



КОНСТИТУЦИАЛЫҚ ЖӘНЕ ӘКІМШІЛІК ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И АДМИНИСТРАТИВНОЕ ПРАВО

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DEVELOPMENT OF INSTITUTE OF ADMINISTRATIVE JUSTICE IN THE REPUBLIC OF KAZAKHSTAN

Түйін. Бұл мақала әкімшілік әділет институтын зерттеуге және оның Қазақстандағы дамуына арналған. Мақалада «әкімшілік әділет» терминіне, оның пайда болуының қысқаша тарихына түсініктеме беріледі. Сондай-ақ біз оның Қазақстан Республикасында даму мүмкіндігі бағыттары мен Қазақстан Республикасы әкімшілік процедуралық-іс жүргізу кодексінің жобасына өңдеп және енгізу қажеттілігін қарастырамыз.

Түйінді сөздер: әкімшілік юстиция, мемлекеттік органдар, әкімшілік процедуралық-іс жүргізу кодексі, құқық үстемдігі, әкімшілік соттар.

Аннотация. Данная статья посвящена исследованию института административной юстиции и перспективе ее развития в Казахстане. В статье дается трактовка термина «административная юстиция», краткая история ее становления. Также рассмотрены возможные направления ее развития в Республике Казахстан и необходимость разработки и внедрения в жизнь проекта Административного Процедурно-процессуального Кодекса Республики Казахстан.

Ключевые слова: административная юстиция, государственные органы, административный процедурно-процессуальный кодекс, верховенство права, административные суды.

Annotation. This paper is devoted to the study of the institution of administrative justice and the prospects for its development in Kazakhstan. The paper gives an interpretation of the term “administrative justice”, and a brief history of its formation. We also consider the possible directions of its development in the Republic of Kazakhstan and the need to develop and implement the draft administrative procedural code of the Republic of Kazakhstan.

Key words: administrative justice, government agencies/organizations, administrative procedural code, the rule of law, administrative courts

Improving the protection of the citizens rights in their relations with administrative authorities has always been an actual issue for the Kazakhstan legal system. One of the ways to increase the effectiveness of such protection is to create a full-fledged system of administrative justice in the country.

The draft Administrative Procedural Code of the Republic of Kazakhstan, which was planned to enter into force in 2018, but has not yet been adopted, contains many innovations in the legal regulation of the judicial-administrative process, and makes the need for extensive theoretical and applied research in the field of administrative justice quite urgent.

Today, for the further establishment of the rule of law in Kazakhstan, it is important to develop a modern system of administrative justice, because in a democratic society, authorities and officials are empowered not only to issue various administrative acts that give rise to legal consequences for citizens, but also bear the responsibility to act within their powers, accepting the consequences for wrongdoing and compensating for the damage caused by such kind of actions. Administrative justice is a judicial mechanism for the protection of human rights from violations and abuses by the public administration [1]. That is the value of it in a democratic and legal state. Development of

administrative justice in Kazakhstan should be carried out within the framework of the reform of all administrative law, taking into account the western experience, where the institution of administrative justice is an essential part of the institution for the protection of human rights. It is clear that in comparison with civil and criminal legislation, administrative law in Kazakhstan is still not sufficiently developed, although now the modernization of legislation is taking place at all levels. At the same time, the development of administrative justice should not take place in isolation from the reform of all activities of public authority.

The adopted Concept of the legal policy of the Republic of Kazakhstan for the period from 2010 to 2020 provides substantial support for the further improvement of administrative legislation.

Today, in many states of the former USSR (Russia, Ukraine, Kazakhstan, Belarus, etc.), at the scientific and legislative levels, problematic issues are being raised to improve the mechanisms for protecting the rights and legitimate interests of citizens in administrative law disputes, as well as in creating specialized administrative justice offices.

Statistics show that the number of citizens and legal entities complaints against decisions of state officials and their actions is not decreasing, but only growing. Under these conditions, it is



necessary to create administrative justice, through which more attention will be paid to administrative-legal relations, respect for the rights of citizens in relations with state authorities. Thus, the importance of researching a given topic is evident.

It should be noted that, despite the importance of the development of the institute of administrative justice in Kazakhstan, in the scientific literature its analysis is incomplete and episodic, which actualizes the topic of this article.

The Institute of Administrative Justice is of undoubted interest for specialists of judicial law. In any legal state, the main task of administrative justice is to resolve administrative disputes in order to ensure the protection of subjective public rights and the rule of law in public administration.

The development of administrative legislation and administrative justice in the Republic of Kazakhstan today is one of the most significant problems. Recently, the regulatory framework, administrative and legal relations have undergone significant changes. One of them is the possible adoption of the Draft Administrative Procedural Code of the Republic of Kazakhstan in the future. It is no secret that today a course is being implemented in the country to improve administrative and criminal legislation. In the context of large-scale updating of domestic legislation in various areas of law, the main focus of administrative reform in the Republic of Kazakhstan is the introduction of the institution of administrative justice.

In order to disclose the nature of administrative justice we should determine the concept of it. There are many different definitions of administrative justice in legal literature. Despite this, most authors are unanimous that the legal essence of administrative justice is reduced to a special order of consideration by special offices disputes about the legality of acts and the action (inaction) of public authorities. At the

same time, most jurists associate administrative justice with the problems of administrative legal proceedings.

“Administrative justice is a legal institution of judicial protection of rights, freedoms of citizens, legal interests of legal entities and other organizations by monitoring the observance of legality in the system of public administration” [2].

According to Russian authors, Solovykh S. and Yusupova N. “The concept of “administrative justice” is considered in relation to the administration of justice by the court in the form of judicial control over the activities of government institutions” [3, p. 23].

In general, if we translate this term from Latin *administro*, we can see that this term is related to the concepts of supervising, managing, executing. The concept of *justitia* is translated as justice, justice, thus we can conclude that this term means «fair management» [4, s. 24].

As we can see, the institution of administrative justice can be understood quite broadly as the procedure for implementing public administration, which differs in its legal nature from private legal relations, encompassing all forms of state activity that are aimed at regulating social processes in the country in order to create a fair administration.

As an institution of judicial control, administrative justice has been known since the Middle Ages. In that period in England, a lawsuit was presented to the crown, that is to the king by his officials» [5; p.4]. In the middle of the 17th century, the King Louis XIV's distrust of parliaments, endowed with great legislative and administrative competences up to the French Revolution, which led to the adoption of a rather important Saint-Germain edict, which forbade parliaments to continue to «engage in public affairs and administration.»

It will take a significant amount of time before the idea of administrative justice

begins to spread everywhere. The result of this spread was the Great French Revolution, after which, already in the 19th century, this institute became quite an effective means of protecting the rights of citizens.

It should be said that in the post-Soviet countries, many researchers consider administrative justice as an activity that is carried out by the courts (general or specialized). This is explained by the greatest effectiveness of the judicial form of protection in comparison with other forms.

In general, the main task of administrative justice is to protect the public rights of citizens, ensure the rule of law and control over legality in the activities of state institutions, and provide public authorities with practical assistance in resolving legal issues arising in the course of their activities.

As can be seen, this institute is a complex interdisciplinary institution of constitutional, administrative, judicial and procedural law, as well as comparative law.

In Kazakhstan today, the creation of the institution of administrative justice is the most important direction of the judicial reform in the country. Like the CIS countries, in the republic administrative disputes are within the competence of general courts and are considered according to the general rules of the civil process; all other disputes are considered administratively.

In order to eliminate the gaps that have arisen in the system of human rights activities in Kazakhstan, it is necessary to create and develop administrative justice offices, which can be explained by the existing factors for further reforming the administrative procedure legislation in the Republic of Kazakhstan, and as a result, administrative procedural legal relations in general. It is no secret that Kazakhstan is currently undergoing a comprehensive legal and judicial reform, the activities of

administrative institutions and courts are subject to reforms, the purpose of which is to ensure legality in the implementation of measures of the institution of administrative justice. Mentioned above just demonstrates the relevance and practical significance of our research.

At present, audio and video digital recording of court proceedings have been introduced and successfully operated in the courts of the Republic of Kazakhstan, an automated case distribution program, in addition, a single information and analytical system has been created, the mediation procedure is actively used, and violations of procedural deadlines are minimized. In addition, appellate and cassation instances greatly improved the quality of the administration of justice.

The sphere of justice in the country is constantly being improved. But the focus of the reforms of the judicial system of Kazakhstan is civil and criminal law. It should be noted that the control over the decisions of administration which is carried out in the courts of administrative jurisdiction, is considered an important tool for increasing the efficiency of administration actions, fighting corruption and enhancing citizens' confidence in the legal and judicial systems in general.

An important problem of administrative proceedings is that today there is still no clear principle of separation of powers between the court and extrajudicial instances for the consideration of cases of administrative offenses, which generally makes it difficult to process such cases. In addition, the adversarial principle has not yet been developed in administrative proceedings. So, it is important to pay attention to such a problem as non-compliance with the principle of proportionality of legal responsibility, the degree of public danger and the nature of the offense.

Thus, for the effective development of the institution of administrative justice in Kazakhstan, it is necessary to rely on



sufficiently regulated administrative legislation. For the full deployment of the institution of administrative justice, it is necessary to adopt a legislative act designed to enshrine the procedural rules for the activities of state departments dealing with administrative cases (public disputes). Note that the need to develop and implement the project of the APC is dictated by such important circumstances:

1. An important area of administrative reform in the Republic of Kazakhstan is the introduction and development of the institution of administrative justice, which is a legal institution in the field of judicial protection of the citizens rights and freedoms, legal interests of legal entities and other organizations through monitoring compliance with the rule of law in the public administration system.

2. The problems that are currently being addressed by the institution of administrative justice have for many years been the object of study not only by administrative law, but also by a civil process, since the country has chosen

the model of a single justice, i.e. when disputes with the state are considered by the courts of general jurisdiction.

3. According to the Constitution of the Republic of Kazakhstan, judicial authority is exercised through civil, criminal and other forms of legal procedure established by law. The analysis of practice and legislation shows that in our country the activity of “administrative courts” differs from the administrative courts of foreign countries that consider and settle disputes that arise from any kind of legal relations of a public law nature.

The development of the institute of administrative justice in our country will contribute to the formation and development of efficient and effective administrative court proceedings as well as authoritative administrative courts, while the administrative justice mechanisms will be reliable assistants in protecting the rights and legitimate interests of citizens and increase the level of trust of citizens to the authorities.

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