Theme:
PRE-TRIAL APPEAL OF ACTIONS (INACTION) OR DECISIONS
OF ADMINISTRATIVE BODIES: THE EXPERIENCE OF RUSSIA AND FRANCE

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This is with great pleasure that I have read the PhD Thesis of Pavel Aleksandrovich KURYNDIN.

This excellent thesis that Mr. KURYNDIN shall defend in the next future is very interesting, not only for Russia, but also for France. The academic writing shows all the importance of pre-trial actions before courts or administrative bodies for the development of a new citizen: an active one that claims his right to take part in the process of making administrative rules and decisions. This is a new way, and should I say the best one, to create conditions of a better acceptability of administrative decisions.

From the first lines of the thesis' introduction, the author asserts that "*a citizen is not just a passive consumer of public services but also an active legal entity in the public law sphere*". This assertion refers to what is theorized in French administrative law as "Administrative Citizenship". This concept means that a citizen should be able to take part in administrative actions, what reflects a horizontal administration where the rules of procedures are based on citizen needs and requests contrary to a vertical one where authorities make rules to regulate administrative procedure without regard to the real needs of the people.

By this important academic work, Mr. KURYNDIN shows that comparative work, especially in theoretical discussions, is the best way to solve many problems raised in any legal system, as he concludes: "*problems that arise in practice cannot be solved without theoretical developments or borrowings of suitable foreign concepts*" (conclusion, p. 356).

By reading this academic writing, we discover an original spirit of a public law specialist who is full of ideas to shape in a better way the activities of administrative authorities in a constant evolving society.

<u>These remarks raise some questions:</u>

As the author seems to admit the idea according which "*the government has the ability [...] to impose demands on their subjects*" (Chapter 1, §1, p. 228). Does he think that administrative citizens are "subjects of state" rather than "subjects of the law"?

The author seems also to point out trends to a development of "pre-trial" (chapter 2, p. 260). Does he think that pre-trial appeal can be a better way to prevent or resolve court cases? Couldn't it be the exact contrary?

Elsewhere, Mr. KURYNDIN quotes Article 41[1] of the Charter of Fundamental Rights of the European Union as a text that "*gives a general outline of the right to good government*" (Chapter 2, p. 262) and that "*holds a specific place in the development of the legal system of*

1 In particular, "*the obligation of the administration to give reasons for its decisions*" (§2, point 3).

the EU and its Member States" (same page). But, as we know, the Court of Justice of the UE can't be easily seized by individual people, unlike the European Court of Human Right. How we can consider that this Charter develops the legal systems of the Member States of the European Union without an EU Court to protect it and to impose its provisions to administrative authorities?

Moreover, in the last Chapter, the author seems to admire the fact that the procedure that guides pre-trial actions before administrative authorities or before courts is fixed by courts themselves. However, that way to make the procedural rules can be considered as problematic, in some way, for some people, because, in a state system founded on democracy, the power that makes law should normally be different of the one who interprets and apply the law. This is exactly the sense of the fundamental principle of separation of power. Considering this, how can the author convince the ones who don't agree with the idea according which this is the judge that makes the procedural rules guiding pre-trial action?

Finally, these questions raised above are the marks of the great pleasure that I had in reading this very well documented thesis of Mr. KURYNDIN.

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