

Contemporary Development Trends in Administrative-Legal Relations in the System of Administrative Justice

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ABSTRACT

The purpose of the study is to determine the main contemporary development trends in administrative-legal relations in the field of administrative justice. In order to examine theoretical and practical issues of modern administrative justice, normative legal acts identifying the relations in the system of administrative justice in the Republic in Kazakhstan have been reviewed. The analysis of international experience showed that administrative justice was not a punitive, but an advocacy institution. Furthermore, in examining the essence of the judiciary as a constitutional category, the authors consider its components: administration of justice, judicial control, interpretation of the active legislation on the basis of case studies and case law analysis, and formation of the judiciary. The submissions may be useful for historians, lawyers and legislators as a basis of investigations on reforming the administrative law of the Republic of Kazakhstan and formation of new administrative institutions for successful implementation of judicial reform.

KEYWORDS

Administrative justice, administrative-legal relations, administrative court, judicial control, judicial reform

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Introduction

As a justice system from the point of view of its subject, the judiciary is a specific form of the state's activity (Johnson, Johnson & Svara, 2015). Apart from administration of justice, the judiciary has the following functions:

- Judicial control of the legality and relevance of measures of procedural compulsion (Arkhipov & Prikhodko, 2002);
- Interpretation of legal norms;
- Official certification of facts that have legal significance;
- Restriction of the constitutional and other legal status of citizens (Kozlov, 1997).

Administrative-legal relations in the system of administrative justice are linked to the elucidation of an issue in law; it consists in verification and assessment of the legality and relevance of the decisions and actions of public authorities that violate or restrict the constitutional rights, freedoms and legal interests of citizens and legal entities (Jones, 2016). Moreover, judicial control is embodied by the courts' verification of the legality of the decisions taken by

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bodies of the legislative and executive branches and local governments, specifically by their representatives (Chepurnova, 1999).

Judicial control as opposed to other kinds of state control has a wider scope in the sphere of its execution. It embraces all the sides of public life and state power and administration (Solomon, 2004).

Specific features of administrative justice include the fact that judicial control, unlike the control executed by the executive branch or a public prosecutor, is initiated by the administered subjects (citizens, other natural persons and legal entities) or by the subjects of social administration that perform the functions of public authority (Solomon, 2004). The lack of initiative, passivity of the bodies of judicial control is some of its distinctive features as opposed to the control exercised by the legislative and executive powers (Tikhomirov, 1998).

So, we cannot overestimate the problems of the establishment and unfolding of the mechanism of administrative justice as an independent legal institution which fulfills the function of judicial control by means of administrative claims adjudicated in administrative court procedure.

Literature review

Scholars argue that control as a self-contained legal norm of public administration is expressed by a system of specific relations (Arkhipov & Prikhodko, 2002). Controlling functions of anybody of power have some common characteristics that are determined by the nature of state control.

Firstly, the functions of state control are inherent only to bodies of state power and administration (Taitorina, 2010). Secondly, state control is exercised on behalf of the state, has a nationwide character regardless of what bodies it is exercised by (Dzhagaryan, 2008). Thirdly, control is exercised in juridical form (Jones, 2016). Fourthly, the system of control is hierarchical. The controlling function, according to its content, character and objective, is a constitutional function and, is, by definition, a constitutional category (Henry, 2015).

K. Mami (2005) observes that the active administrative legislation of the Republic of Kazakhstan foresees a possibility for natural persons and legal entities to challenge regulatory acts of the Government, ministries and agencies, and local governments. Regulatory acts of the government can be challenged directly in the Supreme Court.

At the same time, according to the active legislation one cannot challenge in court the laws and decrees of the President. They undergo a special verification procedure for Constitutionality, which is executed by the Constitutional Council of the Republic of Kazakhstan for Inquiries by the President, the Government, deputies and courts (Yurchenko, 2011).

Y. Porokhov (2011) points out that in Kazakhstan, like in other post-soviet countries, judicial control of the legality of actions and decisions by the bodies of state power was limited to supervising the activities of bodies of the executive power. This approach was obviously too restricted since it failed to control the

legality of actions of the judicial and legislative branches as well as local governments.

As K. Mami (2005) observes, “such a narrow view of the subject for the citizens’ challenge of public legal acts generates a narrow understanding of administrative court procedures, administrative justice or administrative jurisdiction. It is emphasized that one of the parties to the legal dispute is an administrative body fulfilling its administrative functions.

Legal theorists in Kazakhstan have spoken more and more often in favour of extending judicial control to all the law-making activities of the state, and this opinion is supported by many legal practices (O’Callaghan & Howard, 2013).

It is worth noting that there is no agreement in legal literature in defining the essence of the judicial power from the viewpoint of its functions. In view of the above-said, it is necessary to explain that in the past the application of judicial control was always limited in Kazakhstan. It should be admitted that the judiciary was never perceived as a separate power that upheld the interests of the law.

Aim of the study

The study aims at analysis of contemporary development tendencies in administrative-legal relations in the system of administrative justice (the example of the Republic of Kazakhstan).

Research questions

The research questions were as follows:

What are the main factors changing administrative-legal relations in the system of administrative justice? What are the features of judicial control in Kazakhstan?

Methods

The research work was based on an analysis of normative legal acts designating the relations in the system of administrative justice. Moreover, we used investigations on administrative justice in order to identify contemporary development trends in administrative-legal relations determined by modern legal theorists.

Results

Evidently, justice was seen exclusively as a ceremonial function. Resolutions of the Communist party and explications provided by higher bodies of the judiciary were strewn with phrases like ‘step up the fight’, ‘create an atmosphere of intolerance of crime’ etc.

However, the situation has changed recently. A need arose to increase the effectiveness of public administration (which is one of the objectives of the administrative law). Paradoxically, citizens need to be protected from this ‘effectiveness’ (which is the objective of administrative processes and administrative justice.) Resolution of new problems encountered by the courts

requires application of new means and methods of judicial control (Arkhipov & Prikhodko, 2002).

Under conditions of the present administrative-legal relations we fully share the view that the system of administrative justice, as well as the administrative court procedure, should address only administrative disputes. There can be no other solution to this problem.

It is vitally important to reject the understanding (forged in the soviet time) that administrative disputes are citizens' challenges of normative legal acts of the state. Relevant amendments to laws should be made. Moreover, the procedure of settling these disputes in the Republic of Kazakhstan is regulated by the Code of Civil Procedure (Subchapter 3 "Special Litigations") which obviously does not agree with the public character of such litigations (Podoprigora, 2010). This is accounted for by the former "doctrine of uniform justice according to which all types of litigations were considered as a uniform process, without their division into private legal and public legal ones. However, public litigations presuppose not only specific features but also the specifics of implementation of the courts' decisions" (Mamontov, 2011).

Administrative courts resolve disputes between individuals and public administrations and not impose administrative penalties. They strive to encourage the best management practices to the activities of public administrations (Beknazarov, 2011).

Administrative courts are the backbone and the pivotal point of a state of law. They are entrusted with passing judgments against the state – and on behalf of the state. In other words, administrative justice resolves conflicts in the administrative procedure activities of the executive bodies, when a citizen/subject of the law suffers from an illegal action by a state administration. By filing a complaint with an administrative court, a citizen requests a verification of the legality of actions by the state bodies and their officials, as well as that of adopted administrative acts/decisions (Starilov, 2001).

It is important to note that administrative courts in all civilized countries consider a state agency or its official innocent until proven guilty. A subject of public authority must prove to the court that its actions are impeccable from the point of view of law and have been carried out in compliance with all the active legal norms.

This stance has been universally supported in Kazakhstan. Thus, when speaking of the problem of organization of administrative justice, former Chairman of the Supreme Court of the Republic B. Beknazarov (2011) underlined that "an effective market economy is impossible without an active regulating role of the state. Only a clear, accessible, and objective system of protecting human rights and freedoms from illegal infringements by state officials will become one of the main indicators of establishment of a state of law, of the ambition on part of the national legal system to achieve international standards and juridical ideals."

Therefore the Supreme Court supports the view that it is necessary to extend the jurisdiction of specialized administrative courts in Kazakhstan.

In our opinion, such courts must resolve all the disputes arising from the relations between the authorities and citizens as well as legal entities. These courts could also conduct proceedings related to judicial control of preliminary investigations.

The competence of administrative courts could embrace cases of recourse against decisions or inaction by bodies of state power, local governments, public organizations and officials. They could also deal with disputes on the application of election legislation, cases of contesting the legality of normative legal acts, and disputes between bodies of state power and local governments” (Beknazarov, 2011).

Discussion and Conclusion

As we mentioned earlier, the administration of justice in cases arising from public legal relations is carried out within a civil procedure. It should be added that no Code of Administrative Procedure has been adopted in Kazakhstan to date, although some attempts have been made to elaborate it.

As Y. Porokhov (2011) maintains, “the experience of administration of justice in a number of cases in the system of civil procedure suggests that the principles and methods of civil procedure do not promote effective resolution of the problems faced by administrative justice. On the contrary, these principles and methods impede its development and prevent correct resolution of public legal disputes. The competitiveness and equality of the parties (set forth in Article 15 of the Code of Civil Procedure of Kazakhstan) cannot promote the ascertainment of truth and restoration of justice in public legal disputes. A state body that has adopted an illegal act will always refrain from presenting any evidence against itself. A private individual, on the other hand, will always be deprived of the opportunity to obtain such information from the state body”.

In the context of the above-said, the following conclusion made by R. Yurchenko (2011) seems justified: “it is not a simple matter for any ordinary citizen to challenge the authorities of any level, if only for the reason that these bodies are vested with power. They have their administrative apparatuses which, if need be, will prepare everything for the authorities’ defense in court. Ordinary citizens are not in a position to do so. Not every one of them can hire a lawyer, whereas a free lawyer is not guaranteed to any citizen. The parties do not compete on equal terms here, the state bodies always being at advantage. Therefore we believe that citizens and legal entities should be obliged to just indicate which of their rights and interests have been violated or restricted in each case. It is up to the state bodies to defend the legality of their actions and decisions” (Yurchenko, 2011).

Germany has some of the most revealing experiences in the field of administrative justice with regard to the implementation of rights and freedoms of citizens and human beings. German administrative courts are completely separate from other bodies of state power and constitute an autonomous system. Thus, three degrees of administrative courts are observed.

The first-instance court in any federated state is the administrative court which processes any complaints by citizens about the decisions of officials. A characteristic feature of administrative justice in Germany is that before filing a complaint with an administrative court, a citizen must use the opportunity to do so at the administrative agency itself.

The second instance is represented by the Supreme Administrative Court of a federated state, which does not only conduct proceedings and passes judgment in administrative disputes but is also an appellate authority as regards the rulings of lower administrative courts. Decisions of the Supreme Administrative Court of any federated state can be contested in the Federal Administrative Court, which is the last instance in administrative legal proceedings (Abdraimov, 2005).

We should add to the above-said that special emphasis in Germany is put on the fact that the disputes of administrative court jurisdiction are addressed by highly qualified judges. This is accounted for by the fact that in the sphere of administrative law citizens will often challenge the state, and the rulings of these courts must ensure that state bodies should comply with the law and the Constitution. By doing this, administrative courts not only strengthen the role of the state in conformity with the present state-legal order but foster the citizens' confidence in law-enforcement and the state, which promotes social stability.

In summary, we can state the necessity of the reforming the administrative law of the Republic of Kazakhstan, the change of its subject of regulation, formation of new administrative institutions (e.g. administrative agreement, administrative claim) and a sweeping reform of 'old' institutions (e.g. the institution of public service, authorization system), the implementation of judicial reform, formulation of theoretical foundations of the administration and management processes, of administrative procedures, of administrative legal basis for enforcement of rights and freedoms of citizens and human beings in public law on part of the judiciary.

Implications and Recommendations

In our opinion, the administrative justice that is evolving within the juridical system of Kazakhstan should be considered only in light of the theory of administrative legal relations. This implies that administrative disputes should be addressed by administrative courts as part of administrative court procedure and within the framework of the evolving administrative justice.

It is necessary to admit that the modern concept of administrative justice in Kazakhstan is being forged in two legal contexts at once, namely the administrative legal context (including the administrative procedure context) and the civil procedure context. This duality is not a boon but rather a deterrent to the establishment of administrative-juridical relations in the Republic.

In view of the above said, we believe that the jurisdiction of the specialized administrative courts of Kazakhstan must be changed. Instead of hearing cases of administrative offences, these courts must settle the disputes proceeding from administrative legal relations in the field of administration.

Administrative offences must be referred to the jurisdiction of district courts, since these cases are, in point of fact, misdemeanors.

It is necessary to exclude not only Chapter 26 from the Code of Civil Procedure, which sets out the procedure for administration of complaints about the decisions of state officials on administrative cases. It is also advisable to exclude some other chapters from the Code that set forth the order of proceedings in various cases of public legal character.

Thus, the research findings can be used by lawmakers as a basis for legislation development in the field of administrative-legal relations.

Disclosure statement

No potential conflict of interest was reported by the authors.

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