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# Features of administrative proceedings in the Republic of Kazakhstan

The purpose of the article is to analyze the new Administrative Procedural Code of the Republic of Kazakhstan, which will enter into effect on July 1, 2021. The relevance of the problem is due to the fact that with the adoption and introduction of the new APPC in Kazakhstan the institute of administrative justice is being created, the purpose of which is to create a system of constitutional checks and balances. The newly created specialized administrative court will ensure the interests of the public in the sphere of the legality of the activities of the executive authorities. Analyzing the norms of the new APPC of the Republic of Kazakhstan, the authors rightly believe that the adoption of the APPC will lead to increased transparency and efficiency of the activities of state bodies, will become an effective mechanism for protecting the rights of citizens when considering public law disputes, as well as a guarantee that allows our citizens to take part in the decision-making process of the authorities.

*Keywords:* administrative justice, administrative courts, jurisdiction of disputes, public law disputes, pre-trial settlement of disputes, administrative discretion, administrative proceedings, administrative process.

## *Introduction*

Administrative justice, as a system of special judicial (quasi-judicial) organizations that address public law disputes, is the most significant attribute of the supremacy of law. It can be defined as a form of court procedure that provides specialized oversight of executive authority's activities.

The Republic of Kazakhstan professes to be a democratic, secular, legal, and social state, according to Article 1 (1) of the Constitution of the Republic of Kazakhstan of 1995 [1]. That is, one of the indicators of the rule of law is the limitation (connection) of the government's own law, as well as the state's and citizens' mutual accountability. This means that if a state violates laws, it is also subject to laws or other regulations, such as international obligations. Accordingly, there should be a detailed mechanism for responding to violations of laws committed as a result of illegal acts and actions of state bodies.

Disassembling the actual issues of the new Administrative Procedural Code of the Republic of Kazakhstan as legislative acts, empirical data and other materials is the main objective of this article on the justification of this research.

## *Methods and materials*

In order to study the problem, scientific sources and legislation of the Republic of Kazakhstan and foreign countries were studied and analyzed. To achieve the purpose of this article general and specific methods have been used. The general scientific methods were analysis, synthesis, induction, deduction. With the help of system analysis the main directions in the field of defining the conceptual apparatus were determined. The private-law methods used in the article are: comparative-legal, legal-dogmatic, historical-legal.

## *Results*

The Constitution guarantees citizens a number of rights in the public sphere. However, the existing capacity to protect these rights is insufficient. In this regard, by the President of the Republic of Kazakhstan's proclamation dated January 26, 2021, specialized inter-district administrative courts were established [2]. And the existing specialized administrative courts that deal with cases of administrative offenses have been renamed specialized inter-district administrative courts for administrative offenses. From July 1, 2021, specialized courts will operate from the competent, most trained judges, who will consider disputes arising from public law relations.

In connection with the establishment of the republic's administrative court system an independent branch of legal science and judicial system law appears as an administrative process, an integral part of which is administrative legal proceedings (administrative justice).

Administrative justice is an established legal institution with an almost two-hundred-year-old history; in today's states, there are a variety of its manifestations. This institute has been the subject of numerous research works, notably in post-Soviet countries. Many scientists believe that in administrative proceedings a dispute about the law is resolved, which is considered as a conflict between a citizen (or other subject), on the one hand, and a powerful public legal body, on the other [3; 16–17]. However, some researchers, especially representatives of civil procedure science, believe that all disputes arising from administrative-legal relations are the subject of civil proceedings, and therefore there can be no question of an independent branch — administrative proceedings [4; 142]. According to a number of authors who proceed from the established traditional understanding of the content of the concept of "administrative process", the subject of this form of legal proceedings should be the production only in administrative cases [5; 68–79], or "development of administrative justice as a means of judicial control" [6; 78].

Previously, administrative justice institutions were established in France. After the French Revolution, the concept of separation of powers became a reality, and justice and administration were separated (judicial and administrative jurisdictions). According to the ideals of French philosophers, the administration should have been fully independent of the judiciary, even in areas of dispute settlement relating to the administration's functions. In succession, the judiciary has to consider criminal and civil cases while avoiding interfering with the work of administrative agencies, otherwise the separation of powers will be disrupted. Consequently, bodies were established (prefectural councils and the State Council) that were part of the state machinery but solely responsible for supervising the administration's activities by adjudicating conflicts according to a set of rules [7; 120]. Administrative justice bodies were born out of these institutions.

The experience of France has had a great impact on other European countries — Italy, Spain, Belgium, and Portugal. D.T. Karamanukyan also quite accurately states in his scientific research that the system of administrative justice in France served as the foundation for the formation and functioning of the institute of administrative justice in Great Britain, the Federal Republic of Germany and other countries [8: 259]. Now, in modern states, there are different models of the organization of administrative justice. Three models are most often distinguished: French, German, and Anglo-Saxon [9; 12–17]. These models differ mainly in terms of the institutional structure of the bodies dealing with public law disputes.

If the French model is characterized by the verification of acts and actions of the state administration of special bodies (tribunals, courts, commissions) that are a part of the state administration itself, then according to the German model, the bodies (administrative courts) that deal with administrative justice are isolated from the state administration (executive power). However, being a part of the judicial power, they occupy a separate place within this power, existing in parallel with the general courts [10].

Based on the Anglo-Saxon model, all disputes with the state administration are subject to the general courts. No special judicial bodies are being created. However, in the countries of this model, there are a large number of administrative institutions (courts, tribunals, councils, commissions, bureaus) created within the executive branch of government. For example, in the United Kingdom, one of the most prominent representatives of the Anglo-Saxon model, since the 1930s a largely spontaneous process of creating administrative justice institutions has emerged. This process was justified by the practical need to ensure optimal and prompt resolution of administrative disputes and to relieve the general courts [11; 81–82].

Many post-Soviet countries, including Kazakhstan, are also close to this model, with the exception that no administrative tribunals are established outside the judicial system to deal with disputes.

Azerbaijan has established courts for administrative and economic disputes as courts of first instance, and at a higher level there are judicial panels for administrative and economic disputes of regional courts of appeal and the Supreme Court. In Estonia, the courts of first instance are the administrative courts, while the courts of appeal and cassation are the district courts and the State Court. In Armenia, there is an Administrative Court with divisions in various regions, and its decisions are appealed to the Courts of Appeal and Cassation. In Latvia, there are administrative district and administrative district courts, the highest instance here is the General Supreme Court, which has a Department for Administrative Affairs (as a cassation instance). Georgia has found a different solution, they do not have administrative courts, but administrative divisions can be created in the courts of general jurisdiction, and administrative chambers can be created in the regional courts and the Supreme Court. Lithuania has established administrative courts, district administrative courts and the Supreme Administrative Court. The same approach is also present in Ukraine.

In all these countries, there are procedural regulations on administrative proceedings [12; 122].

Despite the different approaches to the formation and organization of administrative justice there are some common elements that are inherent in this institution:

− jurisdiction of disputes is a public-law dispute, where the parties are an executive authority or other public administration body on the one hand, and citizens or their associations, various non-state legal entities on the other;

− in public law disputes it is primarily about protecting the public rights and interests of citizens and their associations (civil and political rights, public interests, rights in the field of governance);

− legal proceedings are conducted on the basis of special procedural acts, where, taking into account the specifics of public law disputes, the time of proof is assigned to the state body;

− mandatory pre-trial settlement of the dispute, i.e., preliminary appeal of an administrative act or action (inaction) to a higher administrative body.

*Discussion*

In Kazakhstan administrative justice is still in the process of its development.

For a very long time, more than 10 years, the feasibility of introducing administrative justice in the Republic of Kazakhstan was discussed. There were great opponents, especially the institutions of executive power. They were afraid that citizens would start demanding the restoration of their violated rights in the administrative and legal sphere. President of the Republic of Kazakhstan, Kassym-Jomart Tokayev, in his Address to the people of Kazakhstan, dated September 2, 2019, noted that citizens, in public legal disputes, are often in unequal conditions when appealing decisions and actions of authorities [13; 46]. Therefore, he initiated the introduction of administrative justice as a special mechanism for resolving disputes, leveling this difference.

In order to improve the norms set out in the draft APPC of the Republic of Kazakhstan and bring them into compliance with international standards, while taking into account the peculiarities of Kazakhstan's legislation, the development bodies (the Ministry of Justice and the Supreme Court of the Republic of Kazakhstan) have done a lot of work to study the foreign experience of the leading countries of the world, including those that, like Kazakhstan are part of the continental system of law, namely France, Germany, the Baltic States and some Central Asian republics.

On June 29, 2020, the Administrative Procedural Code of the Republic of Kazakhstan (hereinafter referred to as the "APPC of the Republic of Kazakhstan") and the accompanying law on amendments and Additions to various legislative acts of the Republic of Kazakhstan were adopted [14; 192].

In Kazakhstan public law disputes between individuals and state bodies were resolved in accordance with the requirements of the Civil Procedure Code of the Republic of Kazakhstan by general courts in the order of special claim proceedings. For example, the case of a dispute between a citizen and a state body was considered by a court of general jurisdiction. A dispute between a legal entity and a state body is settled in a specialized economic court. Now, according to the APPC of the Republic of Kazakhstan, which will be put into effect from July 1, 2021, the current Laws of the Republic of Kazakhstan "On Administrative Procedures" and "On the Procedure for Considering Appeals of Individuals and Legal Entities" will become invalid, a number of norms of the CPC of the Republic of Kazakhstan, including Chapters 27–29, norms of other codes and laws, will cease to apply.

The new Code is a unique legislative act that combines the norms for regulating administrative procedures and the norms for regulating administrative proceedings. It is intended to regulate the procedure for the implementation of administrative procedures, internal administrative procedures of state bodies, as well as the procedure for resolving disputes in the field of public legal relations. Its main goal is, on the one hand, to provide guarantees that allow citizens to actively participate in the process of making managerial decisions and on the other hand, to establish effective mechanisms for protecting the rights of citizens when considering public law disputes in a higher state body and an administrative court.

The APPC of the Republic of Kazakhstan is designed to regulate public-law disputes related to cases when an individual or legal entity disagrees with a particular decision of a state body or other organization that is somehow endowed with authority through regulatory legal acts.

Along with the general constitutional principles, completely new principles of administrative justice have been introduced, such as the limits of the exercise of administrative discretion, the protection of the right to trust, the prohibition of the use of formal requirements, proportionality, and others. The content and application of these principles by administrative authorities and courts are disclosed in the APPC. When re-

solving administrative disputes, both in pre-trial and in court, the courts should prioritize the rights and interests of citizens (legal entities), their right to trust in public authorities, and the right to justice. The legislator establishes that an illegal burdensome act is always subject to mandatory cancellation, and when canceling an illegal favorable act, the principle of protecting the right to trust of the participant in the administrative procedure is taken into account. This principle is a guarantee that an administrative act once adopted is legal and consistent, and that a mistake made by a public authority cannot be turned to harm a person if it is not their fault.

In the framework of administrative proceedings the parties are not in an equal position: a public authority, an official is endowed with authority unlike the other party – an individual or a legal entity. To eliminate this inequality the principle of the active role of the court has been introduced, the essence of which is the active participation of the court in administrative proceedings, aimed at maintaining a balance between the parties and ensuring equal opportunities for them. That is why, the peculiarity of the administrative process is the imposition of the burden (weight) of proof on the defendant: the administrative body will have to prove its rightness, that it has adopted a legitimate and justified administrative act or committed an administrative action (inaction), or otherwise it can be said that the presumption of guilt of the administrative body is provided. The plaintiff must prove, regardless of the claim filed, only the time when they learned about the violation of rights and the losses incurred by them.

Before applying to the court with a claim, the plaintiff must appeal against the actions of the administrative body that adopted the administrative unfavorable act to a higher body by filing a complaint with the body that made the decision. The administrative body has the opportunity to correct its mistake within three days from the moment of receipt of the complaint against the act, without sending the case to a higher authority, or to end the case in peace. It follows that departmental control over the activities of lower-level bodies will increase, which, in turn, will lead to uniformity in the adoption of administrative acts — an administrative body will not be able to adopt different acts in the same situations.

Finally, the higher authority has the right to cancel the burdensome act due to inexpediency, which the court does not have. The court is authorized to exercise exclusively legal control over the decision, action (inaction) of the administration.

This once again proves that the introduction of the APPC of the Republic of Kazakhstan is expected to establish effective mechanisms for protecting the rights of citizens when considering disputes with authorities in a higher body and in court, as well as to consolidate a set of guarantees that will actually allow them to participate in the management decision-making process [15].

Administrative proceedings are initiated on the basis of a claim, which, depending on the occurrence of legal consequences, are divided into four types:

1) claims for contestation with the requirement to cancel the administrative act in whole or in part;

2) claims for coercion, for which the plaintiff may demand to adopt a favorable administrative act, the adoption of which was refused or not accepted due to the inaction of the administrative body, official;

3) claims for the commission of an action for which the plaintiff may demand to perform certain actions or refrain from such actions that are not aimed at the adoption of an administrative act;

4) claims for recognition, in which the plaintiff may demand to recognize the presence or absence of any legal relationship.

Administrative cases will be considered by specialized district and equivalent administrative courts, while some categories of cases will be considered by the Supreme Court of the Republic of Kazakhstan and the court of the city of Nur-Sultan according to the rules of the court of first instance.

It is also important to note that the provisions of the Civil Procedure Code of the Republic of Kazakhstan will be applied in administrative proceedings, but with the features that are provided for in the APPC of the Republic of Kazakhstan.

Prior to the start of the trial, the judge to whom the claim is automatically assigned performs the actions and orders that are necessary to resolve the case on the merits and appoints a preliminary hearing. In the preliminary hearing, the court decides in which proceedings to consider the claim, since the trial of the case can be both oral and written but only by agreement of the parties.

In the cases provided for in part 2 of Article 138 of the APPC the judge makes a procedural decision only in the form of a decision on the return. Thus, it follows that the stages are reduced: termination of the proceedings, abandonment of the claim without consideration, refusal to accept the claim [13; 46].

The trial itself takes place with the mandatory participation of the defendant, except in cases where this does not prevent a full, objective and comprehensive review of the administrative case and within a reasona-

ble time: no more than three months. However, due to the legal and factual complexity of the case, the terms of consideration can be extended up to six months. The specified period does not apply when considering certain categories of cases: appeals against bailiffs and appeals against the conclusions of the authorized body for public procurement.

Also, one of the innovations in the consideration of administrative cases is the conduct of conciliation procedures, where there is administrative discretion. Administrative discretion is the power of an administrative body, an official, to make one of the possible decisions for the purposes and limits established by law, based on an assessment of their legality, i.e., when such a body can choose from several legally permissible decisions. Such a rule allows the parties to reach a peaceful settlement of the dispute in the shortest possible time.

The parties may, on the basis of mutual concessions, fully or partially terminate the administrative case by adopting an agreement on reconciliation, mediation or settlement of the dispute through a participatory procedure. They can reach this decision at all stages of the process until the court is removed to make a decision. This is necessary to ensure a fair and individual decision, to be able to correlate and weigh public and private interests, to increase the mobility and flexibility of management, as well as to make decisions in a difficult situation that cannot be calculated by the legislator.

To improve the quality of the activities of public authorities, a special mechanism of "judicial supervision" over the legality and validity of their decisions and actions has been created. When considering a claim in an administrative court, the court checks whether the given authority had the right to administrative discretion in a particular situation, whether its limits were met and whether there was abuse on the part of the authority, excess of the authority to apply administrative discretion. Thus, one of the important differences between the administrative process and the civil one is the judicial control and execution of the judicial act.

So, the court may oblige the defendant to provide a written response, within the prescribed period not exceeding ten working days. The failure to submit a review within the specified period may be the basis for the application of a monetary penalty. In addition, the administrative body is obliged to notify about the execution of the procedural decision of the court.

By virtue of the rules of the APPC, the court imposes a monetary penalty in the amount of fifty monthly calculation indices for non-execution of a court decision, a court ruling on the approval of an agreement of the parties on reconciliation, mediation or settlement of a dispute in the order of a participatory procedure, with an indication in the same court act of a period not exceeding one month, during which it is subject to execution. Thus, the introduced new institution of procedural coercion in the form of a monetary penalty is imposed by the court on the participants of the process on an individual, official, legal entity or its representative in the amount of ten to one hundred monthly calculation indices for abuse of procedural rights or failure to perform procedural duties, as well as for actions (inaction) that clearly indicate contempt of court.

*Conclusion*

The implementation of the norms of the APPC of the Republic of Kazakhstan will increase the transparency and efficiency of the activities of state bodies and in making decisions in the business sphere, when considering disputes with state bodies in a higher body and court reduces corruption risks and the burden on the judicial system. The investment attractiveness, the entry of investors into a particular national jurisdiction is predetermined by the presence of administrative justice in this jurisdiction. In international practice, where administrative justice investors feel more secure and it is easier to go to this jurisdiction with their investments. Therefore, another positive aspect of the introduction of administrative justice is that it will facilitate the influx of foreign investors.

Analyzing these features of the consideration of a claim in court, we would like to note that the provided mechanism for the consideration of public law disputes will ensure the observance of the rights and legitimate interests of citizens and organizations, and increase the efficiency of the work of state bodies. At the same time, for the formation of effective administrative justice, it is necessary to create effective institutions and an appropriate system of bodies that contribute to its full implementation.

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## Қазақстан Республикасындағы әкімшілік сот ісін жүргізудің ерекшеліктері

Мақаланың мақсаты 2021 жылғы 1 шілдеден бастап қолданысқа енгізілген Қазақстан Республикасының жаңа Әкімшілік рәсімдік-процестік кодексін (ӘРПК) талдау. Мәселенің өзектілігі Қазақстанда жаңа ӘРПК-нің қабылдануы және енгізілуімен әкімшілік әділет институты құрылуына байланысты, оның мақсаты конституциялық тежеу мен тепе-теңдік жүйесін құру мәселенің өзектілігін айқындайды. Жаңадан құрылған мамандандырылған әкімшілік сот атқарушы билік органдары қызметінің заңдылығы саласында қоғамның мүдделерін қамтамасыз етуге мүмкіндік береді. Қазақстан Республикасының жаңа ӘРПК-нің нормаларын талдай отырып, авторлар ӘРПК-ны қабылдау мемлекеттік органдар қызметінің ашықтығы мен тиімділігін арттырады, жария-құқықтық дауларды қарау кезінде азаматтардың құқықтарын қорғаудың тиімді тетігіне, сондай-ақ азаматтарымызға билік органдарының шешімдер қабылдау процесіне нақты қатысуға мүмкіндік беретін кепілдікке айналады деп есептейді.

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## Особенности административного судопроизводства в Республике Казахстан

Целью статьи является анализ нового Административного процедурно-процессуального кодекса (АППК) Республики Казахстан, вводимый в действие с 1 июля 2021 г. Актуальность проблематики обусловлена тем обстоятельством, что с принятием и введением в Казахстане нового АППК создается Институт административной юстиции, целью которого является создание системы конституционных сдержек и противовесов. Вновь созданный Специализированный административный суд позволит обеспечить интересы общества в сфере законности деятельности органов исполнительной власти.

Анализируя нормы нового АППК РК, авторы справедливо считают, что принятие АППК приведет к повышению прозрачности и эффективности деятельности государственных органов, станет эффективным механизмом защиты прав граждан при рассмотрении публично-правовых споров, а также гарантией, позволяющими нашим гражданам реально принимать участие в процессе принятия решений органами власти.

*Ключевые слова:* административная юстиция, административные суды, подсудность споров, публично-правовые споры, досудебное урегулирование спора, административное усмотрение, административное производство, административный процесс.

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