Administrative courts: international experience and prospects of development in Kazakhstan

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Abstract. In article administrative courts of Kazakhstan are investigated: competence of operating administrative courts, creation of institute of administrative justice, concept and reforming of administrative legal proceedings. Coherence of the government the right and the law requires the introduction of effective mechanisms of protection of the rights of individuals from possible interventions and violations from the power. In order that it is correct to choose the direction and it is detailed to start introduction of institute of administrative justice it is necessary to analyze the international experience carefully. In order to choose the right direction and detail to begin implementing the Institute of Administrative Justice should carefully analyze international experience.
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Introduction

Administrative justice is an institution of judicial review of actions and decisions of the executive branch related to consideration of disputes between citizens or their associations, as well as government officials or state administration bodies. The parties within the administrative proceedingare a citizen and the state, and herewith they are far from having equal opportunities. Active role of the court in proceeding is provided in the purpose of ensuring a genuine competitiveness and equality of the parties. For this purpose, the courts are given the opportunity to provide assistance to citizens in implementation of their procedural rights.

Administrative agencies and other entities of public authority may apply measures of administrative en forcementto private individuals, which severely restrict the rights and freedom of citizens. In case of human rights and freedom violation, the citizen must be able to protect them.

The Strategy "Kazakhstan-2050" of Nursultan Nazarbayev, the President of the Republic of Kazakhstan states the following: "The most important issue of legal policy is implementation of citizens' right to judicial protection which is guaranteed by the Constitution. For this purpose, it is necessary to simplify the lawful processes and to get rid of unnecessary bureaucratic red tape" [1].

Legal institution, which allows to restore the violated legal right of citizens is considered to be the administrative justice, development of which took places imultaneously with the changing ideas about the state, its functions and role in society. Administrative justice arises when the powers of government entities are beginning to be subject to regulation by laws, whereas the latter governing the management activities define the duties of civilians in relation to the administration.

The main task of administrative law is to ensure public interests through acts of legislation. Describing the role of administrative justice in the system of administrative law, it is necessary to point out the official purpose of this sub-sector, which exists in order to provide a correct and lawful implementation of the rules governing the management activities. Administrative and justice rules are designed for promotion of management cases, the work of the entire state apparatus, in particular those sections which carry out the administrative jurisdiction"[2].

Relations in a state should be governed by the laws in which the administration must "seek for rules for its activities in case if it involves a violation of individual rights.

Administrative justice is the application of administrative law in the interest of resolving disputes by means of special, non-judicial corporation, but organized on the model of the ordinary courts, governance bodies (administrative courts), and the rules of the proceeding, similar to those adopted in the ordinary courts (administrative process on moot cases).We need to create our own administrative justice in Germany.

The right and the law can only get the true value and power, where their implementation is based on a court decision.

During the 60's and 70's of XIX century, there were taken decisive steps on establishment of a judicial legal protection against administrative actions"[3].

Department of Public Law from the private led to a limitation of the ordinary courts'

competence(jurisdiction), on the one hand, and on the other, to the emergence of administrative justice, the establishment of self-governance authorities over management. There were two key issues set on the course of the debate related to introduction of judicial control over the management that are of great significance for understanding of the contemporary administrative justice.

The first question: whether the judicial control should be carried out by ordinary courts or specially created administrative courts? While Otto Baer thought about the necessity to be considered of such cases by the ordinary courts, Rudolph Gnayst urged to establish independent administrative courts. As a result of reforms, it was decided in favor of establishment of special administrative and judicial proceedings, which first spread into the institutional sphere - the area of personal and business independence, - to the Supreme Administrative Court. Establishing the right to file with the Administrative Court by fixation in the law of general clause, referred to as the basic condition which made it possible to appeal to the administrative court of any administrative act. It was carried out in Germany just after the end of the World War

The second issue was related to the aim of administrative legal proceedings: whether it serves to subjective rights protection of individual subjects or provision of fair legal order? For example, the German system has been designed for protection of subjective public rights of citizens, whereas administrative legal proceedings served as an instrument of the inviolability adherence of the objective legal order; subjective protection of rights occupied the secondary role. With the entry into legal force of the Basic Law of Germany in 1949, the idea of individual legal protection prevailed; yet administrative legal proceedings serves for provision of objective legal order"[4].

In the United States of America in the first half of the XX century, along with the general courts started to operate specialized administrative bodies vested with quasi-judicial powers and dealing with administrative disputes - administrative tribunals. Federal Law 1946 on administrative procedure distinguished between such cases and pointed out which ones are dealt by the ordinary courts, and which - by administrative tribunals.

There is a separate branch of the Administrative Justice in France, headed by the State Council; it includes administrative and appellate administrative courts; there is a hierarchical system of administrative courts. Two types of courts are functioning - general and administrative, and it should be noted that the delineation of jurisdiction between these two causes some difficulties. There was established the Court on disputes over jurisdiction aimed at resolving of this issue within early 1848. Consequently, essential two equally important reforms related to the State Council were conducted in France in order to improve the administrative system, which took place in 1963 and 1980.

By virtue of the principle of separation of powers, the activities of administration were regulated mainly by administrative law norms. At the same time, only administrative courts (they were the creators of this law) were entitled to consider cases of one of the parties who appeared for the administration side. Thus, political system of the country has been gradually transformed and, in our opinion, it contributed to reducing abuse and improving of this area.

Comparing the Anglo-Saxon system of administrative justice to the continental model, it should be noted that the countries which do not have administrative courts (England, USA) possess a large number of administrative tribunals. Their advantages: flexibility, informality, speed of resolution of cases due to the high qualifications and experience of their members, the relative cheapness. Disadvantage: administrative tribunal does not accept all cases, but only those that are within its jurisdiction"[5].

A feature that distinguishes the administrative tribunals from administrative courts is their controllability by the general courts. Administrative courts of France and Germany are independent of general courts"[6].

This Note examines whether state or federal principles of administrative law should govern suits challenging state agency action pursuant to cooperative federalism statutes. Despite the prevalence of cooperative federalism statutes, courts and scholars alike have given scant attention to this question"[7].

At present, the classic Anglo-American model is being incurred big transformations, as the process in the courts of common law is getting less accessible to the public due to the high cost, slowness and formality. There are being opened new "non-classical" ways of challenging the illegal acts of governance: the number of references to members of parliament is increasing, specialized administrative courts on financialmatters, social security issues, transportation, agriculture, as well as labor relationsare being established, the power of the Parliament authorized body on Administration affairs isexpanding, quasi-judicial bodies in the sphereof education, healthcare, police department isdeveloping"[8].

The article emphasizes new books by Charles Epp and Sean Farhang, which each examine

different features of this enforcement process. In The Litigation State: Public Regulation and Private Lawsuits in the US (2010), Farhang explores the frequency with which Congress has chosen to enforce its civil rights statutes through incentivizing private litigation"[9].

It is particularly noteworthy that in parallel with the general jurisdiction court or the administrative courts, public law disputes can be considered by quasi-judicial bodies as well"[10].

The interest of lawyers to the problems of administrative justice in Russian legal system is quite noticeable within the literature of recent years. So, talking about the future development of administrative justice in Russia, itis fair to say that the Russian legal system is close to the continental model of legal systems, for which the establishment of administrative justice is peculiar"[11].

Although the significance of the issue on establishment of administrative courts does not cause any disputes, there is no consensus on the establishment of administrative courts in Russia. Since all citizens and legal persons are located in the field of management, regulation and control, the establishment of administrative courts will have a positive impact on activities of state bodies, fundamentally improving the relationship of citizens and legal entities with executive authorities"[12].

Administrative justice is an institution of judicial review of actions and decisions of the executive branch related to consideration of disputes between citizens or their associations, as well as government officials or state administration bodies"[13].

In Greece, the data suggest that the ratio of staff to total number of cases affects the time needed to dispose of cases in appeals courts and higher civil trial courts, but not in lower civil trial courts or administrative courts.

Therefore, the recommendation of the existing literature, which mainly follows from the analysis of first instance courts, to emphasize measures that simplify procedures and lead to an increase in accountability and competition, should be adopted, at least for courts of first instance.

For appeals courts, our results suggest that the improvement of the staff to case ratio may be paired with such measures, while the improvement of the quality of first instance rulings may reduce the appeals rate"[14].

Establishment of the Institute of Administrative Justice in the Western European countries has played a crucial role in positive development of administrative law. With the emergence of the theory of separation of powers, the establishment of the constitutional forms of governance, formation of administrative courts, the proclamation of mutual rights of state and citizens within the laws formed the basis for creation of a new administrative law regulating the administrative relations"[15].

In the article ofLenaerts, Koen, the principle of democracy in the case law of the European court of justice That principle, like all EU constitutional principles, pervades the whole of EU law and, as such, must be read in light of societal changes. As democracy within the EU is not limited to the participation by the European Parliament in the legislative process but also encompasses other forms of governance, in particular rule-making by administrative agencies and the achievement of consensus by social partners, it is for the EU judiciary to make sure that those other forms of governance remain as democratic as possible. This can be achieved, inter alia, by making sure that they enjoy sufficient representation or are subject to parliamentary control.

This article seeks to explore the way in which the Court of Justice of the European Union ('CJEU') has interpreted and applied the principle of democracy. It examines first the democratization process upon which the EU has embarked since the adoption of the Treaty of Maastricht and how that transformation was a positive reaction to those voices arguing that the EU suffers from a 'democratic deficit'.

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The growth of the administrative courts is less developed in Central Asian countries rather than in European ones, which is explained not only by a low legal awareness of population, but the specific performance of the law on the spot. For instance, a researcher of administrative law in the legal system of the People's Republic of China notes: "Administrative law suitin the country is not transparent, balance disappeared in the scale between the "people "and "public officials", there is a big difference between the written and the real laws. Administrative procedural law as a lamp that does

not shine, i.e. that it doesn't perform the role of instrument limiting the power of administrative bodies to the purpose of ensuring the rights of citizens""[17].

"For an objective review of administrative disputes, it is appropriate to create special administrative and judicial panels with in the management bodies. Questions of administrative law should be under jurisdiction of an administrative authority itself; the justice has no right to interfere in the activities of the administration; the judicial and administrative functions must not be mixed, also the public administration shouldn't be deprived of its autonomy and independence, otherwise the control will be subject to the judicial authorities; the judges of general courts are not prepared for resolving specific disputes that arise in the sphere of public law application, they are not familiar with the rules of management.

The approval of administrative justice in this sense has been occurred gradually in all countries, allowing the state agencies to enforce the requirements of law and rights of persons who were under their jurisdiction. The models administrative justice differ in their organization, the nature of disputes and their combination with other methods of securing the rights.

The following works of Kazakhstan scientists should be noted who have made significant contribution to the development of this problem: B.A.Zhetpisbayeva "Administrative responsibility in the Republic of Kazakhstan" (Almaty, 2000); "Administrative Process: Legal proceedings on administrative violations in the Republic of Kazakhstan" (Almaty, 2002); "Theoretical problems of administrative and legal coercion in the Republic of Kazakhstan" (Almaty, 2006). A.A.Taranov "Administrative responsibility in the Republic of Kazakhstan" (Almaty, 1997.); "Administrative Law of the Republic of Kazakhstan" (Almaty, 2003); "Legal proceedings on administrative violations in the Republic of Kazakhstan" (Almaty, 2005).A.E.Zhatkanbaeva "Legislation of the Republic of Kazakhstan on administrative responsibility" (Almaty, 2002).E.A.Nugmanova "Theoretical and practical problems of improving the administrative and jurisdictional activities in the Republic of Kazakhstan (Astana, 2010).B.E.Abdrakhmanova "Administrative delictual liability in the Republic of Kazakhstan (conceptual theoretical and methodological problems" (Almaty, 2010). In their works, the authors greatly expanded and developed the idea of legal state's administrative and procedural relations evolution and have made a significant contribution to the development of administrative and legal reform in the Republic of Kazakhstan.

Sources and methods. The main method used in the studyof formation and development problem of administrative justice is the method of comparative analysis. There was drawn a parallel between historical development of European countries' administrative justice and the possibility of application of the international experience in Kazakhstan. The progress of administrative justice in the former Soviet Union took place due to the transition from totalitarian methods of governance to a democratic one.

Analysis of experience in the field of administrative justice of these countries allows us to emphasize some states where the administrative legal proceedings are conducted in the framework of civil procedure (Russia, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan). This category can be divided into two groups: 1) with a resolution of administrative disputes under the rules of civil legal proceedings (Kazakhstan, Kyrgyzstan); with a resolution of administrative disputes under the rules of civil and economic (arbitral, economic) legal proceedings (Russia, Belarus, Uzbekistan, Tajikistan, Turkmenistan). A significant drawback of the second group is non-commonality ofprotection mechanisms and procedures of individuals, legal entities and individual entrepreneurs"[19].

In most European countries, the Institute of Administrative Justice is presented by administrative legal proceedings and administrative courts or specialized structures dealing in administrative affairs in the frames of general courts. The European Court of Human Rights in one of its decisions noted: "The fact of creation and existence of administrative courts, of course, can be welcomed as one of the leading ideas of a state based on the supremacy of the law. It should be underlined that in particular, the fact that these courts have obtained a jurisdiction to review acts of the administrative authorities did not occur without a proper fight""[20].

Administrative Courts of Justice is considered to be the most advanced and modern form of justice in administrative cases. Such courts, resolving the disputes and defending citizens from illegal actions of the administration are the best form of organization of justice on administrative cases in terms of professionalism, impartiality, competence in disputes settlement issues"[21].

Kazakhstan has established specialized administrative courts, but they only consider the cases on administrative violations and are not considered as bodies of administrative justice. At the same time, public disputes of individuals with representatives of government authorities are resolved in accordance with the special provisions of the Civil Procedure Code by the ordinary courts. The

development of extra-judicial (quasi-judicial) forms of dispute resolution can serve as promising measures for disputes settlement, for instance, as a court of arbitration, international arbitration, extrajudicial mediation conducted on the basis of local executive bodies. It is necessary to take steps for further enhancement of administrative procedures optimization in government structures.

First, an administrative mechanism is needed aimed at fixing the mistakes made by the chiefs, and allowing settle the dispute without recourse to court.

Second, improvement of the procedural law is required through supplementing the Civil Procedure Code with the chapter on resolution of cases conducted with the consent of the parties in the context of the simplified procedure, if the price of the lawsuit does not exceed for legal entities - a million tenge, and for individuals - five thousand tenge.

Third, it is exemplary to revive the work on development of administrative justice on the basis of specialized administrative courts, handing them the cases of disputes which arise from public and legal relations, as for the case of administrative violations, they should be given to the general jurisdiction court" [22].

The point of view of those lawyers who believe that the administrative disputes must be resolved by administrative legal proceedingsis correct. Post-Soviet understanding of administrative disputes as cases on challenging of the regulatory legal acts by citizens should be discarded, and appropriate changes should be introduced into the legislation. Despite the public and legal nature of disputes arising from administrative-legal relations, the order of their consideration is governed by the Civil Procedure Code, which clearly does not meet the public and legal characteristics of such disputes.

There are certain reasons behind the increased interest to the administrative justice in Kazakhstan, as in research, legislation, and within the law enforcement sense.

These include: 1) the growth of civil litigation with the public administration. It was quite difficult to imagine anyone arguing with the state a quarter-century ago. Today such disputes are a common occurrence for Kazakhstan which has selected the democratic way of development; 2) specialization. With all the professional training of judges, a wide range of areas of law and legal information requires specialization"[23].

Establishment of specialized administrative courts can provide with judicial review over the legality of consideration by the authoritative government bodies the cases on administrative violations, since the latters may impose a large number of administrative penalties. One administrative court can be set up for several administrative-territorial units. It follows from the provisions of the Constitutional Law "On Judicial System and Status of Judges in the Republic of Kazakhstan", which allows to form the inter-district courts. The discrepancy between the jurisdiction of administrative courts with administrative-territorial structure is one of the guarantees of non-interference of local officials in the legal proceedings"[24].

In consequence of aforesaid, it is importantto pay attention to the following basis of necessity for further specialization of courts: provision with legitimacy of acts and actions of public administration as well as agood governance; increasing of attention to public and law norms and subjective public rights in the purpose ifupgrading of self-consciousness of citizens to participate in constitutional and legal disputes.

Administrative justice is intended to solve the issues that are resolved in other countries by bodies of constitutional control or public justice: there is a need for further defense of the rights and freedom of the citizens and interests of legal persons in respect to public authorities, as a citizen and legal person confronts powerful bureaucracy with corporate solidarity. That's why we need a mechanism that is procedurally equalizes in rights the government and other entities. Administrative justice is considered to be a such mechanism.

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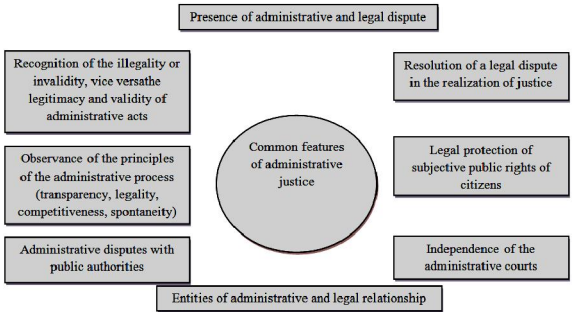


Today, Kazakhstan has not yet formed a complete system of administrative justice. Public law disputes of individuals with public authorities are resolved in accordance with the specific provisions of the Civil Procedure Code by the general courts, while specialized administrative courts have focused on examination of cases on administrative violations and imposition of fines, and therefore become punitive bias that leads to distortion of the traditional aims and objectives of administrative courts.

Establishment of a modern system of administrative justice in Kazakhstan must be claimed by the current time demands: protection of human rights, anti-corruption, legal nihilism. Signed by the

Head of the Republic of Kazakhstan the Constitutional Law of the Republic of Kazakhstan dated as for February 16, 2012 № 559-IV «On introducing changes and amendments to the Constitutional Law of the Republic of Kazakhstan "On the Judicial System and Status of Judges of the Republic of Kazakhstan"should optimize the legal proceedings"[25].

Results

On November 17, 2011 Steve Hein in his speech «Administrative justice in danger» at BIS conference-center expressed: «I am though, firmly of the view that our rights based culture is linked to the expansion of the franchise and the development of our modern democracy. Governments had to deliver rights and benefits to create greater equality and improve people's lives-if they did not they would not get elected. And this remains the case today. Particularly in these difficult economic times people need the assistance of the state and the law when things go wrong in their lives. LAG believes administrative justice is at the heart of the relationship between the state and ordinary people or citizens"[26].

The Concept of Legal Policy of the Republic of Kazakhstan set for the period from 2010 to 2020 stated the importance of the development of Administrative Procedure Law, the apex of which would culminate in adoption of the Administrative Procedure Code. Herewith, the subject of regulation of the administrative procedure law should be clarified properly (2.2). It means that the following question as: whether to include to the subject of the Administrative Procedure Code the proceedings on administrative violations cases, is not settled fully in the Concept, but left for the future study and resolution. The adoption of the Administrative Procedure Code should become an important step in the development of the constitutional state of the Republic of Kazakhstan.

The peculiarity of the project APC is in its covering the provisions of the acting Civil Procedure Code, which regulates the order for resolution of administrative disputes by courts (administrative legal proceedings), also the procedural part of the Code involving the Administrative violations issues. Resolution of administrative disputes is related mainly to the jurisdiction of the district (city) and equivalent to them courts (Article 71), and cases on administrative violations to special district and equivalent to them administrative courts, as well as specialized inter-regional juvenile courts (Article 35 of the APC project) "[27].

At the same time, the authors of the Concept clearly delineated administrative and tort law (Institute of Administrative violations and bringing to responsibility) and the Institute of Administrative Justice: "in the context of the administrative procedure law, there should be considered the question on administrative justice, resolving disputes about rights whicharise out of public and law relations between the state and the citizen (organization). Thus the importance of procedural separation of administrative justice is emphasized in the Concept:" should be considered the issue on procedural separation and legitimation of conflict resolution order of a public nature. The refore, along with the criminal and civil legal proceedings, the administrative legal proceedings should become a full-fledged form of delivery of justice"(2.2). Understanding of the administrative courts as an institution of administrative justice, not as an administrative repression has led to the consolidation within the Concept of the following provision: "on the basis of existing administrative courts, it is necessary to establish a system of administrative justice, which considers public disputes with the transfer of cases on administrative violations to the general jurisdiction courts' jurisdiction"(paragraph 3.2) "[28].

The adoption of Administrative Procedure Code and revision of the current norms of Administrative Violations Code of the Republic of Kazakhstan is the solution of only a half the problem. The project of the Administrative Procedure Code is a fusion of Administrative Violations Code of the Republic of Kazakhstan and the Civil Procedure Code which in accordance with its structure does not take into account specificity of the courts consideration of both types of cases; the Code should regulate homogeneous social relations, and administrative torts and administrative processes occur to be essentially different relationships, they have different items of regulation; priority of administrative legal proceedings is to protect the rights of individuals and legal persons from abuses of public authorities, and for proceedings on administrative violations it is to bring the perpetrators to justice in case they commit administrative violations; proceedings are based on different, opposite principles: the presumption of guilt in administrative legal proceedings and the presumption of innocence in proceedings on administrative violations; administrative and tortuous procedure is essentially punitive and administrative justice acts as a tool to protect human rights, and therefore we are not able to combinedifferent institutions into one code: a punitory and human rights.

The inequality of the parties in regulatory administrative and legal relations is eliminated in the administrative and legal dispute. The new model

proposed by the APC project is a complex symbiosis of different models: the administrative courts continue to consider cases on administrative offenses, and administrative disputes are reviewed dealt and resolved by the district (city) and equivalent to them courts, but yet, there is used the APC.

Thus, the terms of APC (article 35,71) which define the jurisdiction of administrative cases to the general courts and the cases on administrative violations to specialized administrative courts do not comply with the Concept of Legal Policy of the Republic of Kazakhstan set for the period from 2010 to 2020. Unification in one code the administrative legal proceeding sand tort procedure blocks the development of administrative justice and will impede the progress of legislation on administrative torts.

Administrative Procedure Code should be an instrument of administrative justice, which means, protection of civil rights and legal persons from abuses by the public authorities. Due to the fundamental difference between the Institute of Administrative Justice as well as the administrative and tort law, there is the need for procedural separation of the administrative legal proceedings. Administrative legal proceedings and proceedings on administrative violations should be subject to regulation of various codes. The procedure of bringing to responsibility for administrative offenses which is proposed by the APC project does not differ from the proceedings settled by the current Administrative Violations Code of the Republic of Kazakhstan.

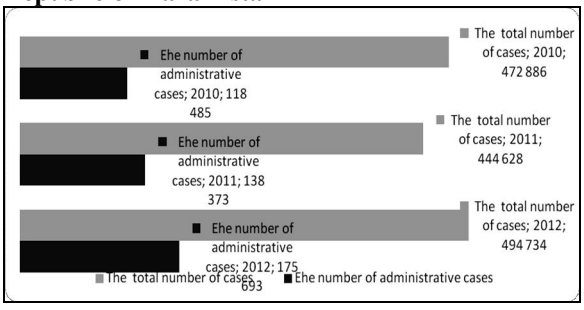
This is explained by the fact that the project did not take into account some of the constitutional principles (separation of state power, inviolability of property), the project's own principles (equality before the law and court, the presumption of innocence) and European standards (freedom from self-incrimination, the equality of the parties and competition, legal certainty, fairness of the court, the reasonablenessof production timing, inviolability of residence, the right of persons to be listened to, the right to be informed and motivated decision with regard to the case) "[29].

Real attempts on implementation of the administrative justice system project are being carried out in Kazakhstan. However, this is prevented by: a lack of sufficient substantive law, governing the substantive relations in the field of management; lack of extended Procedure Act which implements the rules of substantive law; the gaps within the project of the Administrative Procedure Code. Being oriented to the establishment of a new institution of administrative justice, the current operating system has its positive sides as well: the followers of the doctrine of common justice areconfident that citizens are always interested in the minimum of the legal agencies and courts for defense of their rights in court.

For the purpose of establishment of an administrative justice as a way of ensuring the legitimacy in the sphere of public administration which is set out in the Development Concept of Legal Policy for 2010-202, it is necessary: to transform the administrative courts into the courts of administrative justice, granting them the jurisdiction to consider only the cases on administrative disputes, since the administrative disputes can be resolved with greater effectiveness in the bodies of administrative justice, and not in the courts of general jurisdiction; to transfer consideration of administrative violationscases to the general courts, since the administrative violationsrefer to a general jurisdiction court; administrative courts should be kept out of the system of general jurisdiction court; to ensure the principle of judicial independence in the system of administrative justice, which should be independent of government powers (legislative, executive, central, local), the dispensation of justice should become independent and competent; to develop pre-trial procedures in the frames of the administrative procedure law in order to ensure the accelerated procedure of dispute resolution.

Creating a system of administrative justice will reduce the burden of courts of general jurisdiction; will improve implementation of the functions of judicial control over the activities of executive power entities in the sphere of public administration; will assist in analyzing systematically the shortcomings of their activities. The course of the formation of an independent and open court of justice is one of the priority tasks of the judicial community. The requirements on quality improvement of dispensation of justice, transparency and accessibility of information on a wide use of innovative electronic technologies in the judicial proceedings maintain as the most important ones.

The growth of administrative cases of the Republic of Kazakhstan



The dispensation of justice by the courts in the first half of 2012 shows that administrative cases are more for 4.5% than in the same period of 2011, for 10.4% more than in 2010, and it gives us a belief that there is a tendency of reduction of criminal and civil cases in Kazakhstan, and the growth of administrative cases in the courts. This is taking place because there is a dispute between citizens and government officials about the law, the interpretation of laws. In its turn, it requires the formation of the institution of administrative justice in the republic"[30].

The main task of establishment of administrative justice is protection of human rights. The practice of administrative legal proceedings is based on the fact that the citizen is more vulnerable than the government official. Institute of Administrative Justice will provide a high degree of protection of citizens from illegal actions (inaction) of state bodies, will limit the power to ensure the rights of citizens and legal persons. Formation of administrative justice should not be confined solely to the creation of administrative courts. It must be carried out within the framework of the reform of the entire administrative law taking into account the experience of foreign countries, where they are successfully operating. It is necessary to implement the reform of administrative procedures, to make a clear separation of administrative and legal procedures and proceedings on administrative violations. To ensure a comprehensive reform, it is exemplary to develop the concept of reforming of the entire block of administrative law.

Despite the slight differences in details, proceedings in administrative authority and administrative court are found to have many common items or at least similar features. The main similarity is in the same procedural principle, which largely determines the appropriate course of proceeding: it is the principle of objective examination of the case by the court or administrative body.

Unlike the civil process, the competence of an administrative body or a court includes the duty of a full investigation of the facts, to which, of course, they can attract participants of the proceedings. The main difference lies in various amounts of checks carried out by the administrative authority and the administrative court, which has already been enshrined in constitutional law within the principle of supremacy of the law.

The administrative authority verifies the validity and expediency, while the courts should only check the legality of administrative decisions. The broader competence of examination cannot begiven to the mdue to the reasons of separation of powers in a legal state. Our program will support to improve the administrative procedures and administrative procedural law. Today, exactly these areas require urgent reforms, as they are considered to be the key foundation for attraction of foreign investors and at the same time the yhave a crucial significance for the economic development of Kazakhstan as a whole"[31].

One of the reasons for the interest in this problem is the fact that the major obstacle on the way of development of administrative courts system is the lack of theoretical and applied scientific research of institute of administrative justice. It means that the efforts of the Republic of Kazakhstan directed for reforming of administrative law require some support. After all, the government's attention to the problems of relations development of individuals with public administration shows its readinessand willingness to take new steps for democratization of these relationships and provision of a better state service to the mankind. Introduction of the institute of administrative justice in the country should be preceded by serious government reforms, it has to be ensured by appropriate structural changes.

November 30, 2012 there was held the experts' meeting in Astana which covered the issue on reforming of the judicial system in Kazakhstan. The event was organized by the OSCE Legal Policy Research Centre and the Soros Foundation-Kazakhstan, where the prospects of development of administrative justice system in the Republic of Kazakhstan were discussed together with experts from Germany, Russia and Ukraine: effective introduction of international standards; compliance with fundamental rights and freedom in the field of administrative justice; compliance with the principles of the rule of law, and this is possible only with the operation of administrative justice system, which enables citizens to effectively challenge administrative decisions. The model proposed by international experts has undeniable advantages as impartiality, efficiency, specialization of courts"[32].

Conclusion

Creation of a modern administrative justice system plays an enormous role in strengthening the supremacy of law in Kazakhstan. The public administration bodies, officials are entitled not only to issue administrative acts that present legal consequences for citizens, but also have the obligation to act within the framework of due process, the responsibilityto stand surety for the unlawful acts and to pay for the damage caused by such actions.

Administrative justice is a judicial mechanism aimed at protection of human rights from violations and abuses committed by the public

administration. This is considered to be the very value of this concept in the constitutional state. The development of administrative justice should be carried out in the framework of the reform of the entire administrative law based on the experience of Western countries, where the institution of administrative justice is an integral part of human rights protection mechanism.

This article explores the benefit of applying procedural justice criteria (participation, neutrality, respect, and trust) in human rights adjudication, with a particular focus on the European Court of Human Rights"[33].

The convergence of the legal system of Kazakhstan with the European legal values is stated within the state program "Path to Europe". Establishment of administrative justice should not take place in isolation from reform of the whole public administration. The works on development of administrative justice should not be limited solely to creation of administrative courts. The significance of the reform of administrative procedures and services, a clear separation of administrative and legal procedures as well as proceedings on administrative violations must be particularly noted. There stands a high need in conceptual base with a common vector of development of administrative law for the purpose of ensuring a comprehensive reform.

Moreover, further integration processes in the frames of the Eurasian Economic Space of Kazakhstan, Russia and Belarus suggest a movement in one direction. Taking into account that until 2015 it is expected to establish a common legal framework of the Common Economic Space, classification and codification of national legislation that will be interlinked with the legislative experience of all partners in the Customs Union"[34].

The judicial system should move up to a qualitatively new level of performance, the main course of which should be ensuring and strengthening of the rule of law, improvement of legal security of citizens and legal persons. The courts have no right to apply laws and other normative legal acts infringing on the rights and freedoms of man and citizen.

In Article 78 of the Constitution: "If the court finds that a law or other regulatory legal act subject to application infringes on the rights and freedoms of man and citizen, the court is obliged to suspend the proceedings and address to the Constitutional Council presenting its admission of the law as unconstitutional"[35].

Thus, the stability in the country is largely due to the stability of the judicial system which is capable of defending the rights of any subjects of legal relations, including citizens, representatives of other branches of government as well as the judges themselves. That is why the study of the history, problems and prospects of development of administrative courts of Kazakhstan remainsas very important issues of our time.

Specialization of courts and, above all, a change of competence of administrative courts will be a separate milestone in the history of formation and strengthening he legal statehoodin Kazakhstan. The development of administrative justice will have a positive impact on the progress and reform of the entire judicial system of the country.

The course directed to specialization of the courtsmust becomeas the progressive feature of the judicial system which is aimed atensuring a prompt and qualified consideration of administrative cases, provision of accessibility of justice for population. Specialization of judges on consideration of cases on administrative violations will enable to study in depth the amount of regulatory legal acts, the violation of which constitutes specific blocks of administrative violations. Establishment of administrative courts will ensure a strict judicial control over authorized state bodies on legality of their administrative cases consideration, since in practice the courts impose unreasonable administrative penalties very often.

It is impossible not to remember: "The sense of legitimacy is in direct relation with the social environment. If a person lives in an environment where one person is in compliance with the law, and the other is just laughing at it, in the place where today a law has been published, but tomorrow it is forgotten - there can't be developed any habit of constant acting in accordance with the law, and therefore, there is no basis for development of a sense of legitimacy"[36].

Indicator of the country's judicial system development is demonstrated by establishment of the structure "Kazakhstan Union of Lawyers," which will assist to implement many of the tasks set out in the Concept of Legal Policy of the Republic of Kazakhstan for the period 2010-2020. Participation within the organization of the International Union of Lawyers provides opportunities for successful formation of a unified legal space and synchronization of activities with a vibrant international legal environment, which of course, will contribute to the development of legal science and practice.

The main purpose is to strengthen the legality and Kazakhstan statehood, foster the protection of the rights and freedoms of man and citizen. Establishment of a public organization will help to effectively resolve the current essential issues of law and contribute to improving the practice of rule-making and law enforcement" [37].

Administrative disputes must be considered within the framework of administrative justice by administrative courts in administrative legal proceedings. Currently, Kazakhstan has all the juristic conditions for the active development of administrative legal proceedings aimed at resolving disputes of a public nature. It is necessary to isolate the order of resolving conflicts organizationally and procedurally, transferring the responsibility for public law disputes to specialized administrative courts. In this regard, it is necessary to define the order of consideration of cases from the Civil Legal Procedure which arises from administrative legal relations. Accordingly, this order should be settled in a separate Administrative Procedure Act, which is to be adopted and where all the specificity of such cases should be taken into account. Only then administrative proceedings can be approved as a full-fledged form of justice.

The cases on challenging the decisions and actions (or inaction) of state authorities, local self-government bodies, public associations and officials can be transferred to the competence of the administrative courts (Chapter 27Code of Civil Procedure). As well as the cases on disputes relating to the application of electoral legislation (Chapter 25, Code of Civil Procedure), cases on challenging the legality of regulatory legal acts (Section 28 of CPC), cases on disputes of state power and local self-government bodies among themselves. These competencies may also include the cases on suspension or termination of the activities of public associations. The category of administrative cases should include the matters and cases arising from the administrative authority entities of state power and local governments.

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