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[1]Zhetpisbayev B.A., [1]Tynybekov S.

[1]Al-Farabi Kazakh National University, Almaty, Kazakhstan

Administrative Justice in the Issues of Implementation of Administrative and Legal Reforms of Kazakhstan

Abstract. Despite all the attempts perceived within the confines of ongoing administrative and legal reforms, the administrative justice of Kazakhstan has not yet been fully formed and is at the stage of its formation. The processes of further development of administrative justice call for the need for a more detailed elaboration of this problem with the application of advanced international experience in this area of public law activity of the state. In order to fill the gaps that have formed, at all stages of state reform, in Kazakhstan issues were sharply raised whose solution was aimed at improving administrative legislation and, in general, administrative and legal relations. Another basic idea of the ongoing reforms was the idea of the formation of administrative justice and administrative proceedings, which, according to its purpose, was to become a full-fledged form of administration of justice, along with criminal and civil proceedings. The administrative justice within the Kazakh legal system should be considered only within the confines of the theory of administrative and legal relations, that is, administrative (public) disputes must be considered within the confines of the administrative justice that is strictly included in the field of activity, administrative courts in the procedure of administrative proceedings.
Key words: administrative justice, administrative law, administrative legal proceedings, judicial control, judicial protection, rights and freedoms, justice, public-law disputes, administrative and legal reforms.

Аңдатпа. Әкімшілік-құқықтық реформалар шеңберінде қабылданған барлық әрекеттерге қарамастан, Қазақстанның әкімшілік юстициясы әлі қалыптаспаған және ол қалыптасу сатысында тұр. Әкімшілік юстицияның алдыңғы уақытта даму үрдістеріосы саладағы мемлекеттің жария-құқықтық қызметінің алдыңғы қатарлы халықаралық тәжірибені қолдану арқылы осы мәселені неғұрлым терең зерттеу қажеттігін талап етеді. Мемлекеттік реформаның барлық сатыларында қалыптасқан кемшіліктерді толтыру үшін Қазақстандағы әкімшілік заңнаманы және тұтастай әкімшілік-құқықтық қатынастарды жетілдіруге бағытталған мәселелер күрт көтерілді. Реформалардың тағы бір негізгі идеясы қылмыстық және азаматтық сот ісін жүргізумен қатармақсаты сот төрелігінің толық нысаны болуға тиіс болатын әкімшілік әділет және әкімшілік сот ісін жүргізуді қалыптастыру болды. Заңнамада орын алған кемшіліктердің орнын толтыру мақсатында, мемлекеттік реформалаудың барлық кезеңдерінде Қазақстанда әкімшілік заңнаманы, жалпы алғанда әкімшілік құқықтық қатынастарды жетілдіруге бағытталған мәселелер өте өзекті болды.Жүргізіліп жатқан реформалардың тағы бір идеясы ол әкімшілік юстицияны және әкімшілік сот өндірісін қалыптастыру болып табылды,ол өз кезегінде,азаматтық және қылмыстық сот өндірістерімен қатар, сот төрелігін жүзеге асырудың толыққанды нысаны болуы тиіс еді. Қазақстандық құқықтық жүйе шеңберінде дамып келе жатқан әкімшілік юстицияны әкімшілік-құқықтық қарым-қатынас теориясының аясында ғана қарастыру қажет, яғни әкімшілік даулардамып келе жатқан әкімшілік юстиция аясындаәкімшілік соттармен әкімшілік сот өндірісі тәртібімен қаралуы тиіс.
Түйін сөздер: әкімшілік әділет, әкімшілік құқық, әкімшілік сот ісін жүргізу, соттық бақылау, сот қорғауы, құқықтары мен бостандықтары, әділеттілік, қоғамдық-құқықтық даулар, әкімшілік-құқықтық реформалар.

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Аннотация. Несмотря на все попытки, воспринимаемые в рамках проводимых административно-правовых реформ, административная юстиция Казахстана на сегодняшний день окончательно не сформировалась и находится на стадии своего становления. Процессы дальнейшего развития административной юстиции вызывают к необходимости более детальной разработки данной проблемы с применением передового международного опыта в этой сфере публично-правовой деятельности государства. В целях восполнения образовавшихся пробелов, на всех этапах государственного реформирования, в Казахстане остро стояли вопросы, решение которых были направлены на совершенствование административного законодательства и, в целом, административно-правовых отношений. Другой основной идеей проводимых реформ, была идея формирования административной юстиции и административного судопроизводства, которая по своему предназначению должна была стать полноправной формой осуществления правосудия, наряду с уголовным и гражданским судопроизводством. Складывающуюся в пределах казахстанской правовой системы административную юстицию, следует рассматривать только в рамках теории административно-правовых отношений, то есть административные (публичные) споры должны рассматриваться в рамках строго включенных в сферу деятельности формирующейся административной юстиции, административными судами в порядке административного судопроизводства.
Ключевые слова: административная юстиция, административное право, административное судопроизводство, судебный контроль, судебная защита, права и свободы, правосудие, публично-правовые споры, административно-правовые реформы.

Introduction

Modern reforms in the sphere of public administration aimed at implementing the administrative and legal policy of the Republic of Kazakhstan since the moment of gaining sovereignty are characterized by the desire of the state to form administrative and legal mechanisms for protecting the rights, freedoms and legitimate interests of a citizen and a person from illegal actions and decisions of state bodies and officials, arising in the sphere of public administration (Zhetpisbaev2014: 10).And in this aspect, the institution of administrative justice is presented undouble interest, emerging in the bowels of Kazakhstan's statehood, which forms mechanisms for the protection of rights and freedoms of a citizen and a person in the sphere of public legal relations.

At the same time, despite all the attempts being made, to date, administrative justice in Kazakhstan is only at the stage of its formation, has not been fully formed, and the processes of its further development cause the need for a more detailed development of this problem with the application of international best practice in this sphere of legal activity of the state. Brief historical and legal information of Kazakhstan's activities in this direction illustrates the facts that the processes of reforming the administrative and legal relations in this direction of the state activity of the Republic can be divided into three stages, especially since such periods is conditioned by the processes of adoption of the most important program documents of Kazakhstan, the conceptual and system-forming character:

– Stage 1 – from 1994 to 2002 (linked to the adoption of the State Program of Legal Reform in the Republic of Kazakhstan in 1994);

– Stage 2 – from 2002 to 2010 (associated with the adoption of the Concept of the Legal Policy of the Republic of Kazakhstan for the period from 2002 to 2010);

– Stage 3 – from 2010 to 2020 (linked to the adoption of the Concept of the Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020).

At all stages of state reform, in Kazakhstan issues were sharply raised, the solution of which was aimed at improving administrative legislation and, in general, administrative and legal relations. Another basic idea of the ongoing reforms was the idea of the formation of administrative justice and administrative proceedings, which, according to its purpose, was to become a full-fledged form of administration of justice, along with criminal and civil proceedings (Zhetpisbaev 2001: 15).

In the context of what has been said, it should be pointed out that the creation of special administrative justice bodies – administrative courts, was, in fact, a radical transformation in the system of Kazakhstani judicial proceedings.

Methods and theoretical and methodological foundations

In the research, the dialectical method of cognition and the systematic approach to study of legal phenomena arising in the system of conceptual

and theoretical problems of administrative justice in the Republic of Kazakhstan as specialized bodies for the protection of rights and freedoms and legitimate interests of a citizen and a person in the field of public law are used as a methodological basis relations.

The methodological base is characterized by both traditional and new innovative approaches, methods and methods of research of the legal relationships under consideration. In the process of research methods of analysis and synthesis, modeling, generalization, forecasting, abstraction, historical legal, comparative legal, formal-legal and other methods are applied.

The theoretical basis of administrative justice, as a system of public-management activities in the field of public law relations in the protection of rights, freedoms and legitimate interests of man and citizen in the history of the legal thought of mankind have been formed for a long time. It is important to note that until the end of the XIX century the state law was the branch of law regulating the activities of public administration and public service. But the administrative scientist Rudolf Gneist, L. Stein and O. Mayer in the second half of the XIX century transfer the study of these legal institutions from state law to a new branch of law-the right of management or the right of executive power, which in the last third of the XIX in the early 20th century Western Europe, and then in Russia was named as "administrative law". This name turned out to be the most successful, as it had the features of a generic concept and could unite into one whole the various parts of administrative and legal activity (Belskyi 2004: 148-149).

The authors of the notion of "administrative law" are the French, who had this term based on the development and regulation of the institution of administrative justice. If for the German policemen of the 18th and the first half of the 19th century, the development of issues related primarily to policing and the protection of public order ("deanery"), which is, the development of a substantive part of administrative law, then in France, the administrative centralization carried out by Napoleon I, and the mechanisms created by him to protect the rights of citizens from the absolute power of officials contributed to the formation of the institution of administrative justice, which becomes part of the administrative department in the late XIX – early XX century in the countries of Western Europe and Russia (Belskyi 2004: 148-149).

The French system of administrative justice, today throughout the world is recognized as classical and characterized by the presence of special bodies (administrative tribunals), which consider disputes on claims of citizens to public authorities (Chapus 1996: 13-75).

Issues of administrative justice for Kazakhstan's administrative law are mostly innovative, since they are most actively developed only during the last decade. At the same time, it should be recognized that the theoretical bases of administrative justice in Kazakhstan began to be formed at an earlier period of development.Proceeding from socially and historically conditioned contradictions, in our opinion, the history of the development of legal doctrines and views in the field of administrative justice can be divided into 3 main stages covering more than a century.And in particular on:

1) pre-revolutionary;
2) soviet;
3) modern (Zhetpisbaev 2014: 10).

It should be recognized that there was no administrative justice in the pre-revolutionary period of development in the legal system of Kazakhstan. However, after the revolutionary changes, a single Union of SSR was established, the subject of which was the Kazakh Republic, and accordingly the further development of law in Kazakhstan was carried out within the framework of the Soviet legal system, which largely used the achievements of the legal thought of tsarist Russia.

The history of the development of legal views of the researchers Russian of pre-revolutionary administrative justice is known by the works of outstanding scientists of the late 19th and early 20th century who laid the methodological and theoretical foundations for this type of public-management activity: I.E. Andreevskiy (Andreevskiy 1924: 241-242), I.T. Tarasov (Tarasov 1888: 18-63, N.M. Korkunov (Korkunov 1888: 52), V.M. Gessen (Gessen 1910: 63), S.A. Korf (Koft 1910: 55), A.I. Elistratov (Elistratov 1913: 264), V.A. Gagen (Gagen 1916: 312), M.D. Zagryatsky (Zagryatsky 1925: 142) and others.

Thus, in the administrative and legal science of Russia, the problems of administrative justice were most intensively and fruitfully developed in the pre-revolutionary period of its development, and only post-Soviet transformations gave new impulses to the activation of research in this field. However, significant changes that differ in the fundamental and doctrinal nature of the scientific results obtained in this direction of Russia's administrative law science have not occurred, and the legislation regulating these types of social relations has not yet been formed. Atthesame time, during the Soviet period of development of the Russianadministrative justice, a significant contribution to the development of its theoretical and methodological foundations was made

by works: A.E. Lunev (Lunev 1962: 62), N.G. Salishev (Salischev 1964: 55), A.A. Zhdanov (Zhdanov 1971: 18), A.T. Bonner (Bonner 1964: 4), D.M. Chechot (Chechot 1973: 63), G.E. Petukhov (Petukhov 1974: 22), Zh.N. Mashutin (Mashutin 1974: 51), V.A. Loria (Lorya 1980: 56) O.K. Zastrozhny (Zastrozhny 1985: 46), A.A. Demin (Demin 1987: 66), V. Durnev (Durnev 1988: 8), V.V. Sazhinov (Sazhina 1989: 21), M.Ya. Maslennikov (Maslennikov 1990: 24) and others.

Administrative and legal science received new impulses in the development of administrative and judicial relations in connection with the collapse of the USSR and the collapse of the administrative command system of management. This period of development of administrative law is characterized by the publication of a number of works that justify new approaches to solving the problems of administrative justice, put forward on the basis of implementing the ideas of building a rule-of-law state. Among the Russian researchers of this period, it is necessary to mention the following works: A.V. Absalyamov, D.N. Bakhrakh, K.S. Belsky, A.A. Demin, A.B. Zelentsky, A.G. Kucheren, R.N. Lyubimov, D.V. Osintsev, Yu.N. Starilov (Starilov 1998: 69), M. Studenikina, Yu.A. Tikhomirov, I.Sh. Kilyaskhanov et al.

It should be explained that in the works of the above-mentioned authors, a creative attempt was made to justify the need to introduce administrative court proceedings, to formulate the concept of administrative justice as a legal institution that performs the function of judicial control through a judicial administrative suit, examined under the rules of administrative litigation.

A significant place in the development of modern concepts of the institution of administrative justice belongs to Kazakhstani scientists. So, among the Kazakhstan scientists who made a significant contribution to the development of this problem, it should be noted scientific works of: A.A. Abdikerimova, B.E. Abdrakhmanov (Abdrahmanov 2010: 23), G.T. Baisalova, A.E. Zhatkanbaeva, B.A. Zhetpisbaev, K.A. Mami, A.M. Medetova, E.A. Nugmanova, A.N. Nurbolatova, R.A Podoprigora, E.V. Porokhov, B.A. Titorina, A.A. Taranova (Taranov 2003: 38), E.O. Tuzelbaev and other researchers.

In their works, the above-mentioned authors largely expanded and promoted the idea of developing administrative justice through the point of view of the law-governed state and made a significant contribution to the development of modern administrative and legal reform in the Republic of Kazakhstan.

At the same time, it should be pointed out that the analysis of the scientific works of the above-mentioned researchers allows us to conclude that in the administrative and legal science of Kazakhstan at present there are no special scientific studies devoted to the issues of a specialized, integrated, conceptual and theoretical-methodological substantiation of problems of administrative regulation of justice as a developing institution in the system of the branch of Kazakhstani administrative law.

Results

In the conditions of modern reality, the problems of reforming the administrative law of the Republic of Kazakhstan, changing its subject of legal regulation, creating new administrative and legal institutions (for example, an administrative contract, an administrative claim) and a swift reform of the "old" (for example, the civil service institution, the licensing system), carrying out judicial reform, developing the theoretical foundations of the administrative and managerial process, administrative procedures, administratively – Legal provision of rights and freedoms of a citizen and a person in public law by the judiciary (Starilov 1998: 6) remain as before unresolved.

They also demand further development of the problem of forming and setting up the activity of administrative justice as an independent legal institution that performs the functions of judicial control through an administrative suit, which is considered according to the rules of administrative legal proceedings.

Control as an independent legal form of government is expressed in a system of certain relations. Control functions of any body have common features, determined by the essence of state control.

Firstly, the functions of state control are inherent only to the bodies of state power and administration.

Secondly, state control is exercised on behalf of the state, has a nation-wide character, regardless of which bodies it is implementing.

Third, control is exercised in a legal form.

Fourth, the control system is built on the principle of hierarchy.

The control function by its content, nature and purpose is constitutional and by definition is generally a constitutional category (Dzhagaryan 2008: 18-20).

The current modern administrative legislation of the Republic of Kazakhstan provides for the possibility of appealing by individuals and legal entities of regulatory acts of the Government, ministries and departments, local government bodies, and government regulations can be appealed directly to the Supreme Court.

At the same time, according to the norms of the current legislation, only laws and decrees of the President can not be appealed in court. They have a special procedure for checking their constitutionality in the Constitutional Council of the Republic of Kazakhstan at the appeals of the President, Government, deputies and courts.

In Kazakhstan, for a long time, as in other post-Soviet states, traditionally judicial control over the legality of actions and decisions of public authorities is reduced to monitoring the activities of executive bodies. This approach, of course, is narrow, as it leaves outside the framework of judicial control the legality of the actions of the legislative, representative government, as well as local self-government bodies.

K.A. Mami believes that: «It is a narrow understanding of the subject of citizens' appeals against public law giving grounds for the same narrow approach to the problems of administrative proceedings, administrative justice or administrative jurisdiction. The emphasis is made precisely on the fact that one of the parties to a public legal conflict is the administrative body that carries out administrative activities.

In the legal science of Kazakhstan, the idea of extending judicial control to the entire norm-setting activity of the state is increasingly expressed, and this opinion is supported by many practices «(Mami 2005: 18-19).

It should be noted that in the legal literature there is no unity in determining the essence of the judiciary from the position of characterizing its functions. Exposing the function of the judiciary as a constitutional category, we shall single out its components: justice, judicial control, explanation on the basis of studying and summarizing the judicial practice of the current legislation, the formation of the judiciary. The human rights protection function of the state, which guarantees the protection of human rights and freedoms, is provided by the judicial power, which is endowed exclusively with constitutional authority – the right to execute justice on behalf of the state. As a system of justice, from the point of view of the purpose, the judicial power is a concrete form of the state's activity. In addition to justice, thus, the functions of the judiciary in literature include:

– judicial control over the legality and validity of the application of measures of procedural coercion;

– interpretation of legal norms;

– official certification of facts of legal significance;

– restriction of the constitutional and other legal personality of citizens (Kozlov 1997: 348-349).

Judicial control is related to the resolution of the dispute over the law; the essence of judicial control is to verify and assess their legality and validity of decisions and actions of public authorities that violate or restrict constitutional rights, freedoms and legitimate interests of citizens and legal entities. According to NMChepurnova, the essence of judicial control lies in the fact that the courts verify, for compliance with the law, decisions taken in the exercise of management by legislative, executive and local government bodies, their officials, that is, managers Chepurnova 1999: 28-29).

Judicial control in comparison with other types of state control has a wider range in the sphere of implementation, covering in essence all aspects of public life and state power and administration.

To the specific features of judicial control, first of all, it should be attributed to the fact that judicial control, unlike the control of executive authorities and prosecutor's supervision, is carried out on the initiative of non-governors and managed subjects – citizens, other individuals and legal entities in connection with their appeal in the court, as well as subjects of social management, realizing the functions of public authority. Lack of initiative, inactivity of the judicial control bodies distinguishes it from other types of state control – control of the legislative and executive branches of government.

It is appropriate in this connection that investigators identify alternatives as one of the most important features of this type of state control: a person is entitled, and not obliged to take advantage of the mechanism of judicial control in case of violation of his rights and interests (Taitorina 2010: 144).

In the context of what has been said, it should be clarified that in our country, however, the scope of judicial control has always been limited. For the sake of justice, we must admit that justice has never been perceived as an independent force expressing the interest of law (Tihomirov 1998: 55). Apparently, she was given only a ritual, decorative function. Party decisions and guiding explanations of the highest judicial bodies were full of appeals "to strengthen the struggle", "to create an atmosphere of intolerance", etc.

However, recently the situation has changed. There is a need to improve the efficiency of the public administration system (which is one of the tasks of administrative law), but at the same time there is a need to protect citizens from this ever-increasing "efficiency" (which is the task of a positive administrative process and administrative justice). Therefore, the solution of new tasks that arise before

the court requires the use of new means and methods of judicial control (Arhipov 2002: 69).

In the conditions of the existing administrative and legal relations, we fully share the opinion of researchers and practitioners who believe that administrative disputes should be resolved both in the system of administrative justice and in administrative proceedings. And there should not be any other approaches to solving this problem.

At the same time, it must be fundamental that, from the time of the Soviet era, the understanding of administrative disputes as cases of citizens challenging normative legal acts should be abandoned and appropriate changes made to the legislation. In addition, despite the public nature of disputes arising from administrative and legal relations, the procedure for their consideration in the Republic of Kazakhstan is regulated by the Civil Procedure Code (subsection 3 "Special lawsuit proceedings"), which clearly does not correspond to the public nature of such disputes. This situation has been preserved to this day largely thanks to the "existing doctrine of unified justice, according to which all categories of disputes, without their clear division on the grounds of origin of private law and public law, are considered within the framework of a single process under uniform rules. Meanwhile, the consideration of public-law disputes by virtue of their specifics implies not only the features of the process, but also the specifics of the execution of judicial acts that have entered into legal force "(Mamontov 2005: 11-12).

In our opinion, the administrative justice that is developing within the Kazakh legal system should be considered only within the framework of the theory of administrative and legal relations, that is, administrative disputes should be considered within the framework of strictly administrative justice that are strictly included in the sphere of activity, by administrative courts in the course of administrative proceedings.

Thus, unfortunately, we should immediately note that the modern Kazakhstani conceptual model of administrative justice is formed in the range of two legal orbits: administrative-legal (including administrative procedural) and civil procedural.

This kind of dualism in the formation of administrative-judicial relations in the republic does not entail favorable consequences, but, on the contrary, is a deterrent.

The basis for approving such conclusions, as we said above, is that in the Republic of Kazakhstan, the processes of the administration of justice in cases arising from public legal relations are still being carried out within the framework of civil legal proceedings. It should also be added that the Administrative Procedural Code has not been developed in the Republic of Kazakhstan, although the first attempts have already been made to create it.

E.V. Porokhov says, that "as the experience of the administration of justice in the civil justice system has shown in the categories of similar cases, the principles and methods of civil proceedings do not contribute to the effective achievement and solution of the goals and tasks facing administrative justice. On the contrary, they hamper its development and impede the correct resolution of public-law disputes. The competitiveness and procedural equality of the parties to litigation (Article 15 of the Civil Procedure Code of the Republic of Kazakhstan) can not contribute to the most complete, objective and impartial establishment of truth and the restoration of justice in public legal disputes. State bodies that have adopted an unlawful act will always shy away from presenting any evidence that testifies against them. A private person, on the contrary, will almost always be deprived of any possibility of obtaining such information from the hands of state bodies "(Porohov 2011: 90).

In the context of the foregoing, RN's conclusions are also justified. Yurchenko that "it's not easy to be suing a common citizen with an administration of any level, if only because the latter represent bodies that are vested with power. The administration of power has a corresponding apparatus, which, if necessary, will prepare everything necessary to protect its interests in court. Citizens, as a rule, do not have such an opportunity. Not all of them have the means to pay for the services of a lawyer, and a lawyer who is free of charge is not guaranteed. In this regard, the conditions of competition among the parties are not equal, they are always with the advantage on the side of the administration. Therefore, it appears that a citizen or a legal entity should only indicate which rights and interests protected by law are infringed or otherwise restricted by the action or decision of the administration appealed against them. The legitimacy of the disputed actions and decisions must be proved by the administration "(Yurchenko 2011: 85).

In the process of realizing the rights and freedoms of a citizen and a person in the system of administrative and legal relations, the experience of administrative justice in Germany is most indicative. Modern German administrative courts are completely separated from the administration and are allocated to an independent system. So, in Germany there are three instances of administrative courts.

As the first instance in each of the lands there is an administrative court, considering any complaints of

citizens against decisions of officials (administrative bodies). A characteristic feature of the administrative justice of Germany is that a citizen, before filing a complaint with an administrative court, must first use the possibility of protecting his right by filing a complaint with the administrative authority.

The second instance is the Supreme Administrative Court of the Land, which not only deals with litigation and adjudicates administrative disputes, but also is the appellate body in relation to decisions of lower administrative courts. Decisions of the Supreme Administrative Court of the land can be appealed to the federal administrative court – the last instance to review administrative disputes (Abdraimov 2005: 75-76).

To the above, we should add that special attention in Germany is drawn to the fact that the tasks of administrative jurisdiction are decided by highly qualified judges, because in the field of administrative law there are disputes where the citizen is opposed to the state and the decision of these courts should help ensure that the activities of state bodies correspond to law and the Basic Law of the country. Administrative courts, therefore, not only strengthen the activities of the state in accordance with the established state and legal order, but also form the trust of citizens in law and order and the state, which contributes significantly to stability in society.

Thus, world experience shows that administrative courts resolve the disputes of individuals with public administration, and do not impose administrative penalties, since administrative justice is a human rights institution, and not an institution punitive to a person. By their decisions they introduce the best world standards of good governance into the activities of the public administration (Chapus 1996: 4).

Administrative justice is the core and center of gravity of the rule of law. After all, it is her share of the heavy fate – to make decisions against the state on behalf of the state. In other words, administrative justice resolves disputes (conflicts) arising in the process of administrative and procedural activity of executive authorities when a citizen (or a subject of law) experiences undue influence on the part of the administration and, submitting a statement of claim to the administrative court, asks to verify the legality of the committed management bodies and their employees of actions, as well as the adopted administrative acts (managerial decisions) (Starilov 1998: 39).

At the same time, it is necessary to clearly understand that in the world practice of administrative cases, in all civilized societies, the principle of presumption of guilt of a state body or official acts, which means that it is an obligatory and indisputable condition that a public authority should personally prove the court that his actions are impeccable from the point of view of the law and are executed in accordance with all existing and applicable legal norms.

This position in Kazakhstan is fully supported. Thus, by actualizing the problem of organization of administrative justice, Ex-Chairman of the Supreme Court of the Republic of Kazakhstan, B.A. Beknazarov, pays special attention to the fact that "an effective market economy is virtually impossible without an active regulatory role of the state. Only the existence of a clear, accessible and objective system for protecting the rights and freedoms of citizens and individuals from unlawful harassment on the part of officials will be one of the main arguments that testify to the real formation of the rule of law, the striving of the national legal system to universal standards and legal ideals.

Therefore, the Supreme Court supports the opinion of a number of scientists and practitioners on the need to expand the jurisdiction of existing specialized administrative courts in Kazakhstan.

In our opinion, such courts should consider all cases arising on the basis of relations between the authorities and the citizen, as well as a legal entity. These courts could also consider cases related to judicial control at the preliminary investigation.

The competence of administrative courts could be referred to the cases of challenging decisions and actions (omissions) of state authorities, local self-government bodies, public associations and officials, as well as cases involving disputes related to the application of electoral legislation, on disputes over legality normative legal acts, on disputes between bodies of state power and bodies of local self-government among themselves "(Beknazarov 2011:5).

In the context of what has been said, it should be pointed out that the specialized administrative courts set up for the time being in the Republic of Kazakhstan must be amended – instead of considering cases of administrative offenses, such courts should consider disputes arising from administrative and legal relations in the field of administration.

Cases of administrative violations should be attributed to the jurisdiction of district courts, since such cases are inherently minor crimes.

From the civil procedural code, it is necessary to exclude not only chapter 26, the norms of which regulate the procedure for considering complaints against decisions of officials of authorized state bodies on cases of administrative violations, but

also other chapters regulating the procedure for examining various categories of cases of public law nature "(Administrativnoe pravo 2010:319-320).

Discussion

In modern Kazakhstani legal science, questions about how the Kazakhstani administrative justice should remain open. At the same time, among the scientists and practical workers involved in the investigation of problems of administrative justice, an acute discussion has unfolded in several alternative directions:

– in the first case, administrative justice is understood as the activity of both ordinary courts and specialized administrative courts and quasi-judicial bodies considering public-law disputes related to appealing physical and legal persons to unlawful decisions of authorities that violate their rights and legitimate interests;

– in another case, administrative justice is understood as the activity of specialized administrative courts on the resolution in a special procedural order of disputes arising between the public administration concerning the validity of administrative actions and decisions;

– in the third case, the concentration of research attention focuses on judicial control, which is one of the components of the functions of administrative justice. In this case, the researchers believe that its implementation is possible in strictly specific forms, due to the peculiarity of the relationship between the two independent branches of government – the executive and the judiciary. This group of researchers believes that in the process of judicial control in this case a two-fold goal is achieved: protection of individuals and legal entities from abuse of power by government bodies, as well as improvement of the activities of government bodies in the interests of society as a whole. If you look at the problem more broadly, improvement of this type of control should be considered as a necessary element of ongoing reforms, both judicial and administrative. In the context of the foregoing, researchers propose to consider more widely the peculiarities of the institution of administrative justice, which consists in the consideration of disputes by special judicial bodies under special rules concerning the violation of the public rights of citizens and legal entities during the management process.

Judicial control in this area is one of the procedural legal forms of resolving an administrative legal dispute, and the judicial procedural form ensures equality of procedural status of the participants in the judicial proceedings – state bodies and individuals or legal entities. A legal dispute becomes possible when the public rights of citizens and legal entities are violated;

– Fourth, conduct research based on the thesis that administrative and legal disputes are resolved in the judicial process, and this, in their view, is the basis for considering the institution of administrative justice in relation to the judiciary. In addition, they pay special attention to the fact that for the administrative justice characterized by the existence of a separate range of subjects of legal relations (citizens, legal entities, public authorities, subjects of executive power, officials). Judges (officials) considering disputes in the field of management generally have special knowledge and qualifications in specific areas of public administration, the activities of executive authorities and their interaction with subjects of legal relations. Thus, administrative justice is expressed in the consideration of disputes by special judicial bodies according to strictly delineated rules concerning violation of public rights of citizens and legal entities during the management process (Taitorina 2011:199);

– No less common is the range of studies based on the conviction that administrative proceedings are understood in two forms, in the form of cases on administrative offenses and in the form of consideration of complaints by natural and legal persons against actions (inaction) and legal acts of administrative bodies, their officials. That is, we are talking about the fact that the subject of legal regulation are, on the one hand, an administrative offense, and on the other, an administrative dispute. At the same time, special attention is drawn to the fact that in foreign law there is no concept of an administrative offense arising from the sense of the Code of the Republic of Kazakhstan on Administrative Offenses. Accordingly, it is proposed to consider only an administrative dispute as the subject of administrative justice, which is understood mainly as an administrative disputable (hard), rather than a punitive jurisdiction, whereas it is proposed to understand administrative dispute and administrative violation under the subject of administrative proceedings. Therefore, to indicate the subject of administrative proceedings, it is proposed to use a more general category – "administrative and legal conflict" (Nurbulatov 2014: 14).

Thus, the analysis of the modern administrative and legal literature of Kazakhstan indicates that the range of studies of problems of administrative and legal relations arising from the specific nature of the legal nature of administrative justice is diverse in its

content and represents a combination of theoretically grounded ideas that promote development as a practice of law enforcement, and the formation of national legislation on administrative justice. It seems that Kazakhstan in the near future will develop its own concept of a legal model of Kazakhstan's administrative justice, which will create new opportunities for Kazakhstan to further integrate into the legal international space.

Conclusion

In states with a developed legal system, the institution of administrative justice is an important element of legal relations mediating the activities of public authorities in matters of security and protection of public and legal interests of a citizen and a person.

Through the point of view of the regularities of the institution of administrative justice, the problems of state-administrative influence of the norms of administrative legislation on public relations require adequate study on the basis of modern methods of administrative legal research. At the same time, "it becomes possible to scientifically justify the limits of such influence on public relations, the effectiveness and expediency of the regulation of various general relations, the introduction of new or changing existing standards in administrative legislation" (Abdrahmanov 2013: 5).

The systematic systematization and clarification of well-known administrative and legal concepts within the framework of the institution of administrative law relations should entail a revision of the usual notions about the institutions of administrative law, administrative and tort law and administrative procedural law, as well as further detailing and systematizing the norms of administrative legislation and specialization relevant government agencies that implement organizational and management activities, including in asks decisions of public law disputes between the citizen and the public authority (the state).

This provision is especially important in modern conditions, when a draft of the new Administrative Procedural Code of the Republic of Kazakhstan is being developed in Kazakhstan. In this direction, one of the consolidating factors will be the development of the Concept of the Administrative and Legal Policy of the Republic of Kazakhstan, implemented within the framework of the development of the relevant provisions of the Concept of the Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020.

It seems that the adoption of the aforementioned normative legal acts will be one of the most important areas of strategic decision-making for further reform of administrative legislation and the improvement of the activities of administrative bodies and administrative justice bodies.

From the point of view of these positions, the research can be considered as the researcher's desire to fill the legal gaps formed in the system of administrative legal relations of Kazakhstan in matters of their implementation by synthesizing the existing set of knowledge and introducing new aspects of the notion of theoretical foundations of administrative justice.

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