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THE IMPORTANCE OF FOREIGN EXPERIENCE FOR THE ADMINISTRATIVE JUSTICE OF THE REPUBLIC OF KAZAKHSTAN.

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For the first time at the legislative level, the term “administrative justice” was used in the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, approved by the Decree of the first President of the Republic of Kazakhstan on August 24, 2009 [1].

Administrative justice is the most important attribute of the rule of law. For public administration and administrative law, administrative justice is the connecting link in the functioning of the system of legal relations.

Administrative justice is a relatively young phenomenon. Consistently carried out administrative and judicial reforms in the country show further steps towards the development of the institution of administrative justice - for this there is both political will and appropriate legislative support.

There are different models of administrative justice in the world: French, German and Anglo-Saxon (Great Britain and the USA). Administrative justice is specialized courts (or quasi-judicial bodies) designed to resolve claims of citizens against the state. Many researchers attribute the formation of administrative justice to the second half of the nineteenth and early twentieth centuries. At the same time, according to the Kazakh researcher Zh. Abdraimov, the first sprouts of administrative justice can be seen in the states of Ancient Greece and Ancient Rome, where individual rights were recognized as the greatest value and protected from the arbitrariness of rulers. In Ancient Greece and Ancient Rome, every free citizen, offended by a consul, praetor or other official, could appeal to a free assembly, for example, to the tribunes of the people with a request to protect him from oppression [2].

The current stage of political and legal development in Kazakhstan, the state of civil society, the situation with the rights and freedoms of citizens determines increased interest in issues of administrative justice. Speaking about the reasons for such attention, we can start with constitutional characteristics. Paragraph 1 of Article 1 of the 1995 Constitution of the Republic of Kazakhstan establishes that the Republic of Kazakhstan asserts itself as a democratic, secular, legal and social state [3]. Among other things, the signs of a rule-of-law state include the limitation (bound) of the state itself by law, the mutual responsibility of the state and citizens. That is, the state is also subject to laws or other regulations, for example, international obligations. And the state also breaks laws. Today no one would dare to say that government bodies do not make mistakes in their activities or that there cannot be conflicts between the state and citizens. Accordingly, there must be a detailed prescribed mechanism for responding to violations of laws committed as a result of unlawful acts and actions of government bodies. The Constitution guarantees citizens a number of rights in the public sphere. However, existing opportunities to protect these rights are insufficient. Thus, in Kazakhstan, the ability of citizens to participate in constitutional and legal disputes is limited. Administrative justice, apparently, is called upon to resolve those issues that in other countries are resolved by bodies of constitutional control or justice. A number of reasons lie in the organization and activities of public administration and public administration. The state apparatus is growing every year, more and more new bodies with solid administrative powers are being created. Already at the republican level alone there are about 100 administrative structures. Moreover, each of them has potentially dangerous control and supervisory powers, that is, those during the implementation of which conflicts with the state administration most often arise. There are problems with duplication of powers, overlap of competencies, and excessive centralization of public administration. The nature of relations between the state and citizens is changing, which are increasingly moving into an electronic format. At the same time, despite all the advantages of this format, citizens are deprived of the opportunity to present their explanations and participate in procedures. All these and other reasons affect the quality of public administration, which suffers due to the inadequate level of legality of acts and actions of public administration bodies. External judicial control over government bodies, pointing out shortcomings and errors will help improve the quality of public administration both in general and in relation to various aspects of such administration [4].

According to Hamburg University professor Otto Luchterhandt, “Administrative proceedings and administrative courts are even more important for the functioning of a democratic state governed by the rule of law and in the everyday actions of the legal order than constitutional proceedings” [5].

Thus, administrative courts in Germany have existed for more than 150 years. The historical prerequisites for their creation were the fact that in the 19th century the bourgeoisie decided to limit the power of the monarchy. Administrative bodies were in the hands of the monarch, and the bourgeoisie had influence in parliament. Encroachment by administrative bodies on freedom and property was to be allowed only on the basis of a law adopted by parliament. This approach is an expression of the principle of the rule of law. An independent authority should monitor compliance by administrative bodies with the rules adopted by parliament.

For these purposes, at the beginning of the 19th century there were internal control committees. However, this was not enough. Therefore, there was a need for control by independent courts. In 1863, 150 years ago, the first administrative court was created in one of the states that were part of the German Empire. This was followed by the creation of a number of other administrative courts. Since 1919, the existence of administrative courts has been provided for in the Constitution.

Administrative jurisdiction in Germany is one of five independent jurisdictions. Art. 95 of the Basic Law (German Constitution) proceeds from its existence and prescribes the creation of the Federal Administrative Court (Bundesverwaltungsgericht) as the supreme administrative court for all of Germany. The intermediate administrative-judicial authority is the highest administrative courts of the federal states (Oberverwaltungsgerichte). At the level of 1st instance in Germany there are 52 administrative courts (Verwaltungsgerichte). The largest administrative court in Germany is

the Administrative Court of the State of Berlin, which, as a matter of principle, always hears disputes in cases where the legal address of the defendant is in Berlin.

Each of the 52 administrative courts of first instance is divided into chambers, which consist of one chairman and two lay judges, who are reporting judges. Two additional voluntary judges are invited to attend oral proceedings and have the same voting rights as professional judges. In simple cases, the Chamber may, for expeditious purposes, refer the dispute to the appropriate rapporteur judge for decision as a single judge. Administrative courts are the authority that reviews both legal issues and factual circumstances. It should be emphasized that the court checks only the legality of the appealed actions of administrative bodies, and not their expediency.

The bodies that make decisions in the highest administrative courts are called senates and also consist in principle of one chairman and two assessors, who are professional judges, as well as two voluntary judges. The senate's decide appeals against decisions made by administrative courts, as well as in some other special cases established by law, as courts of first instance. The Supreme Administrative Courts are also an authority that examines both legal issues and factual circumstances.

The Federal Administrative Court of Germany, which is located in the city of Leipzig, today consists of 13 senates, each of which in turn consists of one chairman and four assessors, all of whom are professional judges. They make decisions, in principle, only on audits (cassation appeals) against decisions made by the highest administrative courts. In certain cases, it is also possible to appeal decisions of the courts of first instance to the audit authority, i.e. direct revision of decisions of administrative courts, bypassing the appellate instance. The Federal Administrative Court makes decisions only on purely legal issues. He does not check the factual circumstances.

Today, the issue of reforming the administrative justice system is being actively discussed in Germany. Due to the fact that public law disputes in Germany are considered by three public law jurisdictions (general administrative, financial and social), there is a discussion about their unification. In favor of this reform, the first argument put forward is budget savings. In addition, simplification of the legal system and thus improving the legal protection of citizens is discussed.

The judiciary generally opposes such reforms. Firstly, in her opinion, it will not be possible to achieve large cost savings, since judges are appointed to office for life, and secondly, this may negatively affect the quality of decisions of administrative courts. At the moment, the high level of specialization of individual courts leads to the fact that judges become highly qualified specialists in a narrow area of their daily work. According to opponents of the reform, the creation of a single public legal jurisdiction/jurisdiction will lead to the disappearance of this advantage [6].

Ultimately, only time will tell in which direction the German judicial system is heading. But the likelihood of combining at least two types of public law jurisdiction/jurisdiction has recently increased significantly.

Given this experience, the Kazakh authorities might also consider the extent to which specializing courts and dividing them into different jurisdictions could benefit the judicial system as a whole.

When reviewing the main aspects of administrative law, as well as, first of all, the corresponding processes in Greece, it should immediately be noted that in the field of administrative law the country was guided by France for the reason that France was a centralized state, which Greece was to become.

The formation of a separate administrative justice took a long time, since it was initially assumed that the actions of administrative bodies could be controlled only by completely independent persons - judges, who should have nothing to do with the administrative apparatus. Thus, the competence to consider administrative disputes was assigned to civil courts of general jurisdiction. The echo of this approach is still felt today: despite the creation of a separate administrative jurisdiction, the right to establish the amount of compensation for damage to owners whose land plots are seized by the state for public needs is assigned in the Constitution to civil courts.

The first step towards the creation of a separate administrative justice was taken almost 100 years after the new state was formed. In a strategy that, from a modern perspective, can be described as top-down, a Supreme Administrative Court, the Council of State (Symvoulion tis Epikratias), was established in 1928, which, in keeping with the general focus of administrative law on the traditions of France, corresponded to the French Council of State (Conseil d'Etat). It was the only administrative court in the country whose task was to verify and cancel, i.e. annulment of unconstitutional and illegal administrative acts of all types in the first and at the same time last instance. The court had no right to change the acts in favor of one of the parties. The court was initially deprived of the opportunity to accept recommendations to “correct” the established illegality of an administrative act. The act was subject to either upholding or repeal in toto. A petition for review could be filed by any citizen whose rights and interests were affected by the administrative act.

The Council of State, which still exists to this day, and which is of course now at the top of the pyramid of administrative justice in Greece, has since gained importance and respect; its judges are considered particularly independent, highly qualified and vigilant in matters of limiting the omnipotence of administrative bodies when it comes to protecting human rights and legitimate interests of citizens. Particularly noteworthy is the relatively early environmental sensitivity of the Council, thanks to which, albeit minimally, but nevertheless from time to time, environmental policy in the country is successfully built.

In addition to the said Council and due to an existing feature (the introduction of direct taxation in 1955), in the early 60s an independent jurisdiction for tax disputes was created, which to this day can be considered as the beginning of modern administrative justice. Quite quickly, tax courts gained a reputation as protectors against state arbitrariness in this area. Within the framework of their powers, specialization of judges occurred for the first time, which contributed to the growing awareness of the need for general administrative jurisdiction. And last but not least: when the decision was actually made to create such a jurisdiction, there was already a certain base in both personnel and infrastructural relations, which made it possible to quickly implement this decision in practice.

Despite the enshrinement of genuine, permanent and full-fledged administrative justice in the Constitution of 1952 [7], it took another 30 years before its actual appearance. Thus, in the mid-80s, with the introduction of general administrative jurisdiction, the existing tax courts were renamed administrative, which also affected the judges who worked in them. Over time, the courts were able to “separate themselves” significantly, also in a spatial sense, so that today administrative justice is located mainly in newer and better buildings than civil and criminal courts, and operates in much more favorable conditions for everyone, which to a large extent contributed to the creation of a higher reputation for this part of the judicial system in comparison with the other two jurisdictions (civil and criminal justice). Currently, administrative justice consists of courts of first instance, which are located in cities where the corresponding courts of other jurisdictions are located; then there are administrative courts of second instance (courts of appeal), and the aforementioned State Council acts as the cassation authority. Administrative courts consider all administrative disputes, with the exception of issues related to establishing the amount of compensation for damage resulting from the seizure of land plots. The latter, as noted above, are the subject of consideration in civil courts. The career ladder of judges is established only within a given jurisdiction, which contributes to a high level of professionalization and specialization.

It will also be useful to consider Switzerland's experience in this area. The Swiss Federal Law “On Administrative Procedure” of December 20, 1968 can be cited as the main regulatory legal act in the field of administrative justice, valid throughout the country. In addition, in the field of administrative justice at the level of the Confederation, the following basic regulatory legal acts also apply, as the Swiss Law on the Federal Administrative Court of June 17, 2005 and the Rules of the Federal Administrative Court of April 17, 2008.

As stated in clause 1, part 1, art. 1 of the Federal Law of Switzerland “On Administrative Procedure”, this regulatory legal act applies to the procedure for resolving administrative disputes,

which are considered through decisions of the federal public authorities in the first and appellate instances.

Thus, in Switzerland, dispute resolution bodies within the administrative justice system primarily consider appeals from private individuals against decisions of public administration authorities, autonomous public law institutions and private law institutions with certain public functions. In the process of activities of administrative justice bodies, effective control over the functioning of the Swiss public administration system is ensured [8; 154].

As established by Part 1 of Art. 1 of the Swiss Federal Administrative Court Act, it is an ordinary administrative court (tribunal) of the Confederation. In accordance with Art. 2 of this Law, when exercising its judicial powers, the Federal Administrative Court is independent and subject only to the law.

The highest judicial body of the Confederation, the Federal Court of Switzerland, exercises administrative supervision over the management activities of the Federal Administrative Court. At the same time, the Swiss Federal Assembly also has control functions regarding the extrajudicial activities of this body (Article 3 of the Swiss Federal Law “On the Federal Administrative Court”).

It should also be noted that in relation to the Swiss administrative justice system, a number of authors note its mixed nature

In conclusion, we can draw a brief conclusion: the creation of administrative courts, as an independent judicial branch, represents a strategic step forward to strengthen the democratic rule of law, as proclaimed by Art. 1 of the Constitution of the Republic of Kazakhstan. This strengthens, firstly, the legal protection of citizens in relation to government authorities, the separation of powers, and, in particular, the dominant position of the legislative branch in relation to the executive branch; also increases the efficiency of management bodies. Thus, the legitimacy of management activities in the eyes of citizens and civil society will increase as a whole. Administrative jurisdiction can perform a key function on the path to a slow but steady increase in the level of both legal and management culture. As a result, the state will steadily strengthen internally and externally.

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