of the draft Federal law "On state control (supervision) and municipal control in the Russian Federation" (hereinafter – the bill), emphasis is placed on the following goal of the CND – prevention and suppression of harm (damage) to the rights and legitimate interests of citizens and organizations, as well as other values protected by law. In France, as in other countries of continental Europe, this aspect of the CND is expressed in a more General way. The CND is not an independent subject of legal regulation, but is a type of administrative proceedings, an element of administrative procedures integrated into the proceedings for the adoption, execution or cancellation of administrative acts. The purpose of any such administrative activity, including the CND, in accordance with the legislation on administrative procedures is to respect human rights and freedoms of the public administration and to achieve the rule of law. Accordingly, in the framework of scientific discussion, the characteristic of administrative activity in the implementation of the CND is not singled out as an independent subject, but is

considered in the context of General administrative procedures, their principles, problems of adoption and cancellation of administrative acts, ensuring the rule of law in the activities of public entities and exercising control over them, primarily judicial [1-4].

Thus, in Russia and France, the approach to legal regulation of the CND differs significantly. France, like other countries belonging to the continental legal family, does not separate the legal regulation of the CND from the General regulation of administrative activities – procedures for issuing administrative acts. (The doctrine of the activity of administrative bodies is covered by the concept of l'action administrative (administrative activity): the use of this term is typical for classical works [5, 6]. In modern works based on the concept of the service state, the term le service public (public service or public service) is already used to refer to the activities entrusted to the subject of public law or even to a private entity for the implementation of tasks necessary for society [7]).

Accordingly, the regulation of public administration is based on the unity of forms of administrative activity. Since the end of 2015, France has been implementing the Code on the regulation of relations between the population and the administration (hereinafter referred to as the Administrative code), which is a new stage in the development of legal regulation of administrative relations. The administrative code was prepared on the basis of the Law of April 12, 2000 No. 2000-321 "on the rights of citizens in their relations with the administration", as well as on the basis of generalization of other normative acts and extensive judicial practice [8]. The subject matter of the Administrative code includes the basics of interaction between individuals and administrative bodies in any administrative procedure, the duties of administrative bodies

to motivate decisions, provide access to the materials of an administrative case for a private person, as well as their right to give explanations on the case and other powers). The Administrative code is based on the doctrine of administrative acts – their forms, features of entry into force, cancellation (cancellation) or revocation and appeal, as well as provisions on interaction between administrative bodies, on the resolution of disputes between private entities with them.

The Russian Federation continues the Soviet tradition of separate regulation of the order of implementation of certain types of administrative activities – provision of state and municipal services, including registration and licensing procedures; management of state and municipal property; implementation of control and Supervisory activities [9.10]. In this regard, the procedure for providing public services and control and Supervisory activities are regulated by various Federal laws. At the same time, the Russian literature on administrative law since the mid-1990s has been aggressively promoting the idea of adopting a single normative legal act on administrative procedures [11] or on the basics of public administration [12], which, however, has not yet been implemented in practice.

3. Public management facing the challenges of Informatization and digitalization

Despite the differences in approaches to regulating various types of administrative activities, public administration in the context of the information society in both France and Russia faces serious challenges involving the modernization of administrative procedures, the widespread introduction of information and communication technologies and digital data in public administration (hereinafter-ICT). The goal of informatization and digitalization is not only to increase the efficiency of public administration, but also its accessibility, simplify

administrative procedures, and ensure the openness and transparency of public administration.

This form of organization and activity of government bodies is covered by the concept of e-government, which at a new stage of development of the information society acquires the qualities of digital government. At the same time, there is no unity in the information and management literature on the relationship between the concepts of informatization and digitalization, as well as the concepts of electronic and digital government. They are often used as synonyms, meaning by digitalization a set of processes of informatization of the corresponding type of administrative activity.

In General, we share the opinion about the qualitative features of digitalization as a new stage of informatization of administrative activities, including the CND as its type, we believe it is wrong to proceed from the opposition of electronic and digital governments. Here and further, we will rely on a broad understanding of e-government, including the digital stage of its development. This digital stage is planned, but, as both French and Russian researchers note, the transition to it in both countries is far from complete [16, 17]. For example, E. V. Talapina states that Russian legislation still exists in terms of e-government, and documents that reflect the processes of digitalization do not fulfill the mission of the "idea center" [15]. M. Yu. Pavlyutenkova notes that Russia is moving towards digital government in the transition from the second stage of building a digital government (the stage of transformation) to the third (the stage of involvement) [14].

At present, the introduction of ICT in both Russia and France is taking place in all spheres of public life and with increasing acceleration. Russia has among the index of digitalization of business among the 32

countries (European countries, Korea and Turkey) the most advantageous position according to the level of using cloud services — ahead of 19 countries out of 31, although by the end of 2018 has 31 points (last third), and first place is Finland with a value of the specified index at the level of 50 points, France (37 points) closes 2nd ten States. At the same time, the processes of Informatization and digitalization of the sphere of public administration occupy a Central place and cover both internal administrative procedures and the relationship of public administration with external entities.

3.1. Plans and programs for digitalization of public administration in Russia

In Russia, the tasks of informatization of public administration have been firmly embedded in concepts, programs, doctrines, and strategic planning documents since the first half of the 1990s . in 2002, the Federal target program "Electronic Russia (2002-2010)" already addressed the tasks of transition to the provision of public services and the implementation of public functions in electronic form, the implementation of public administration using elements of e-government, and the development of e-government infrastructure . Since then, many strategic policy documents have been adopted on the introduction of ICT in state and municipal administration, the development of e-government and open government, ensuring information security and transparency in public administration. The state automated system "management" has been created and is being operated .It provides the formation and processing of data contained in state and municipal information resources, official state statistics data, and information necessary to support managerial decision-making in the field of public administration, including information support for strategic planning.

The current Strategy of information society development in Russia to 2017 – 2030 as the may Decree of the President of Russia 2018 "On the national goals and strategic objectives development of the Russian Federation for the period up to 2024", the national strategy for the development of artificial intelligence by 2030 marked a new digital stage in the development of e-government. This stage is associated with the formation of the digital economy ecosystem, the introduction of digital technologies and platform solutions in the areas of public administration and public services, as well as the use, where possible, of artificial intelligence technologies. More specific measures are reflected in the state program "Information society", the national program "Digital economy of the Russian Federation (2018-2024)" and its projects, including the Federal project "Digital public administration" (hereinafter - the Project) [18-20].

It is noteworthy that the direction of implementing digital technologies and platform solutions in public administration in the Russian Federation is implemented mainly through improving the procedure for providing state and municipal services. The whole logic of digitalization of public administration is based on the idea of public administration as primarily an activity for providing public services to the population and business. The project is based on the need to typify and standardize public services, identify priority, mass and socially significant services (not only state, but also regional and municipal), linking a number of measures for digitalization with these services, the list of which must be approved, obviously, at each level of public authority (1.3, 1.37, 1.47). In addition, it is planned to allocate comprehensive public services for citizens and businesses, grouped by the main life situations – such as in the field of agriculture (p.1.51). In the decision Of the

Presidium of the Government Commission on digital development, the use of information technologies to improve the quality of life and business conditions of 28.03.2019, these service complexes were designated as 25 priority "super services" - priority life situations for the digital transformation of public services.

At the same time, the authors of the Project, apparently realizing that the provision of public services does not exhaust state and municipal management, in some planned activities, along with services, mention "other functions" of public administration and (or) "other services". For example, the e-government infrastructure covers information systems not only for the provision of services, but also for the performance of public functions in electronic form (paragraph 1. 19); the infrastructure of the unified system for handling requests, to which all entities performing publicly significant functions must be connected, including through a single digital communication window, involves processing various requests, including requests for public services, functions, and services (p. 1. 16, p.1. 31); it is planned to develop, implement, and operate a cloud-based digital platform for providing both state (municipal) services and services, including in electronic form (1.56). At the same time, judging by the wording of the planned activities, the project, on the One hand, lacks clarity in the differentiation of public services, functions and services: sometimes the differences between these phenomena are not made at all. Thus, according to paragraph 1. 43 of the Project, "high quality provision of state and municipal services (implementation of functions), other services (services) and information in electronic form in the field of fire safety and human safety on water bodies" should be provided, and in accordance with paragraph 1.57 of the Project, "completion and operation of the Federal register of state and municipal services (functions), including a cloud

solution for the subjects of the Russian Federation" is planned. On the other hand, the terminology of digital services and services is quite freely applied to democratic institutions of power: as a result, for example, elections are considered as the sphere of providing digital services, and "justice online" turns out to be a comprehensive public service – one of the 25 priority "super services".

At the same time, within the framework of the digital reform of state and municipal services, special importance is attached to the digitalization of internal management procedures. In particular, it is planned to develop an automated information system for project activities "Standard cloud solution for automating project activities of public authorities" (1.11 of the project), a platform for interdepartmental interaction and data exchange based on the system of interdepartmental electronic interaction (SMEV) and a unified system of normative reference information (1.12 of the Project), the introduction of an interdepartmental legally significant electronic document flow using an electronic signature in state and local government bodies, as well as in subordinate organizations (1.14 of the Project), creation of information systems to support decision-making by higher state authorities (1.30 of the project), development of a Platform for performing state functions (item 1.35 of the Project). Special importance is also attached to the introduction of digital technologies, information-analytical and expert-analytical support of other management functions aimed ultimately at ensuring the implementation and protection of citizens' rights and freedoms. A special place in the number of these functions is occupied by control and supervision activities (item 1.33 of the project). Thus, the Platform for performing state functions is supposed to ensure the functioning of the "unified register of mandatory requirements, a

standard cloud solution for automating control (Supervisory) activities" (1.41 Projects); and within the framework of the system of interdepartmental electronic interaction, a segment of the database of regulatory legal acts (Federal, regional and municipal) Russian Federation, used in control and supervision activities, available in real time (1.42 Projects).

For a more detailed analysis of the steps that are proposed in the Draft to translate the plans into a regulatory framework, it is necessary to refer to the history of the formation and development of legislation on informatization of public administration in the Russian Federation. At the same time, it should be noted that the legal support for informatization and digitalization of public administration is clearly lagging behind the rapid development of Informatics and information technologies. Moreover, new information solutions are significantly ahead of the processes of their legal understanding. This understanding is crucial. After all, giving a normative shell to an information solution is not an end in itself. It is necessary not only to ensure the internal consistency of the legal system, to ensure the smoothness and consistency of legal regulation, but also to calculate all the risks and prevent unjustified and excessive restrictions on rights and freedoms.

3.2. Development of the legal basis for informatization of public administration in the Russian Federation

The normative formalization of the use of ICT in public administration is mainly concentrated in the legislation on state and municipal services. This shows a specific Russian approach to reform in the field of informatization and digitalization of public administration. It was the Federal law on services and the bylaws adopted in its development (which not only developed, but in

fact significantly expanded and modified the legislative regulation) that first proposed a comprehensive regulation of the procedure for implementing public administration using information technologies through the presentation of services in electronic form and secured the appropriate infrastructure, in particular registers and portals of state and municipal services, the system of interdepartmental electronic interaction (SMEV), the unified identification and authentication system (ESIA) .

This infrastructure was later used for other management purposes, as well as for other interactions between citizens and legal entities with the public administration. Thus, the ESIA received legislative consolidation in Federal law No. 149-FZ of 27.07.2006 "On information, information technologies and information protection "(hereinafter - the law on information) as a Federal state information system that provides authorized access to information contained in information systems in cases stipulated by the legislation of the Russian Federation . Moreover, the legislator allows the possibility of providing access to non-publicly available information in state and municipal information systems in certain cases only to those users who have been authorized in the ESIA. Moreover, mandatory identification through the ESIA can be a condition for access not only to information in electronic form or to electronic services, but also to other electronic procedures. For example, according to the changes made to the current law on control in July 2016, electronic applications and applications of citizens can serve as a basis for conducting an unscheduled inspection only if they were sent by the applicant using ICT tools that provide for mandatory authorization of the applicant in the ESIA.

At the same time, according to the legislator, the government of the Russian

Federation should determine the specific cases and procedure for using the ESIA. Accordingly, in the decree of the government of the Russian Federation dated 10.07.2013 No. 584, the functions of the ESIA are presented in more detail and not only in connection with the provision of state and municipal services in electronic form. The main focus is on solving the problems of identification and authentication of all participants in information interaction – individuals (including individual entrepreneurs), legal entities, officials, state and municipal bodies and organizations, as well as state, municipal and other information systems .

Following the instruction of the legislator given in the law on services to establish rules for maintaining the Federal register of public services in electronic form, the government of the Russian Federation approved the relevant rules, including in the content of the register, in addition to providing services, the implementation of functions . Such a substantial expansion has also affected all other elements of the infrastructure that provides information and technological interaction of information systems used for the provision of state and municipal services . Thus, this infrastructure was included, in addition to registries and portals of state and municipal services (functions), system identification of ESIA system, providing interdepartmental electronic interaction system, is designed to inform physical and legal persons on the activities of bodies and organizations, the single system of normative reference information system ensuring process of pre-trial (extrajudicial) appeal of decisions and actions (inaction) committed in the provision of public and municipal services, Internet resource "Russian public initiative "(item 2 Of the regulations on infrastructure). Thus, the infrastructure of information and technological interaction was aimed, along with the organization of the provision of state and

municipal services, and the implementation of other management functions, as well as to work with any information requests and requests from citizens and legal entities. After the introduction of rules on electronic communication of government bodies and private entities in the law on information (article 11.1 as amended by the Federal law of 13.07.2015 263-FZ), The government of the Russian Federation has approved rules for interaction in electronic form, according to which the obligation of administrative bodies to provide information, documents and responses to requests in electronic form, if applicants choose an electronic method of communication, should be implemented as a General rule through public service portals, i.e. using the infrastructure that provides information and technological interaction of information systems used to provide state and municipal services and perform state and municipal functions in electronic form .

Accordingly, the process of Informatization also affected the system of relations between public administration, business and citizens in connection with the implementation of control and Supervisory activities by administrative bodies. In part, although rather fragmentary, it was gradually adopted in the above-mentioned and current Federal law on control No. 294-FZ of 26.12.2008. First of all, the novelties of Informatization concerned the possibilities of electronic communication of participants in control and Supervisory legal relations and registration of electronic documents in the framework of control procedures: sending electronic notifications to the authorized Executive body about the beginning of certain types of business activities (part 8 of article 8 Of the law on control); sending electronic notifications to legal entities and individual entrepreneurs from the Supervisory authority about scheduled and unscheduled inspections

(part 12 of article 9, part 8 and 16 of article 10 of the Law on control); submission of documents by controlled entities in electronic form within the framework of documentary verification (part 6 of article 11 Of the law on control); preparation of an electronic inspection report (parts 4 and 5 of article 16 Of the law on control). Since July 2015, the Federal state information system "Unified register of inspections" has been introduced in order to take into account control and Supervisory measures and their results . And since July 2016, changes related to the use of the system of interdepartmental electronic interaction by administrative bodies for obtaining the necessary documents have come into force .

Specialized types of control, such as customs control, are also implemented electronically using the information infrastructure used to provide state and municipal services. Thus, electronic relations between economic entities and customs control and supervision bodies are carried out either through the personal account in the information system of the control body, or using the Federal state information system "Unified portal of state and municipal services (functions)". According to part 2 of article 301 Of the law on customs regulation, the provision of state services and the performance of state functions in electronic form are carried out by customs authorities, including using the infrastructure that provides information technology interaction of information systems used for the provision of state and municipal services and the performance of state and municipal functions in electronic form, and its components.

Thus, it can be stated that the reflection of the process of informatization and digitalization of control and Supervisory activities in Russian legislation has been and is happening in relation to the infrastructure of e-government, aimed primarily at the

organization and provision of public services. Moreover, by-law regulation often goes far beyond the instructions given by the legislator.

3.3. Prospects for legislative formalization of the plan for digitalization of public administration and CND in the Russian Federation

The regulatory solutions outlined in the Digital public administration Project are generally in line with the previous development: the main focus is again on legislation on public services. Thus, by the end of 2020, it is planned to adopt "a Federal law and other normative legal acts that fix the target state of providing state and municipal services, including: a register model for their provision; proactivity; extraterritoriality; typing and standardization of priority regional and municipal services; multi-channel; machine-readable description of the process of providing services; exclusion of human participation in the decision-making process in the provision of priority public services; a unified system for collecting feedback from service recipients; other areas for improving the provision of public services" (p.1.2 of the Project).

At the same time, it is noteworthy that the schedule of legislative and Bylaw changes for 2020 does not imply a comprehensive reform Of the law on services, but provides for point-by-point changes in industry-specific Federal laws and regulations of the government of the Russian Federation, aimed mainly at implementing the register principle and the principle of multi-channel provision of services in various areas . However, these principles also apply to the implementation of management functions, such as licensing functions. Moreover, changes in the implementation of the registry model in the licensing process for certain types of activities have already been made at the end

of 2019 in a number of Federal laws: we are talking about issuing licenses in the form of an entry in the public electronic register . These changes directly affect control and Supervisory activities, since in certain cases the granting of a license, its renewal, or extension of its validity is associated with an unscheduled inspection by the authorized body in accordance with paragraph 1.1 of part 2 of article 10 of the law On control.

Thus, the legislation on the CND cannot remain aloof from the changes that are associated with the legal formalization of the digitalization of public administration.

Indeed, the above-mentioned draft No. 850621-7 of the new Federal law on control (draft law) pays considerable attention to the issues of informatization and digitalization of control and Supervisory activities. As noted in the explanatory note to the Bill, in fact, we are talking about a full-fledged digitalization of state control (supervision), municipal control, reducing the costs of citizens and organizations, increasing the efficiency and transparency of the CND. According to the lawmaker's plan, this plan for digitalization of the CND is based on its own infrastructure – information resources and information systems of state control (supervision) and municipal control.

Its own information infrastructure is designed to help overcome the problems associated with the lack of a single CND platform, with the use of separate information systems by administrative bodies in different departments and regions, with the need to perform "double work" in Federal and regional information systems, and also allows you to debug the procedure for digital interaction between controlled entities and administrative bodies .

The collection, recording, processing and analysis of data contained in state and municipal information resources, including in terms of monitoring of the CND, performance

indicators and efficiency of the CND, is carried out through the above-mentioned state automated information system "Management". In addition, private information and analytical systems are being created to automate the CND. For example, the limited liability Company "research and production center Keysystems-security "offers IAS" alpha-CND", which allows you to automate the processes of organizing and implementing state control (supervision) in terms of planning and conducting field and documentary inspections of the activities of legal entities and individual entrepreneurs, taking into account the risk-oriented approach. Accent company performs automation of various types of CND in more than 20 regions of the Russian Federation.

General requirements in the form of information which should be provided in the information resources and systems CPV, as well as the challenges that must be addressed, defined in the Bill, while the definition of requirements to the composition, order of formation and use of information resources and systems CPV is vested in the Government of the Russian Federation (paragraph 1 of article 26 in conjunction with the rap. "K" clause 2 part 1 article 4 of the Bill). The information infrastructure of the CND is designed to perform not only the accounting function, the function of information and analytical support, but also to offer control and Supervisory measures in automatic and remote mode. Thus, administrative bodies are required to create information resources that allow a controlled person to pass a self-check of compliance with mandatory requirements (part 6 of article 61 of the draft Law) or self-examination in an automated mode (part 2 of article 65 of the draft Law). In addition, additional photo and video recording tools are provided, including in remote mode, for example, in the framework of monitoring as a

mode of remote state control (article 134 of the draft Law). Also, the information infrastructure of the CND is intended to become a platform for electronic interaction of control and Supervisory bodies with controlled persons, other citizens and organizations, state bodies, and local self-government bodies. This applies both to the interagency electronic interaction (article 21 of the Bill), and allow submission in electronic form through the Internet petitions, complaints, comments, objections, evidence, other documents and other information about objects of monitoring, informing the controlled entity to open Supervisory proceedings, taken in the course of Supervisory production decisions, legal acts of the officers of the enforcement authority, as well as the results of control and Supervisory proceedings (item 6 of part 1 of article 26 of the draft Law). Moreover, with the introduction of the new law on control, i.e. from January 1, 2021, it is planned to gradually switch to exclusively electronic document management of controlling bodies and controlled entities (part 1 of article 25 of the draft Law). Only during the transition period until December 31, 2024, it is allowed, in addition to electronic information (about control and Supervisory actions, decisions taken) and sending documents in electronic form, to communicate with the controlled person in paper form by mail, if electronic information is not possible or if a request has been received from the controlled person (part 4 of article 136 of the draft Law). The same transition period (until 31.12.2024) installed for document management and information in the pre-trial (extrajudicial) appeal of decisions, actions, and omissions of Supervisory authorities: along with the electronic form by opting for a controlled face communication possible on paper in the mail (part 3 of article 136 of the Bill). For municipal control is being proposed as a possibility in the transitional period until 31 December 2022 fully go to the

organization control activities on paper (preparation of the documents during monitoring, information of controlled entities on actions and decisions, the exchange of documents and information participants' control of production), if the appropriate procedure is provided for in the regulations on the form of municipal control (part 5, article 136 of the Bill).

For electronic interaction of control and Supervisory bodies with a controlled person, the personal account of the controlled person is used on the Internet, the procedure for creating and maintaining it is determined by the Government of the Russian Federation (part 8 of article 25 of the draft Law). At the same time, the Draft law provides for the use of various options for electronic notification of controlled persons about actions and decisions taken by the control and Supervisory authority: through the personal account; in the unified register of control and Supervisory activities; through the information infrastructure used for providing state and municipal services and performing functions; through electronic means of communication. A controlled entity can also use various electronic communication methods to send documents to the Supervisory authority, including authorization in the ESIA (parts 4, 6 of article 25 of the draft Law).

On the one hand, such a variety of electronic communication options increases the opportunities for controlled entities to communicate with administrative authorities, but, on the other hand, it raises a lot of questions related to the dispersion of information and the departure from the "single platform" principle. It remains unclear how information resources and systems of state and municipal control are connected with a single portal used for providing state and municipal services and performing management functions in electronic form, as

well as with the platform for performing state functions mentioned in the project "Digital state management", which according to clause 1.41 should include the creation, development and operation of a single register of mandatory requirements, as well as a standard cloud solution for automating control (Supervisory) activities. The bill is about control not recalls in the total number of registers on the register of mandatory requirements, although secures the maintenance of the register of statements of evidence of compliance with mandatory requirements (part 2 of article 68). The other bill No. 851072-7 "On mandatory requirements in the Russian Federation", adopted on 1 April 2020 in the first reading, does not regulate the issues of informatization and digitalization of KND, though casually mentions the registry mandatory requirements, the order of which shall be set by the Government of the Russian Federation (part 2 of article 11). In this regard, it can be stated that there is some inconsistency between the plans for digitalization of control and supervision activities outlined in the Digital public administration Project and the proposals for their legal formalization in the two draft laws.

3.4. The experience of digitalization of the public administration in France in a comparative perspective: plans, programmes and legal frameworks

In general, France is characterized by a measured and smooth course of reforms. For the first time, people started talking about ICT in the mid-80s of the last century. In 1984, the installation of Minitel terminals began, through which individuals could remotely access various services, as well as necessary information, including legal information. In 2004, the issue of e-government development was included in the state policy agenda: a strategic plan and action plan was launched, the so – called "Electronic administration" program (Administration

électronique – ADELE) , the implementation of which was entrusted to the General Directorate for state modernization (La direction générale de la modernisation de l'état) under the Ministry of economy, Finance and industry (Le ministère de l'économie, des Finances et de l'industrie, now the Ministry of economy and Finance) . The program aimed to simplify access to public services around the clock using ICT, as well as reduce the costs associated with public administration through the use of information technologies. Currently, as a result of the implementation of various programs and plans for the introduction of ICT and digital interaction, individuals can use a variety of thematic portals and resources, including for business organizations. For example, Guichet-entreprises.fr -a portal where you can go through all the main administrative procedures related to the creation, liquidation or sale of a company. The legal basis of this information resource is defined in the decree of the Minister of economy, industry and digital technologies of April 22, 2015. "About creating a national service" business window»

In the autumn of 2017, individual steps to introduce ICT in public administration were combined in the framework of a new large-scale program for modernizing the relationship between government, business and society "Public actions 2022" (Action publique 2022, hereinafter referred to as the Program). The goals of the digital public administration Program, including the provision of public services and human resources, overlap to a certain extent with the goals of the Russian national project "national program "Digital economy of the Russian Federation" (2018 – 2024). The Ministry of public action and public Finance (Le Ministère de l'action et des Comptes Publics) is responsible for the operational management of the implementation of the Action publique

Programme, and the General direction of public policy in This area is developed and adopted by the Interdepartmental Committee for administrative reform (Le Comité interministériel de la transformation publique) , headed directly by the Prime Minister. An important role in the implementation of the Program is played by an independent expert Advisory body – the public action Committee (Le Comité actionpublique 2022 or "CAP22"), which consists primarily of economists, managers from the public and private sectors, professors and other specialists . A public action Forum (Le Forum de l'action publique) has been established to monitor the progress of administrative reform and ensure civic participation in its implementation . It is organized according to both territorial and sectoral principles – in individual regions and territorial units, as well as by areas of management activity. The broad involvement of the public in the implementation of the Program is linked to the political line taken by the President and the Prime Minister, which aims to present Action publique 2022 as a new social contract that allows individuals to restore and strengthen their trust in public institutions. It is noteworthy that the French Government plans to spend 700 million euros on implementing the Program's goals by 2022-a budget unprecedented in French history. It is assumed, however, that investments in digitalization will be justified and will significantly reduce public spending . The Senate estimated that 4.5 billion euros will be saved by 2022 . For comparison, the Russian national project "Digital economy of the Russian Federation" originally planned to spend 3.5 trillion rubles (spending budgets and the private sector), but by the beginning of 2019, the Russian Government published data on a twofold reduction in the cost of this program to 1.6 trillion rubles .

Action publique 2022 sets the

following tasks for public entities:

- * improving the quality of public services by simplifying rules and standards of administrative procedures and improving user routing, ensuring openness and transparency;

- * development of processes of deconcentration and decentralization of public administration, transfer of decision-making powers to lower levels of public administration – in regions, departments and municipalities. ("From the center" powers were transferred to the grassroots levels to adopt individual administrative acts (about 1000 questions). In addition, the authors of the reform proposed to abolish the preliminary control by the Government and other higher administrative bodies over the implementation of administrative procedures at the lower levels of government).

- * modernization of budget and reporting management: budget planning becomes multi-year, and ministries and administrative bodies, among other things, are responsible for achieving the set financial indicators and ensuring savings ;

- * updating the state personnel policy: managers in the public sector are given more freedom to recruit staff depending on industry or local characteristics, and they are guaranteed real budgetary autonomy in the management and distribution of financial resources provided. The freedom granted is "balanced" by the personal responsibility of managers for achieving results. In this regard, the Program is expected to conduct an experiment on the conclusion of multi-year contracts by the Ministry of Finance with some managers in order to expand the planning horizon in accordance with the goals set.

At the same time, it is planned to abandon preliminary control over the work of public entities and switch to reporting for results, in order to give lower-level managers and employees more freedom to take initiative

and independently choose the means to achieve results. Such control is based a posteriori on the idea of a system of open reporting to society and higher authorities. For example, by January 2020, 400 services were selected for quality control and support in 6 pilot departments (Ardennes, Calvados, Hautes-Pyrenees, Ile-et-Vilaine, Vaucluse and Vande).

In addition, the funds allocated to the Program include expenses for coaching, skill assessment, and retraining. It is also planned to expand the scope of attracting private contractors to perform public functions.

For private entities, the Program offers the following advantages::

1. Transition to a single portal of public services to replace the set of previously existing ones . The principle of "one portal, one password – many public services" helps to increase the number of users. For example, 14 million people are currently registered on the single portal, with a total population of more than 65 million.

The idea of a single portal of state and municipal services, as shown above, is successfully developing in Russia (www.gosuslugi.ru). And by the end of 2019, more than 100 million people have become users of the portal in Russia. And despite the fact that in Russia, as in France, there are also many portals depending on the areas of public administration (such as the personal account of a participant in foreign economic activity (<https://edata.customs.ru/FtsPersonalCabinetWeb2017/>); taxpayer's personal account (<https://www.nalog.ru/>); developer's personal account (<https://наш.дом.пф/auth>), however, they can be accessed through the ESIA, i.e. through the unified portal of public services (<https://esia.gosuslugi.ru/profile/user/personal>) .

2. Transition by 2022 100% of the interactions of the administration and of individuals in digital form.

The transition to digital interaction, however, is gradual: initially, the Government announces an experiment on certain types of services and services. Thus, in 2018, the issuance of prescriptions was digitalized, in 2019, electronic inclusion of citizens in the voter lists was provided, in 2020, the conclusion of lease agreements for public facilities is being translated into electronic form, and by 2021, it is planned to create a single window for registering companies . In addition, priority areas are identified in which relations between administrative bodies and private entities are digitized first. Thus, in the first quarter of 2018, 21 priority areas were identified, starting with social (payment of the social minimum, support for the disabled and people in difficult situations, health care) and ending with the administration of mandatory payments, digitalization of the judicial system, defense and sports . Finally, it is planned to personalize the provision of services, organize feedback, and ensure the participation of individuals in the procedure for their provision.

The Russian Federal project "Digital public administration" also aims not only to identify priority public services and services at all levels of government that correspond to the target model of digital transformation (i.e., provided using digital technologies, remotely, proactively and automatically), but also to increase the share of their digitalization from 15% in 2020 to 100% in 2024 . In this regard, the Presidium of the Government Commission for digital development, as noted above, approved a list of 25 super services.

4. Ensuring transparency of public administration, as well as its effectiveness, accessibility and quality of public services

The new system of digital relations between private entities and the administration allows you to save time and bring services closer not only by using a

smartphone, but also by ensuring the physical availability of services through the network of *Les maisons de services aux publics* (Houses of services for the public) – the Russian equivalent of the MFC, where a specialist can help in various areas at the same time. Accordingly, 6,000 employees were transferred from Paris to other regions in order to organize this infrastructure and ensure accessibility and equality in the provision of public services . For comparison, the Russian MFC system is firmly established in the practice of providing state and municipal services and performing functions. According to the official portal dedicated to administrative reform, by mid-2018, 90% of the population in Russia received public services through the MFC .

As for the legislative formalization of the use of information and digital technologies in public administration, this task in France is primarily solved in the above-mentioned single and comprehensive legislative act on administrative procedures – the Administrative code (AC). This is a significant difference from the Russian approach, where, as was shown above, the issues of digitalization of public administration are enshrined in various laws regulating the implementation of various management functions and various administrative procedures (the law on services, the law on control, etc.), and where the legislation on services was at the forefront of the reform of electronic and digital government. The act of France provides for the possibility of sending any application or any information in electronic form (art. L112-8), guarantees for receiving responses are established (article L112-14), the procedure for sending and confirming receipt of documents in electronic form is regulated (article L112-11 - L112-13), the duties of administrative bodies for posting electronic application forms and other documents on the official portal *service-public.fr* (article R113-2). At the same time,

Chapter III "Contents of cases" States that proof of identity, civil status, including marital status, nationality and place of residence, is not required separately, since this information is already available to the administrative authorities. They can request it via ICT, as well as original documents issued by other administrative bodies, if the individual has submitted only unverified copies of these documents. The issues of interdepartmental electronic interaction, as well as electronic communication of other subjects with administrative bodies, were specially fixed in the Ordinance of December 8, 2005. No. 2005-1516 "on electronic exchange between users and administrative bodies and between administrative bodies", and the status and functioning of state information and communication systems is further regulated by Government Decree No. 2014-879 of August 1, 2014 .

It is noteworthy that by virtue of article L112-10 of the administrative code, electronic interaction between an individual and an administrative body may be excluded, taking into account the requirements of public order, in the areas of defense or national security, as well as in order to comply with the principle of good governance or if personal presence is required. According to article L112-13 of the Administrative code, ICTs may not be used if personal participation in the administrative procedure is required by law. In addition, issues related to pre-trial appeals do not contain special rules on the need to use ICT when filing, reviewing and making complaints from individuals. On the contrary, other legislation may provide for the possibility of preserving the "paper" form. Thus, article R4125-2 of the defense Code explicitly stipulates that a complaint of a serviceman is sent by letter with a notification of delivery .

Thus, it can be stated that the French legislator is flexible enough to

introduce electronic document management, given that the process of universal transition to "digital" interaction in the field of public administration should not be instantaneous. And even one hundred percent digitalization of public administration cannot exclude the right to non-electronic communication between a private entity and the administration. The main reason for this approach is due to the fact that not all the population (especially the population outside cities) has access to the Internet: about 15% of residents are either not covered by the global network or do not have high-speed access. This is the part of citizens who do not have the necessary skills of electronic communication and cannot use it without appropriate training or assistance. In other words, an instantaneous and uncontested transition to a "figure" can actually deprive such individuals of access to the law in general, violate their right to good public administration, including making it difficult to access justice. In order to solve this problem, a service of special assistants in the provision of public services has been established in France

5. Instead of a conclusion. Problems of digitalization of public administration and CND in Russia through the prism of the French experience

Summing up the analysis of the Russian plans for the digitalization of public administration and the CND, the current legal framework and prospects for its development, as well as drawing lessons from the experience of the French administrative reform in this direction, we can find a number of problems that need to be solved related to the transition to digital interaction between administrative bodies and individuals.

1. The problem of non-alternative electronic interaction of private entities with administrative bodies.

The Russian approach to digitalization

of the CND, which assumes that by 2024 all interactions between controlled entities and administrative bodies will be transferred exclusively to an electronic format, does not have the necessary flexibility. Meanwhile, all the above-mentioned constitutional and legal problems related to the need to ensure the principle of equality, access of private entities to the law, public services, information and judicial protection arise in Russian practice. Moreover, unlike the French Program, claiming absolute transfer of all interactions with authority in digital format by 2022, in Russia the share of interactions of citizens and commercial enterprises with state (municipal) bodies and budget institutions in digital form in 2020 will account for only 30 %, and by the end of the Federal project, i.e. by 2024, should reach 70% . Thus, in contrast to the draft law on control, there is no question of one hundred percent digitalization of interactions in Russian programs. In addition, although the share of households in the Russian Federation using fixed broadband access (broadband) to the Internet is quite high (79 % in 2019), it may not reach 100% even by the end of 2024. The national project "Digital economy of the Russian Federation" sets a goal of at least 97 % (P. 2. 1 sec.2 Passports of the national project approved by the Presidium of the presidential Council for strategic development and national projects, Protocol No. 7 dated 04.06.2019.

In this regard, it is necessary to preserve alternative forms of communication with administrative authorities and provide for appropriate exceptions in law.

2. Problems of meaningful differentiation of errors and violations committed in the process of electronic communication.

If the human factor is completely excluded, there may be involuntary errors of the applicant / controlled person in the process of electronic interaction with

administrative authorities (inaccuracies in filling out electronic forms that arise due to the complexity and ambiguity of the requirements for filling them out, ambiguity of the wording of documents, etc.) , which can lead at best to more complex interaction and increase the time spent on administrative procedures, and at worst – to refuse to provide services, to refuse to accept a document, to miss the deadline for its submission, the deadline for appeal, or even to hold a citizen (organization) responsible for the unreliability (incompleteness) of the data provided. Noteworthy in this regard are incidents noted in the Russian media about the cancellation of electronic visas during border control at the entrance to the Russian Federation when the slightest inaccuracies or discrepancies in the data of a person entered in the application for an electronic visa, compared with their passport data, and, accordingly, about the return of foreign citizens to their country of residence to re-obtain a visa.

In the context of electronic communication, it is essential to ensure compliance with the basic principles and guarantees of good governance, including the prohibition of excessive formalism and the principle of proportionality. In this regard, the absence in the Russian Federation of such a comprehensive act regulating the General principles of any administrative procedure, such as the Code on the regulation of relations between the population and administration in France, becomes particularly noticeable, and its adoption is particularly in demand.

3. The problem of insufficient regulation of the rights and obligations of all participants in electronic interaction, including operators of information systems, and other entities engaged by them that provide system maintenance. All this leads not only to the complication of relations, but also to the broad discretion of administrative authorities due to the incompleteness of data presented in

information resources, ambiguous attitude to technical failures in the process of electronic communication. The French Council of state in 2014, allowing the case of admitting a private person to public procurement, held that if an administrative body has made a technical failure of the electronic trading platform, the offer submitted as a result, a private person outside the prescribed period, is considered filed in a timely manner, and the rights of private persons to participate in procurement be reversed. Russia has not yet developed a standard for proving the presence of technical problems in digital interaction. Judicial practice is contradictory: in some cases, a technical failure, if confirmed by the support service, is the basis for both restoring the time limit for appeal, and for recognizing the absence of an event and the composition of the offense, in others – not .

In addition, there is a problem with the effectiveness of pre-trial and judicial appeals, especially in relation to decisions made automatically. In this regard, the problem of disclosure of the algorithm for automatically made decisions, as well as the procedure for appealing such decisions, becomes particularly relevant.

Within the framework of the presented material, it is hardly possible to reveal all the questions that digitalization poses to the legislator and law enforcement officer, and, moreover, to find answers to them. At the same time, it is obvious that without their solution, the benefits of digitalization (economy and speed, accessibility and efficiency) can turn into their opposite.

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