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The Competence of Administrative Courts in the Republic of Kazakhstan

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Abstract

The article deals with the issues of competence of administrative courts in the Republic of Kazakhstan and in foreign countries. The main attention is paid to the identification of the features of the administrative shipbuilding in the Republic of Kazakhstan. The scientific novelty lies in the study of the basic principles of the organization of administrative courts and administrative proceedings. The author concludes that everyone, in the event of a dispute about his civil rights and obligations or when any charge is brought against him, has the right to a fair and public hearing of the case within a reasonable time by an independent and impartial court established on the basis of the law. A brief overview of the main activities of administrative courts in the Republic of Kazakhstan and in neighboring countries was made. At the same time, the institution of administrative procedures, especially their principles, as well as the principles of the administrative process in general, for the legislator and even the doctrine still remain largely unexplored and obscure problem. The author also concluded that the main feature of the principles of administrative procedures is their direct effect and specific regularity. At the same time, in order to form an effective administrative justice, it is necessary to create effective institutions and an appropriate system of bodies that contribute to its full implementation. In the framework of administrative proceedings, the parties, one of which is a public authority, an official with authority, and on the other, an individual or a legal entity, are initially not in an equal position. In this regard, the Administrative Procedural Code of the Republic of Kazakhstan (hereinafter referred to as the APPC RK) introduces the principle of the active role of the court to eliminate this inequality, the essence of which is the active participation of the court in administrative proceedings and is aimed at maintaining a balance between the parties and ensuring equal opportunities for them. Thus, further analysis of the basic principles of administrative procedures and process is needed.

Keywords: Regularity, Universality, System of Principles, Law and Order, Hierarchy, Legality, Proportionality, Managerial Activity, Public Rights, Interests of Citizens, Officials, Administrative Affairs

1. Introduction

It should be noted that the issues of improving the activities of administrative courts and administrative proceedings as an important step towards not only the development of the judicial system as a whole, but the implementation of the provisions of the Constitution and the Constitutional Law «On the judicial system and status of Judges of the Republic of Kazakhstan», but also strengthening the authority of the state, which proclaimed the highest value of rights and freedoms of the person, has recently been widely discussed by domestic scientists and practicing lawyers. Undoubtedly, the lack of special scientific research in the administrative and legal science of Kazakhstan on the complex and conceptual substantiation of the problems of administrative procedural law as a young, developing branch of domestic law also pushes for discussions.

The rapidly developing economy of the country requires adequate administrative and legal regulation of relations between the state and the citizen, the formation according to international practice of administrative proceedings with a completely different character than the one currently existing in Kazakhstan and aimed at resolving disputes in the field of public law relations.

According to the administrative reform carried out in accordance with the Concept of the Legal Policy of the Republic of Kazakhstan until 2030, the improvement of the

norms of the Administrative Procedural and Procedural Code is a legal step in the state-legal construction of effective administrative justice.

Administrative legal proceedings differ from other types of legal proceedings in that they deal with administrative cases in which one of the parties is necessarily a public administration body or another public body.

It is commonly assumed that one of the directions of the judicial reform carried out in the republic is the specialization of judges. Also, the formation of specialized courts, a variety of which are specialized interdistrict administrative courts.

2. Materials and Methods, Results

In the course of the study, general scientific theoretical methods were applied. The method of cognition of scientific and theoretical material was the main one for the whole work. When considering and analyzing the basic principles of administrative proceedings, the method of analyzing literature was used; the method of generalization - when highlighting the basic principles; the logical method - when analyzing problematic issues.

3. Discussion

It should be noted that the formation of administrative courts plays an important role in the process of protecting the rights of citizens. Their legitimate interests and freedoms from the arbitrariness of officials. At the same time, this fact contributes to the creation of stability, legality and validity of decisions, as well as actions of state and other bodies and their officials.

Professor I.V. Panova believes that in administrative proceedings, the activities of the court are regulated in accordance with the procedure established by the norms of administrative law [1].

Some civil scientists are of the opinion that there is no need to single out administrative proceedings as a separate type. The opinion is expressed that «The verification of the legality of the actions of officials, state and other bodies can be carried out with the full use of the civil procedural form, adapted for consideration by the court of any disputes about the law. In the future, consideration of cases arising from administrative and legal relations is possible within the framework of the claim proceedings» [2, p.16].

Thus, we can see that an attempt is being made to fully include the consideration of cases that arise from administrative-legal relations to civil proceedings. In our opinion, this position is insufficiently justified for the following reasons.

Firstly, the special subject composition of administrative and legal relations is not taken into account. Participants in these legal relations are a body, an official who has a prerogative and public authority. At the same time, the next participant is a person who does not have authority or has less of it. Thus, there is no equality between the parties.

It is commonly assumed that in the civil process, disputes that arise between equal subjects are considered. For example, in some foreign countries, administrative justice authorities have an active position when considering a dispute. This is done in order to make up and equalize the possibilities of a citizen and a public authority in resolving a case.

N.G. Salisheva notes that the role of the court appears to be different (the judge) in a dispute between a citizen and the state. In administrative proceedings, a judge cannot be an arbitrator by analogy with the consideration of a civil case. The judge's task is to take into account the real inequality in the legal positions of the parties in the sphere of public power, observing the principles of competitiveness and openness of the process. The court is obliged, - as N.G. Salisheva legitimately believes. It playes an active role in administrative proceedings: to assist a citizen who has appealed to the court with a complaint against the decision or action of the public administration body; to explain to him the rights and obligations; to demand from the administrative defendant the necessary materials and documents; to take measures to protect the applicant's property. Based on this, the main burden of proof should be assigned to the administrative defendant [2].

Secondly, it should be noted that the decisions of administrative bodies are normative in nature and thus affect the rights and interests of an indefinite circle of persons. Meanwhile, civil law relations are built on the basis of compliance, use, enforcement of legal norms and are specific and individual. Consequently, the examination of the legality of normative acts presupposes peculiarities in the procedure and special powers of the judicial authorities and requires a particularly careful and balanced approach, which, of course, affects the timing of the proceedings.

Deppe also names other distinctive features that are integral to the consideration of most public law disputes. In particular, this:

- The administrative judge must research the circumstances of the case. The judge is authorized by duty to demand additional information or means of proof.
- In this regard, in comparison with the civil process, the administrative judge has expanded responsibilities for providing explanations to the parties. At the same time, the judge helps the parties to a greater extent in the formulation of their statements.
- It should also be noted that in the administrative process there is a potentially wider range of participants in the judicial process. The judge has the right to involve third parties whose interests may be affected.
- The main reason for filing a lawsuit in court is, as a rule, the appeal of an administrative decision in a higher instance. Thus, the administrative judge makes a decision not only on the initial administrative act, but also at the same time on the conclusion of the case of the second instance that rejected the complaint.
- It should be noted that there is no correspondence administrative proceedings. At the same time, an administrative judge has the right to make a decision in the

absence of the parties on the basis of documents on the case.
• An administrative judge may also, contrary to the will of an administrative body, temporarily suspend the execution of an administrative act. In addition, he has the right to make a temporary order binding on the administrative body.
• When making court decisions related to the actions of an administrative body, special rules apply: on the one hand, an administrative judge must take into account and respect the discretion that an administrative body enjoys by law, and does not have the right to take the place of this body.
• The administrative process offers opportunities to verify legal norms. The administrative judge decides on the general validity of legal acts [3, p. 16].

It must be said that these features of administrative cases do not allow including the procedure for their consideration in civil proceedings. The main reason is that there are significant differences between them. At the same time, it should be remembered that civil proceedings were the basis for the formation of a full-fledged administrative proceedings in the procedural part.

N.L. Khamaneva and N.G. Salisheva in the work «Judicial power» note that the special procedure of administrative proceedings should reflect the following features of a public-law dispute:
• A citizen's access to justice should be simplified by establishing special procedural deadlines for applying to the court. Also by the procedure of preparing the case for consideration and the consideration of the case itself.
• A citizen should be assisted in drafting an appeal to the court.
• The investigative role of the court taking into account the demand for the necessary evidence and documents that are inaccessible to a citizen the implementation of other measures by the court on its own initiative.
• The duty of proof should be assigned to the body of administration, which compensates for the inequality in the position of subjects of public law.
• Ensuring a fair resolution of a public legal (administrative) dispute that has arisen. Also, the prompt execution of a court decision [4, p.50].

In this aspect, the main purpose of administrative courts is to monitor such a situation «The presence or absence of special administrative proceedings, - Yu. N. Starilov notes, - this is an indicator of the compliance of the national judicial system with international state and legal standards, in particular, the standards of ensuring the rights and freedoms of citizens, the availability of an effective and fair justice system for all subjects of law, the formation of an appropriate structure of judicial authorities» [5, p.124].

In addition, the role of administrative courts in ensuring the economic development of the country is very significant. Thus, M. Stauch notes to this aspect of the activities of such courts: «Administrative Of particular relevance is the issue of a clear distinction of jurisdiction between courts of general and special jurisdiction. This distinction is relevant, since the current legislation defines jurisdiction inconsistently. In this regard, the same dispute can be considered by both a court of general juris-diction and a specialized one. This provision is conditioned by the fact that jurisdiction is determined by the norms of various legislative acts - civil procedural and administrative. The norms of these legislative acts in the matter of determining jurisdiction and procedural regulation of the consideration of court cases overlap and are also in contradiction [3-7]. Often, «when considering a case of an administrative offense, it becomes known that the grounds for bringing to such responsibility are disputed in civil proceedings. Under these circumstances, administrative proceedings are often suspended by administrative courts in connection with the con-sideration of a civil case in the order of special claim proceedings» [8].

It should be noted that in some cases, citizens did not have an accurate idea of which court to apply to. The same contested illegal act of a local state body could be considered in different courts: in one case - in the district, if the applicant was an individual, in the other - in the economic, if the applicant was a legal entity. At the same time, in cases where an administrative penalty has been imposed on an individual or legal entity, and arising from the same regulatory legal act, the issue of judicial protection of the rights and legitimate interests of a person should be considered in a specialized inter-district court for administrative offenses. It must be noted that the institution of administrative justice should not be confused with admin-istrative proceedings. Administrative proceedings are reduced to the order of consideration and resolution of administrative cases in the courts. Judicial activity can be carried out by a wider range of activities of public bodies.

Thus, it can be concluded that the procedural procedure for the consideration and resolution of ad-ministrative cases is being considered in administrative proceedings. Administrative legal proceedings is an institution that promotes the implementation of administrative justice in the courts. At the same time, administrative justice is a broader education than administrative legal proceedings, since it includes material norms (the right to appeal actions, decisions (non-actions), etc.), and also covers the system of bodies with relevant functions.

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France is recognized as the ancestor of administrative and judicial control over the activities of public authorities. The French model of the organization of administrative justice has a multi-stage structure consisting of administrative courts and quasi-judicial bodies. The administrative justice of France is an independent branch of justice. It separated from the system of courts of general jurisdiction and executive authorities. It is based on the specific French concept of separation of powers. It prohibits courts of general jurisdiction from interfering in the activities of the executive branch. The consequence of this concept was a dual judicial system: a system of courts of general jurisdiction headed by the Court of Cassation of France. A system of administrative courts headed by the Council of State of France.

The legislative basis of the French administrative justice is the Code of Administrative Justice of France of May 4, 2000. It entered into force on January 1, 2001 and replaced the previously existing Code of Administrative Tribunals and Administrative Appeals Courts of 1973. The administrative justice system itself is three-tier. The first link consists of 37 administrative tribunals, 8 of these courts are formed in the overseas territories of France. The jurisdiction of administrative tribunals is determined by the territorial principle. The State Council acts as a court of appeal and cassation instance for administrative tribunals. Administrative courts of appeal and specialized administrative jurisdictions: the Court of Accounts. The Central Commission for Social Assistance, the Commission for Refugee Complaints, the Court for Budgetary and Financial Discipline.

The court has the authority to assess the compliance of the act with the purposes for which this management body was established. So, the management act cannot contradict the principle of good faith. In addition, English law imposes a requirement of reasonableness on management acts, which is also checked by the court. This rule has acquired great importance in the USA. On the factual side of the case, the court expresses its opinion only when the institution has made an unreasonable or obviously erroneous decision. Since representatives of the administration are more competent than the court in special, technical management issues. A common law judge in the United Kingdom and the United States has the authority to recognize administrative acts as illegal and to cancel them. It is not considered as interference by judicial authorities in the activities of the executive branch.

In the countries of the former USSR, administrative proceedings appeared earlier than anyone else in the Baltic states. There are administrative courts in Lithuania, Estonia, and Latvia. The necessary legislative framework for their activities has been created and is being improved.

An analysis of the legislation and experience of the former USSR countries in the field of administrative justice shows that the fundamental point in this matter is whether separate administrative procedural laws have been adopted in the country. The countries of the first group do not have a special procedural law. This entails the vagueness of the procedure for resolving public law disputes. The general rules of judicial protection and judicial system do not fully meet the needs of legal regulation of administrative justice issues. In the countries of the second group, there are special legislative acts regulating issues of administrative justice.

In 1999, the Administrative Procedure Code was adopted in Georgia. Administrative cases are considered by the general courts. Also, a chamber for administrative cases has been established in the Supreme Court of Georgia. In 2000, the Law «On the Administrative Court» was adopted in Moldova. In essence, this is an administrative procedural law. Administrative cases are considered by specialized collegiums of general courts, which in the procedural sense are administrative courts. At the same time, the option of creating separate administrative courts is being actively discussed. The Administrative Procedure Code has entered into force in Armenia. The Administrative Court of Armenia has been established and functioning there for several years. The Administrative Procedure Code was also adopted in Azerbaijan in 2009.

Thus, the Institute of administrative justice is actively developing in the Baltic States, the Caucasus, Ukraine and Moldova. At the same time, in other countries of the former USSR (Belarus, Central Asian countries). This institution has not yet found sufficient procedural and organizational

formalization. The procedure for the consideration of administrative disputes by administrative courts. It is based on the same democratic principles of the administration of justice as in courts of general jurisdiction: the independence of the court, its subordination only to the law, publicity, publicity of judicial proceedings, etc. In some countries (Latvia), administrative courts also consider cases on the obligations of organizations to conclude a public law contract, on the cancellation of such a contract. Despite the diversity of administrative justice systems existing in the world, they are united by the main goal - the implementation of judicial control over the legality of acts of public authority against persons who do not have state authority.

4. Conclusion

Based on the above ideas and ways of their implementation on improving the administrative procedural legislation on administrative activities. We believe that the proposed amendments to the Administrative Procedural Code of the Republic of Kazakhstan correspond to the general trend of transferring all disputes arising from public law relations to the jurisdiction of administrative courts. Also transferring to them the right to impose appropriate administrative penalties related to the issuance of illegal administrative acts, the implementation of illegal actions or omissions that violate the legitimate rights, freedoms and interests of individuals and legal entities. They are based on the positive experience of administrative proceedings in foreign countries with long-standing traditions and accumulated law enforcement practice in public law disputes.

In addition, these amendments and additions will become an additional guarantee of the protection of the rights, freedoms and legitimate interests of individuals and legal entities enshrined in the Constitution and laws of the Republic of Kazakhstan.

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