

ISSUES OF IMPROVING THE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN TO ENSURE THE LEGALITY OF MANAGEMENT ACTS

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Abstract

The purpose of this article is theoretical and legal analysis of the scientific literature, and legislation of the Republic of Kazakhstan on the topical problems of ensuring the legality of management acts, making suggestions and recommendations on improvement of legislation and law enforcement practice in the sphere of public administration. The urgency of this problem is determined by the need to further improvement of the organizational and legal mechanism of insuring the legality in public administration, protection of rights and legal interests of citizens. Studying this problem in the scientific researches of Kazakhstani and foreign authors, the Republic of Kazakhstan legislations show that the issues of ensuring the legality of management acts in the Republic of Kazakhstan are paid much attention.

The main results of the study are as follows:

- in management practice all illegal acts, even those that contain obvious and gross defects are voidable, i.e. it is necessary to use measures of state and legal effects provided by the legislation to stop their actions;
- in the Law of the Republic of Kazakhstan «On normative legal acts», one should establish that the state registration shall be subject to all legal acts, except for those by which the internal relations between the executive authorities and their structural divisions are governed;
- it is necessary to establish the science-based concept of administrative justice model, the adoption of the Administrative Procedure Code in the Republic of Kazakhstan;
- in the Constitutional Law of the Republic of Kazakhstan «On the Constitutional Council of the Republic of Kazakhstan» it is necessary to set a standard on the application of courts to the Constitutional Council in the procedure established by Article 78 of the Constitution, the effect of the contested act in cases of urgency should be suspended for a

period of consideration its Constitutional Council»; it is expedient to empower the appeal of the Prosecutor General of the Republic of Kazakhstan to the Constitutional Council.

Keywords: the Republic of Kazakhstan, legality, legal acts of management, normative legal acts, administrative justice.

Introduction

Compliance with the requirements of the law is observed in the publication of the legal acts of the executive bodies as a rule, due to the constitutional principles of organization and functioning of the executive bodies of the Republic of Kazakhstan.

The positive trend reflecting the reduction in the number of illegal acts is certainly contributed by a major upgrade over the years of independence of the legal framework of public administration. The laws of the Republic of Kazakhstan «On normative legal acts», «On administrative procedures», «On State Service of the Republic of Kazakhstan», the Concept of Legal Policy of the Republic of Kazakhstan for the period 2010-2020, the Concept of a new model of state service, approved by Decrees of the Head of State, contain fundamental approaches to the foundations of the normative and enforcement activities of the executive bodies of the Republic of Kazakhstan. The law of the Republic of Kazakhstan «On Legal Acts» is at the stage of development and adoption

At the same time, it would be wrong to assert that the facts of the illegal publication of legal acts in the sphere of public administration eliminated.

Violations of housing, taxation, antimonopoly law, law on appeals of individuals and legal entities, on business, on administrative offenses, on public procurement are still widespread. Number of illegal acts at the local level of state government is large. The reasons for such phenomena are hidden not only in legislation shortcomings, but in the lack of control by the monitoring side, supervisory and parent bodies and officials, in civil servants' poor knowledge of the law, in inefficient work of legal services of state bodies. Violations of the laws of legal acts of the executive bodies lead to violation of the rights and legitimate interests of citizens, both organizations and the state. Therefore, the problem of ensuring the legality of management acts is one of the priority directions of improving the legal policy in the Republic of Kazakhstan at the present stage. Hence the need to improve the rule-making and enforcement activities of the executive bodies of the Republic of Kazakhstan, as the protection and realization of the rights and legitimate interests of citizens and organizations, raised to the rank of public interest, should be a top priority in the content of the human rights functions of modern administrative law. Thus, the organizational and legal mechanism to ensure the legality of legal acts should be directed at removing law violations from the legal field in the process of publication of legal acts, ensuring the early and full restoration of the rights and interests of citizens, society and the state, improving the rule-making and administrative procedures. These circumstances actualize the importance of the theoretical and legal research and current issues analysis of legislation and law enforcement practice to ensure the legality of management acts.

Literature Review

Part 1 of Article 43 of the Law of the Republic of Kazakhstan «On normative legal acts» entitled «Measures to ensure the legality of normative legal acts», states that the legality of normative legal acts is provided by the following measures: 1) bringing the normative legal act in conformity with the Constitution and the law; 2) suspension of the action in the prescribed manner of regulatory legal act; 2-1) holding legal monitoring of regulatory legal

acts; 3) checking the state registration of normative legal acts for compliance with the laws [13].

These measures of ensuring the legality have legal acts as the object of direct influence which are the most important legal means to implement the tasks and functions executive bodies. Membership of the legal management acts, on the one hand, to the means of public administration, and to the mechanism of legal regulation, on the other, provides a basis to characterize them as law based legal power of will expression of authorized subjects of executive power aimed at establishing the legal and administrative regulations or the occurrence, change and the termination of the administrative and legal relations in order to implement the executive power [1, p.269]. J. Vedel notes that an executive decision is a legal act, published unilaterally by the administration to change the legal provisions by imposing duties or provision of goods and, therefore, declarations, statements, etc. documents can not be regarded as the executive decisions due to lack of the «operative» [20, p.138]. Regulative character of management acts, direction in establishing the rules of law or the emergence of specific legal relations find their direct expression in their action.

It is accepted in legal theory that in regards to legal acts there is a presumption of correctness, which means that adopted in a proper manner and in compliance with all the legitimacy of claim the legal management act is valid until the expiration of the term (if there is any), or up to the official cancellation, change, suspension. For example, according to German law the following requirements are imposed to management acts: comply with the law («the legality of the act»), fall within the legal control of the judiciary, independent authorities that issued the act, meet the formal requirements of the control acts, to be issued by the control authority within its competence [4, p.245].

In the legislation of the Republic of Kazakhstan requirements of legality applicable to the management acts established in the Laws of the Republic of Kazakhstan «On normative legal acts», «On administrative procedures», Regulations of relevant executive bodies.

The fundamental position under the action of the control instruments consist in the fact that the legal act is valid, enforceable as long as its action in accordance with established procedure is terminated. Such act is required for anyone who is addressed.

Methodology

The methodological basis of the study are as follows: firstly, the general scientific methods (formal-logical, systematic, statistical, structural-functional, specific, etc.) and formal-logical methods (analysis and synthesis, induction, analogy, etc.). Secondly, the study used specific legal methods (comparative legal analysis, specification, interpretation, etc.). For example, a comparative legal analysis was used to compare the administrative justice and administrative practice in the Republic of Kazakhstan and foreign countries to improve the mechanism for the implementation of administrative law; interpretation was applied in the study of the legislation regulating the state registration of normative legal acts, etc.

Discussion and results

In regard to the legal management acts there is a presumption of correctness. However, in the science of administrative law it is believed that this presumption is in particular depending on the validity of acts on which the extent and nature of violations committed in their publication

Depending on the nature of the violations in the science of administrative law the defective acts are believed to classify into voidable or void [10, p.76-95].

One can not but agree with the view of Kazakhstan scientist R.A. Podoprigora that «the law of the Republic of Kazakhstan and its application in practice has yet not found its simple consent and normative regulation of the issue of demarcation of illegal administrative acts on voidable or void» [2, p. 174].

Void acts are recognized, as a rule, as management acts accepted with clear violation of the law. These void acts do not give rise to any legal consequences to which they are directed and not be enforceable as a legally untenable since its publication.

Voidable acts include such defects certificates which are binding, but may be challenged (appealed or protested) by stakeholders in the administrative or judicial procedure. As a result of the consideration and assessment of the act, it can be: a) legitimate; b) changed (after the elimination of the detected violations of the law in it); c) declared illegal (invalid).

The assignment of one or other act to the void and voidable category is a very complex issue, directly related to the problem of cancellation or suspension of legal acts of the executive bodies. If the ultimate goal of the voidable defect management acts is achieving the legal result in the form of their cancellation, in respect of void legal acts such goal is not set. The presumption of correctness does not spread on void acts i.e. they are not subject to the application and execution.

In the practice of public administration, especially in the work of local executive bodies it is not uncommon the publications of legal acts containing gross obvious defects, which are, however, executed and implemented, i.e. produce certain consequences. It follows that in front of the legal science and legislation there is a task of establishing clear criteria for the classification of one or other act to the category of void or voidable.

We believe in a constructive approach to the problem of defective acts proposed by well-known Polish scientist administrativist E.Starostsyak. He, in particular, wrote that the continued division of the acts into void and voidable can be explained legally, but it is not necessary and inevitable from the point of view of the practical activities of public administration [16, p.226]. R.A.Podoprigora rightly notes that «illegal acts of governing bodies are not automatically invalid, at least, if they are not based on very serious violations of the law, they can be canceled only in court [2, p. 62].

The theoretical structure of the existence of acts that due to obvious defects would not be subject to appeal and shall terminate automatically, does not have adequate reflection in the legislation currently.

The fact that legal acts issued in violation of competence of the body are void, they can be judged indirectly from the content of paragraph 3 of Article 25 of the Law of the Republic of Kazakhstan «On normative legal acts», which found that the adoption of regulatory legal acts of the authorized body is allowed only in the case when competence of the authorized body for the adoption of this act is expressly provided for by the legislation of the Republic of Kazakhstan [13].

This implies that if a particular issue is not directly related to the competence of the relevant body, it follows that it has no right to issue and enforce regulations on these issues. This question often arises in practice. But in our opinion, this norm does not indicate enough that the normative legal acts issued in violation of competence are invalid, that is legally void from the moment of their publication.

An example of void acts in the legislation of the Republic of Kazakhstan can be Part 1 of Article 43 of the Law of the Republic of Kazakhstan «On State Service of the Republic of Kazakhstan», which states that the doubts about the legality of orders received for the execution of it should immediately notify in writing form to your supervisor and the head who gave the order. If a higher-officio head confirms in writing form this order, the civil servant is

obliged to execute it if it does not involve the execution of actions that relate to the criminal offense. The head of the order, confirmed orders is responsible for the consequences of improper execution of a public servant [17]. From the contents of this article, it follows that the presumption of correctness of the act is taken into question by the subordinate civil servants, and he does not explicitly perform illegal disposal of its leader.

However, as a management practice shows this rule is not applied, i.e. the subordinate performs clearly illegal order, until it was canceled by a higher body (official) or appeal against the prosecutor. It appears that in order for this rule to work, one need to improve the procedural mechanism for its implementation firstly, and secondly to increase the level of legal culture of the civil servants themselves. For example, in Germany, in accordance with the Regulations on Petitions a soldier has the right to file a complaint if in his opinion, illegal actions of commanders occur in relation to him or other soldiers. At the same time, even the complainant submitted a baseless complaint he can not be subjected to any disciplinary action for it. A person who prevents filing a complaint may be prosecuted and subjected to imprisonment of up to three years [19, p.40].

In the absence of direct fixed criteria nullity of acts in law one should, in our opinion, proceed from the fact that their illegality is a conflict between the state, which established a presumption of correctness of the acts, and the state body (official) that violated the requirements of the law in their publication. The resolution of this conflict in all cases involves challenging acts in accordance with established procedure, after which the competent authority (official) makes a decision to terminate them (in the case of illegality), or to uphold (if it meets the requirements).

Summarizing the foregoing, we conclude that in practice all illegal acts even containing obvious and gross defects are voidable, i.e. to stop their actions it is necessary to use certain measures of state and legal effects, because only by its apparent nullity, they do not lose their validity.

Referring to the characterization of the powers of public authorities applying the complex of law enforcement measures to ensure the legality of management acts one can not ignore that during the years of independence the legal framework of their activities considerably improved.

Part 2 of Article 43 of the Law of the Republic of Kazakhstan «On normative legal acts» entitled «Measures to ensure the legality of normative legal acts», defines the range of subjects provided in accordance with the competence established by the Constitution of the Republic of Kazakhstan and other legislative acts of the legality of normative legal acts. They are:

- 1) The Constitutional Council of the Republic of Kazakhstan;
- 2) the courts;
- 3) The Public Prosecutor of the Republic of Kazakhstan and the subordinate prosecutors;
- 4) The Ministry of Justice of the Republic of Kazakhstan and its territorial bodies;
- 5) State bodies - in respect of legal acts adopted by the subordinate bodies;
- 6) The competent authorities that have adopted by-laws and regulations and (or) being their developers, - with regard to by-laws and regulations adopted by them and (or) the developers of which they were [13].

Each of these abovementioned bodies use in the process of control or surveillance activities the specific legal sanctions on the facts of illegal publications of management acts. Based on the current legislation of the Republic of Kazakhstan and the law enforcement practice, we believe it is necessary to define a number of areas for improvement of their activities.

One of the priorities of the judicial authorities is the state registration of normative legal acts. The state registration submitted to the judicial authorities of acts is carried out by the due diligence for the presence of the rule of law, the compliance of an act with the legislation of the Republic of Kazakhstan and the inclusion in the Register of state registration of normative legal acts with the assignment of state registration number.

The value of registration is that unregistered normative legal acts have no legal force and should be abolished by the authority that issued them if judicial authorities decision is not challenged in due course. Violation of the Republic of Kazakhstan legislation on state registration of normative legal acts shall entail administrative liability in accordance with Article 457 of the Code of the Republic of Kazakhstan "On Administrative Offences" [7]

However, a number of issues related to the regulation of state registration of normative legal acts and practice of its implementation needs to be improved. Article 38 of the Law of the Republic of Kazakhstan «On normative legal acts» in the original version of the law included as criteria for registration of normative legal acts 1) obligatory value, 2) with regards to the rights, freedoms and responsibilities of citizens, and 3) an inter-administrative nature. However, subsequently these criteria were excluded. Thus, according to the current wording of Article 38 of the Law of the Republic of Kazakhstan «On normative legal acts» all acts of central and local government bodies shall be subject to state registration of normative legal acts. Such a broad interpretation of the list of normative legal acts that are subject to state registration with the justice authorities, in practice led to:

- a different understanding of the executive bodies of the disposition of the article of the Law of the Republic of Kazakhstan «On normative legal acts»;
- a permanent theoretical disputes between organs of state governance, receiving certain regulatory acts, and justice carrying out their registration;
- unnecessarily increase of the load on the judicial authorities and, as a consequence - to a deterioration in the quality of legal examination of coming normative legal acts conducted by them, delay, and even - failure of consideration of normative legal acts and making decisions by them on the state registration.

Even now, in the absence of a clear regulation on this issue, in practice, there are disputes about the need to register one or other normative legal acts.

What then should be the criterion for the designation of a regulatory legal act for state registration? We believe that all legal acts should be divided into two types depending on the content of the regulated social relations:

- 1) general;
- 2) internal.

The first group includes those normative legal acts, which regulate the relationship between public authorities and citizens, organizations (general); the second one - regulating relations within the structures of the executive power (internal).

Therefore, in the Law of the Republic of Kazakhstan «On normative legal acts», in our view, one should establish that all the legal acts of the executive bodies, with the exception of those which regulate internal (intra) relationships between higher and lower executive bodies and their structural divisions shall be subject to the state registration.

Turning to the project developed by the Law of the Republic of Kazakhstan «On Legal Acts», the Article 49 of the bill states that the regulatory legal acts of central executive and other central state bodies, with the exception of acts governing the internal procedures of the State body and its structural divisions, their interaction with other state bodies, defining the status and powers of a public authority, the rules of professional ethics, establishing qualification requirements for candidates (candidates) to engage in the administrative public

office, as well as acts containing state secrets are subjects to state registration in the Justice of the Republic of Kazakhstan. This registration is a prerequisite for its entry into force [14].

Thus, this is another argument in favor of the fact that the criteria for inclusion of regulatory legal acts for registration shall be specified in the law, and as such is the focus of the normative legal act to regulate the external relations and with regards to the rights, freedoms and duties of citizens.

The most important role in ensuring the legality of legal acts of the executive bodies is intended to carry out judicial review. Article 13 of the Constitution of the Republic of Kazakhstan declares that everyone has the right to judicial protection of their rights and freedoms [8]. Ensuring this right implies the creation of an effective mechanism for the protection of violated human and civil rights from illegal acts, actions or omissions of the executive authorities and their officials. Resolving this issue is directly related to the reform of the judicial system of the Republic of Kazakhstan.

Currently, consideration of public law disputes and the consequent order of the control over the legality of administrative acts and actions carried out by the rules of special proceedings, regulated by the Civil Procedure Code of the Republic of Kazakhstan that does not fully meet the protection objectives of the rights and freedoms of citizens in the field of public law relationship.

Currently, consideration of public law disputes and the consequent order of the control over the legality of administrative acts and actions carried out by the rules of special proceedings set out in section 3 of the Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015 № 377-V LRK, i.e. within civil procedure [6]. However, this approach does not fully meet the objectives of protection of the rights and freedoms of citizens in the field of public and legal relations. If the main thing in the process of judicial control of the legality of management acts is restoring rights and freedoms of citizens violated by public authorities and officials, as well as the enforcement of law, the established regime of public administration, the fight against the arbitrariness of officials, then the main one in civil proceedings is restoring the legal order in the sphere of private life .

The scientific literature indicates that the institution of judicial control of the legality of management acts needs to have more clear legal regulation, especially in terms of setting the specific procedural rules of cases arising from administrative legal relations. This, in particular, written by authors such as the N.G. Salishcheva and N.Yu. Hamaneva [15, p.3-12] T. Donakov [9, p.311-320], M. Baltabay [3, p.24], K.A. Mami [11, p.199], and others.

Administrative cases should be treated much more expeditiously than civil cases, since it deals with the restoration of the rule of law in the public and legal sphere. It should be borne in mind that in administrative matters the principle of "presumption of guilt of the state body or the official" - the subject of a public authority must prove in court that the actions are legitimate. The citizen is not obliged to prove the illegality of the acts and actions of state bodies and their officials. In addition, a citizen for a number of reasons can not be an equal party to the dispute with the state body and official, for which there is an administrative resource. According to these parameters, of course, the controversial model of civil proceedings is different from investigative and adversarial one (i.e. more active position of the court) in the administrative legal proceedings.

The provisions on the further improvement of the judicial system are provided for the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, which states that «In the future, based on existing administrative courts it is necessary to create a system of administrative justice, which considers public disputes with the transfer of cases on administrative offences in the jurisdiction of the courts of general jurisdiction». [12]

The concept stresses that one should clearly define the subject of regulation of the administrative procedure law. However, the lack of theoretical elaboration of the issues of administrative justice in the Republic of Kazakhstan complicates the adoption of the Administrative Procedure Code of the Republic of Kazakhstan. For the implementation of administrative justice, it seems to us, one should carefully study and test the experience of administrative proceedings of foreign countries in the Republic of Kazakhstan. In the world there are several models of administrative justice, the main ones are the Anglo-Saxon and continental. We believe that for the Republic of Kazakhstan the preferred model of administrative justice would be the model of continental Europe. Classic examples of specialized administrative courts are, of course, Germany and France. For example, in Germany the administrative courts are an independent branch of the judiciary that organizationally less connected with the public administration bodies. The position of Judicial Administrative Procedure determines that the administrative proceedings are carried out by courts independent of the administrative authorities [18, p.70]. German model had and has a great impact on neighboring countries and on the post-Soviet countries.

For the implementation of administrative justice in the Republic of Kazakhstan one should consider and take into account the international cooperation of our country on the administrative justice with organizations such as the International Association of the supreme bodies of administrative justice.

Summarizing the foregoing, we conclude that the establishment of administrative justice as a special procedural order of resolution of legal and administrative disputes between citizens and the executive authorities (officials) is a legitimate necessity for the establishment of the rule of law in the Republic of Kazakhstan. This necessitates the creation of a science-based concepts of administrative justice model for Kazakhstan, the early adoption of the Administrative Procedure Code. Financial and other costs for the implementation of this objective should be paid off by high-quality and quick consideration of cases, the improvement of justice, the implementation of the constitutional provision that the person, his life, rights and freedoms are the supreme values of our country.

Significant powers in the sphere of control of legality of acts has the Constitutional Council of the Republic of Kazakhstan. In accordance with Article 72 of the Constitution of the Republic of Kazakhstan Constitutional Council shall consider the appeals of courts in cases prescribed by Article 78 of the Constitution, according to which, in the first place; courts are not entitled to apply laws and other regulatory legal acts infringing on the rights and freedoms of man and citizen; secondly, if the court finds that a law or other regulatory legal act, being a subject to application, infringe the rights and freedoms of a person, then shall suspend legal proceedings and address the Constitutional Council with a proposal to declare that the act is unconstitutional [8].

It seems to us that in order to strengthen the supervisory powers of the Constitutional Council the implementation procedure should be improved. In our opinion, the Constitutional Law of the Republic of Kazakhstan «On Constitutional Council of the Republic of Kazakhstan» should be supplemented with the norm as follows: «When the courts applying to the Constitutional Council in the manner prescribed by Article 78 of the Constitution, the effect of the contested act in cases of urgency, should be suspended for the consideration of it by Constitutional Council». This provision, providing its consolidation would be an additional guarantee for the protection of the rights and freedoms of man and citizen.

One of the important directions of improvement of the activity of the Constitutional Council is, in our opinion, expansion of the range of subjects that have the right to appeal to it. So Zh.D. Busurmanov expresses the idea of conferring such a right to the Public

Prosecutor, the Minister of Justice and the Ombudsman for Human Rights [5, p. 32]. This proposal seems to be very constructive. However, we consider that only the Public Prosecutor of the Republic of Kazakhstan should have such a right, as according to Article 83 of the Constitution of the Republic of Kazakhstan on behalf of the state Prosecutor's office oversees the accurate and uniform application of laws, decrees of the President of the Republic of Kazakhstan and other normative legal acts on the territory of the Republic and takes measures to identify and eliminate any violations of the law, as well as appeals against laws and other legal acts that contradict the Constitution and laws [8]. The prosecutor's office has a wide arsenal of state-powerful influence on the identification of law violations; therefore it could use more efficiently the right to appeal to the Constitutional Council on the unconstitutionality of a normative legal act which infringes on the human rights and freedoms guaranteed by the Constitution. Giving the Public Prosecutor of the Republic of Kazakhstan the right to appeal to the Constitutional Council of the Republic of Kazakhstan will enhance and strengthen the role of the Constitutional Council of the Republic of Kazakhstan in the sphere of control of the constitutionality of legal acts and in the first place issued by the executive.

Conclusions

Summarizing the foregoing, we conclude that ensuring the legality of management acts, undoubtedly, is one of the most relevant vectors to improve public administration. This problem is quite multifaceted and covers a range of issues both the theoretical orientation and practical. In this respect, improving the standard and enforcement activities of the executive bodies of the Republic of Kazakhstan, the theoretical development and organizational - legal measures to establish Administrative Justice in the Republic of Kazakhstan, optimization methods ensuring the legality of management acts (judicial authorities, the courts, the Constitutional Council, the prosecutor's office, etc.) are great of importance.

Main findings of a study are as follows.

- in the management practice all illegal acts, even containing obvious and gross defects are voidable, i.e. to stop their actions is necessary to use measures of state and legal effects envisaged by the legislation.

- in the Law of the Republic of Kazakhstan «On normative legal acts», one should establish that all the legal acts of the executive bodies, with the exception of those which are regulated by internal (intra) relationships between higher and lower executive bodies and their structural divisions shall be subject to the state registration.

- creation of administrative justice as a special procedural order of resolution of legal and administrative disputes between citizens and the executive authorities (officials) is a legitimate necessity for the establishment of the rule of law in the Republic of Kazakhstan. This necessitates the creation of science-based concept of administrative justice model for Kazakhstan, the adoption of the Administrative Procedure Code.

- it is necessary to establish in the Constitutional Law of the Republic of Kazakhstan «On the Constitutional Council of the Republic of Kazakhstan» the rate that when the court applying to the Constitutional Council in the procedure established by Article 78 of the Constitution, the effect of the contested act in cases of urgency, should be suspended for the consideration by Constitutional Council».

- it is necessary to expand the range of subjects with the right to appeal to the Constitutional Council of the Republic of Kazakhstan by conferring such a right to the Public Prosecutor of the Republic of Kazakhstan.

A positive resolution of these issues will ensure the effective protection and realization of public interest raised to the rank of the rights and legitimate interests of citizens and organizations, which is a modern content of the human rights functions of administrative law.

References

- 1 Administrative law / Edited by Yu.M. Kozlov, L.L. Popov. Moscow: Lawyer, 1999. 726 p.
- 2 Administrative Law. Training course / Edited by R.A. Podoprigora. Almaty: Tax Expert, 2010. 366 p.
- 3 Baltabay, M. Should we accept the Administrative Code? // Legal Reform in Kazakhstan. - 2006. - №2. - P.23-25.
- 4 Beinhardt, G. Der öffentlich-rechtliche Vertrag als Regelungsbefugnis der Öffentlichen Verwaltung. München, 1960. 245 p.
- 5 Busurmanov, Zh.D. Constitutional Council - Institute mediated protection of human rights and the citizen of the Republic of Kazakhstan. // Journal "Zanger (lawyer)". 2011. №1. P. 31-33.
- 6 Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015 № 377-V LRK <http://adilet.zan.kz/rus/docs/K1500000377/k150377.htm>
- 7 Code of the Republic of Kazakhstan "On Administrative Offences" on July 5, 2014 № 235-V LRK // <http://adilet.zan.kz/rus/docs/K1400000235>
- 8 Constitution of the Republic of Kazakhstan. Constitution adopted on August 30, 1995 at the republican referendum // http://adilet.zan.kz/eng/docs/K950001000_
- 9 Donakov, T. State control and the executive power in the Republic of Kazakhstan (organizational and legal issues). Effective governance in modern conditions. - Astana, 2003. - P.311-320
- 10 Kameneva, E.N. Defective acts of legislative and executive power. Dissertation for candidate of juridical sciences. Moscow, 2003. 199 p.
- 11 Mami, K. Constitutional law and judicial power in the Republic of Kazakhstan. - Moscow: Nauka, 2004 - 310 p
- 12 On Conception of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020. The Decree of the President of the Republic of Kazakhstan dated 24 August 2009 No. 858 // http://adilet.zan.kz/eng/docs/U090000858_
- 13 «On Regulatory Legal Acts» Law of the Republic of Kazakhstan dated 24 March 1998, No 213 // <http://adilet.zan.kz/eng/docs/Z980000213>
- 14 Resolution of the Government of the Republic of Kazakhstan «On the Draft Law of the Republic of Kazakhstan «On Legal Acts» June 28, 2014 № 719 // <http://adilet.zan.kz/rus/docs/P1400000719>
- 15 Salishcheva, N.G., Hamaneva, N.Y. Executive and judicial branches of government: the relationship and interaction // the State and the right. - 2000. - №1. - P.5-11.
- 16 Starostsyak, E. Legal forms of administrative activity. Moscow: Gosyurizdat, 1959. 330 p.
- 17 The law of the Republic of Kazakhstan «On state service» of 23 November 2015. №416-V LRK // <http://adilet.zan.kz/rus/docs/Z1500000416>
- 18 Verwaltungsgerichtsordnung (VwGO) // Verwaltungsverwahrgesetz Verwaltungsgerichtsordnung 24. Aufl. München, 1997. P. 70-118
- 19 Wassenberg, G. Defend of the rights of servicemen in Germany // Journal "State and law". 1997. № 8. P. 39-41.
- 20 Wedel, J. Administrative law in France. Moscow: Publishing house «Lawyer», 1973. 486 p.