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Administrative procedures in the Republic of Kazakhstan and foreign countries: Theoretical-comparative analysis

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Abstract

Relevance. The relevance of the stated problem is conditioned upon the fact that the results of the administrative reform indicate that it is mainly aimed at changing the structures of state bodies (ministries, services, agencies), revising their functions, internal organisational procedures. The existence of legal provisions regulating the procedure for performing legally relevant actions in the sphere of executive power, not related to the prosecution or resolution of public disputes, has never been challenged in administrative law. The increased attention of researchers and legislators to the procedural aspects of the activities of executive authorities is due to the administrative reforms in post-Soviet countries aimed at creating a compact and professional state apparatus that effectively performs managerial functions and provides favourable conditions for the activities of individuals and legal entities.

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Purpose. The purpose of the study is a theoretical-comparative analysis of administrative procedures in the Republic of Kazakhstan and foreign countries, the investigation of the features of administrative procedures. The subject of this study is the provisions of the administrative legislation of Kazakhstan.

Methodology. Good administrative procedure refers to the procedural actions of public administration bodies regulated by administrative and legal provisions, aimed at fulfilling their competence, providing public services to citizens and their associations for the exercise of their rights and freedoms to accomplish duties not related to prosecution or consideration of public law disputes.

Results. This paper is a new comprehensive study of the theory and practice of improving the research on the theory of administrative procedures in the Republic of Kazakhstan and foreign countries, on the features of administrative procedures.

Conclusions. Based on the analysis, it is planned to develop scientifically sound proposals and recommendations to improve the efficiency of the organisation of research of administrative procedures.

Keywords: administrative law; administrative procedures; theoretical-comparative analysis; forensic activities; intelligence-gathering activities.

Introduction

The aim of administrative reform in Kazakhstan should be to build an administrative system that would act in the interests of the individual, satisfy public interests, and suppress the arbitrariness of the civil service. In other words, the reform of organisational structures or the technologisation of public administration must be accompanied by radical reform and revision of the principles and institutions of administrative law in the light of the construction of legal statehood. An important place in this context is given to a good administrative procedure mediating communication between executive authorities and private individuals (individuals and non-state legal entities) regarding the exercise of their rights, freedoms, and duties. The use of the category "administrative procedure" in the singular focuses on the general (framework) regulatory model of the executive authority's activities for the consideration of an administrative case and the adoption of an administrative decision (administrative regulation). For certain types of management activities, the specific features of the implementation of administrative procedures may be established, for example, with respect to deadlines. It is vital that these features do not contradict the fundamental provisions of the administrative procedure (principles and other elements) but develop them considering the specific features of certain areas of public administration [1-2].

How should the administrative procedure be legislated to change the paradigm of relations between a person and the state, so that a person is not a simple object of administrative activity, but its full participant along with a state body? The answer to this question should be sought in the general law of the state – the constitution. The validity of this thesis is confirmed by the generally accepted understanding of administrative law in the European legal doctrine as a concretised constitutional law. The spirit and content of the constitutions of the post-Soviet states, firstly, imply the need for legislative, not by-law regulation of a good administrative procedure; secondly, they consolidate the idea of "personacentrism" as a central provision, for example: "The Republic of Kazakhstan poses itself... as a legal and social state, the highest values of which are a person, one's life, rights, and

freedoms" (Paragraph 1 of Article 1 of the Constitution of the Republic of Kazakhstan) [3] and further: "Human rights and freedoms... determine the content and application of laws and other legal regulations" (Paragraph 2 of Article 12 of the Constitution of the Republic of Kazakhstan). Therewith, the existence of these constitutional provisions has not had a considerable impact on the relations between private individuals and state bodies, although the provisions of the Basic Law have direct effect. The adopted regulations do not include the law that would allow moving from a "system-oriented" to a "personality-oriented" type of relationship between a person and the state [4-6].

In most European countries, administrative procedures also have a solid legislative base. Examples include the Laws of Germany, Sweden, Austria, Spain on Administrative Procedures of 2003. These laws are the fundamental regulations of the administrative and legal sphere that determine the level of democracy between the state and the individual [7-10].

Recently, there has been an interest in the adoption of relevant regulations in post-Soviet countries [11-12]. Thus, the General Administrative Code of Georgia of 1999, the Law of the Republic of Kazakhstan On Administrative Procedures of 2000, the Law of Armenia on the Basics of Administrative Activities and Administrative Proceedings of 2004, the Law of the Kyrgyz Republic On Administrative Procedures of 2004, the Law of the Republic of Azerbaijan On Administrative Proceedings 2005, Code of Administrative Procedures of the Republic of Tajikistan 2007, Law of the Republic of Belarus on the Basics of Administrative Procedures 2008 were adopted. Various versions of similar bills have been repeatedly discussed in Russia and Ukraine, but the parliamentary barrier has not yet been overcome [13].

Materials and Methods

The methodological basis of the study consists of general scientific dialectical methods of cognition, including the principles of objectivity, consistency, historicism, induction, deduction, etc. Along with general scientific methods of cognition, private scientific methods are used: formal-legal, descriptive, linguistic, Aristotelian,

historical, system-legal, comparative-legal, etc. The leading method of studying this problem is modelling, therefore, this problem can be considered as a purposeful and organised process of professional development and the training of special competencies that allow effectively studying the issue of interaction of the investigator with the bodies of intelligence-gathering and forensic activities. The structure of the presented structural-functional model is aimed at studying the work of the investigator with the bodies of intelligence-gathering and forensic activities.

The main methods of this research are legal, including legal and technical and methods of interpretation of the law. The legal and technical method is widely used in regulatory actions. The system of the code and each of its articles must comply with the established rules of disposition and sanctioning of provisions to be clear and logically consistent. Interpretation of the law is possible through understanding the meaning and legal form – grammatical, logical, comparable, in terms of volume – authentic, expanding, restrictive. Secondly, the study presents a criminal statistical method characterised as the cognition of the qualitative originality of criminal law phenomena and concepts by quantitative indicators. Upon using this method, a generalised and quantitative measurement is conducted, for example, provisions, their dispositions and sanctions, the structure of criminal responsibility, criminal records. Thirdly, there is a systematic method. It investigates criminal phenomena and considers them as systems, that is, an integral set consisting of subsystems and elements. This method is used in legislation, law enforcement, and theory of construction, cognition, application of such systemic institutions as criminal law, principles of law, crime, guilt, multiple crimes, complicity, exemption from criminal liability and punishment. The principle of consistency should correspond to the order of sections, chapters, and provisions in the code. The macrosystem is the Criminal Code of Kazakhstan in general. A microsystem is a provision, the disposition of which describes the components of the crime, and the sanction is the form and severity of punishment [14]. Fourth, in criminal law science, the comparative (comparative) method is considered important, which is used when comparing the codes of various legal systems and states [15].

The theoretical basis of the research is the studies in the fields of criminal law, criminology, and other legal sciences, covering the theoretical and practical essence of the analysis of the interaction of the investigator with the bodies of intelligence-gathering and forensic activities.

The research focuses on the main provisions of the theoretical institutions of the administrative law of Kazakhstan, the main areas of administrative policy [16-18]. These provisions were developed by Kazakh and foreign researchers. The legal base of the study is international regulations, administrative law of foreign countries, Constitution and administrative law of Kazakhstan. The experimental base of the study is the statistical data of the Committee of Legal Statistics of Kazakhstan.

The research was conducted in several stages: at the first stage, a theoretical analysis of existing methodological approaches in the scientific literature was conducted along with research on administrative procedures in the Republic

of Kazakhstan and foreign countries: theoretical-comparative analysis; the problem, purpose, and methods of research were identified, a research plan was developed; at the second stage, a set of conditions for the effective study of administrative procedures in the Republic of Kazakhstan was identified and substantiated; experimental work was performed, the conclusions obtained during the experimental work were analysed, verified, and clarified; at the third stage, experimental work was completed, theoretical and practical conclusions were clarified, the results were summarised and systematised.

Results and Discussion

In many European countries, the Romano-Germanic Legal System is used, in other words, the continental one. Administrative procedures are one of the most underdeveloped institutions of administrative law. In the current context, an important role is played by the administrative and legal regulation of relations arising between public authorities and citizens or organisations, both from the standpoint of the content of these types of activities and their procedural registration. It is generally accepted to consider administrative proceedings as a certain regulatory order of actions methodically performed by subjects of law to exercise their rights and obligations [19-21]. Legislative regulation of administrative procedures includes the introduction of general rules for the organisation of relations between citizens and public authorities, in particular: the adoption of individual regulations of administrative bodies or their modification, except for this remedy, or the possibility of their cancellation [22-25].

There are many judicial systems in foreign countries. The above suggests that the judicial system in any country develops based on its own individual conditions, especially those that include historical traditions. The establishment of administrative courts was inevitable in the Middle Ages. In England, in the middle of the 13th century, the institution of justice of the peace was systematically developed. In the legal literature devoted to administrative courts, an opinion is generally held that this institution is the result of historical improvisation, that is, it appeared in France at the turn of the 18th and 19th centuries during the revolution and the First Empire. In the second half of the 19th century, under the influence of France, administrative courts were established in the second half of the 19th century, in other European countries, such as Germany, Spain, Italy, Holland, Belgium, etc., the feudal era of France, Germany, and Italy played a decisive role in the consideration of complaints of individuals against the actions of state bodies, praised by courts that tolerated complaints against the decision. The system of protection of state rights of the highest judicial and administrative institutions was, to a certain extent, adopted by all the absolute monarchies of Europe and did not stop until the French Revolution, which created a new comprehensive model of administrative courts [26-28].

The new law in Kazakhstan introduces the concept "administrative claim", which means a lawsuit filed with the court for the protection and restoration of violated or disputed rights, freedoms, or legitimate interests arising from public legal relations. In this regard, since July 1, 2021, the Republic of Kazakhstan has excluded from the

Civil Procedure Code the provisions concerning the consideration of disputes arising from public-law relations, in particular: on the protection of electoral rights; on challenging decisions and actions (inaction) of state authorities, local self-government bodies, associations, organisations, and officials; on appealing actions (inaction) of the bailiff; on challenging decisions, opinions, directives

of the authorised body based on the results of the public procurement audits. These categories of cases will be considered in the order of administrative proceedings. In addition, investors' claims will be considered within the framework of the administrative procedure for appealing against administrative regulations, administrative actions (inaction) of administrative bodies, officials (Table 1).

Table 1. Structural-functional model of theoretical-comparative analysis of administrative procedures in the Republic of Kazakhstan and foreign countries

Administrative procedures in the Republic of Kazakhstan	Administrative procedures in foreign countries
On June 29, 2020, the Administrative Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the APC) was adopted in Kazakhstan [29], which enters into force on July 1, 2021. Due to the adoption of the APC, amendments have been made to a number of regulations of the Republic of Kazakhstan.	The law-making process of foreign countries confirms the correctness of the chosen vector of development of administrative procedural legislation.
General trends in the establishment of the institution of administrative procedures in the Republic of Kazakhstan indicate the need for the adoption of a basic law regulating the main provisions of the procedure for performing publicly relevant actions by executive authorities [30].	The development of new scientific ideas, their implementation and legislative registration are impossible without considering the experience of foreign countries, its analysis and generalisation. However, the administrative procedures of foreign states have certain specific features [31].
The implementation of public functions by public authorities and local self-government bodies is mediated by the need to adopt administrative regulations. Administrative regulation is adopted in writing (hard copy and (or) electronic format) unless otherwise is provided by the laws of the Republic of Kazakhstan.	Western European administrative law specialists, when investigating administrative procedures, primarily answer questions about the purpose of their creation and the reason public authorities should comply with them when making administrative decisions [32].
The administrative regulation must be legal and justified. An administrative regulation should be understandable, applied uniformly, and exhaustively identify the persons to whom it applies. A regulation adopted orally or otherwise must be issued in writing (in hard copy and/or electronic format) at the request of a participant in administrative proceedings within one working day from the date of filing the application.	One of the first attempts to legislate the institution of administrative proceedings was the adoption of the Law on Administrative Proceedings in the United States in 1946. Conceptually, an important feature of the administrative process in foreign countries, including the United States, is the compilation of a limited list of principles of administrative and procedural activities of authorised bodies. In particular, the basics of administrative proceedings in the United States should recognise transparency and openness, accessibility of the process to the public [33].
An administrative regulation may be adopted orally or in another form, if protection of the rights and freedoms of citizens and legal entities, public interests is required; in other cases provided for by the laws of the Republic of Kazakhstan.	The practical implementation of this principle is provided by widely informing citizens about the work of the administration, holding public meetings, promoting legal knowledge, etc. In some states, there is an active regulatory activity in the field of establishing administrative procedures [34].

The APC establishes a number of principles of administrative procedures and administrative proceedings, among which the following can be distinguished:

1. The principle of priority of rights establishes that all doubts, contradictions, and ambiguities of the legislation on administrative procedures are interpreted in favour of the participant in the administrative procedure.

2. The presumption of reliability assumes that during the implementation of the administrative procedure, the materials, objects, documents, and information submitted by the participant of the administrative procedure are considered reliable until the administrative body, an official establishes the opposite [35].

3. The principle of proportionality is to ensure a fair balance between the interests of the participant in the administrative procedure and society. Therewith, an administrative regulation, an administrative action (inaction) must be appropriate, necessary, and proportionate. The active role of the court is ensured by the provisions of the APC on the obligation of the court to assist in eliminating formal errors, clarifying unclear expressions, filing petitions on the merits of an administrative case, supplementing incomplete factual data relevant for a complete and objective assessment of the circumstances of an administrative case.

The APC divides administrative claims into: claims for challenge, in which the plaintiff requires the annulment of a burdensome administrative regulation that violates one's rights and legitimate interests: enforcement actions, in which the plaintiff may demand the adoption of a favourable administrative regulation, which was refused, or oblige the defendant not to accept a burdensome administrative regulation [36]; requirements for the performance of an action by which the plaintiff may demand the performance of certain actions not aimed at the adoption of an administrative regulation or refrain from such actions; claims for recognition, in which the plaintiff may demand recognition of the existence or absence of any legal relationship if one cannot bring the aforementioned claims of challenge, enforcement or performance of an act; according to the claim for recognition, the plaintiff may also require that an onerous administrative regulation, which no longer has legal force, is declared unlawful by filing a lawsuit against the actions (inaction) of the bailiff.

The APC has established a reasonable period of administrative proceedings, which is determined considering the legal and factual complexity of administrative cases, the behaviour of participants in the administrative process, the procedural orientation and effectiveness of the court's actions. In this case, the administrative case must be settled within a period not exceeding three months from the date of filing the claim. In the case of complex administrative cases, this period may be extended by a substantiated court decision for a reasonable period, but not more than three months [37].

Administrative procedures that are functionally aimed at considering a specific administrative case and guaranteeing the adoption of a fair decision by an independent official should be recognised as instrumental. The Law on Administrative Procedure regulates in detail all types of administrative activities: rulemaking, executive, law enforcement (administrative justice). Almost all actions of administrative institutions and their officials are covered by the provisions of administrative procedural law. All stages of the administrative process have been regulated: investigation and collection of information, preparation of a draft statutory or individual regulation, its consideration in open session, decision-making on it, its promulgation, appeal to higher authorities and the court. Active processes of development of legislation on administrative procedures are taking place in the Baltic States and the Scandinavian countries. Thus, Latvia and Estonia are fully involved in creating administrative and management systems that are close to pan-European standards [38-39].

In February 2004, the Law of Latvia "On Administrative Procedure" came into force [40]. Prior to its adoption, there was no special procedure for the consideration of administrative cases by public administration bodies in the country. To appeal against the actions of the authorities, a person could apply to a court of general jurisdiction, which considered cases according to the Civil Procedure Code of Latvia. The most important achievement of the Law under consideration was the allocation of two independent judicial systems involved in the consideration of administrative disputes: administrative and general. However, in addition to administrative justice, the Law of Latvia "On Administrative Procedure" provided

for: a list of pre-trial procedures; the institution of representation; accessibility and ease of filing an administrative complaint, etc. The general characteristics of the laws are that they do not apply to judicial procedures, bankruptcy, property requisition, the police, and the army. They establish a list of principles of administrative actions: equality; active engagement of authorities in the consideration of an administrative case; promptness; thoroughness of consideration; the national language of production; mutual assistance of public authorities.

Among the most important rights of persons involved in the case, it is necessary to highlight: the right to be heard; the right to access information; the right to appeal decisions to higher authorities and the court. One of the features of the procedure for resolving an administrative case is its similarity with the new Administrative Procedure Code of the Republic of Kazakhstan, adopted on June 29, 2020. The administrative procedure in the Code refers to the activities of an administrative body, an official related to the consideration of an administrative case, the adoption and execution of a decision on it, performed based on an appeal or an individual initiative, and activities performed in a simplified administrative procedure.

An important aspect of the regulation of the institution of administrative proceedings should be the establishment of a list of principles for administrative proceedings: the principles of legality, justice, protection of rights, legitimate freedoms and interests, proportionality, limiting the exercise of administrative arbitrariness, the priority of rights, protection of the right to trust, proportionality, prohibition of abuse of technicalities while respecting the presumption of reliability, the active role of the court, a reasonable period of administrative proceedings, bindingness of judicial acts.

The performance of state functions by state authorities and local authorities depends on the need to adopt administrative regulations. Administrative regulation is adopted in writing (paper and (or) electronic format) unless otherwise is provided by the laws of the Republic of Kazakhstan. Administrative regulation is accepted only in writing (hard copy and/or electronic format) if administrative proceedings are initiated based on an application. An administrative regulation may be adopted orally or in another form, if protection of the rights and freedoms of citizens and legal entities, public interests is required; in other cases, provided for by the laws of the Republic of Kazakhstan.

Administrative procedures are rules that define the grounds, conditions, sequence, and procedure for the consideration and settlement of administrative cases, including: the procedure for making and executing decisions of administrative bodies regarding the exercise of administrative functions and powers; administrative organisation; the procedure for administrative consideration of applications from citizens, individual entrepreneurs, and legal entities on the exercise or protection of their rights and interests.

The law under consideration governs the relations of consideration and resolution by the administrative body of cases on granting, certification, registration, and suspension (termination) of the rights of interested persons (administrative cases) in the following areas: registration of interested persons; registration of rights to property and

transactions with it; licensing of certain types of activities; issuance of licenses for the performance of certain types of activities.; provision of land plots, basements, forests, reservoirs, the seizure of these lands and objects from the owner or other legal owner, etc.

An administrative regulation adopted orally or otherwise must be issued in writing (in hard copy and/or electronic format) at the request of a participant in administrative proceedings within one working day from the date of filing the application. The administrative regulation must be legal and justified. An administrative regulation should be understandable, applied uniformly, and exhaustively identify the persons to whom it applies. Administrative issues in Kazakhstan are considered based on the principles of legality, equality, openness, completeness of consideration of the evidence, etc.

A special place among administrative actions is occupied by the protection of rights and legitimate interests of citizens. The legislation of the Republic of Kazakhstan imposes certain requirements on the procedure for the exercise of citizens' rights:

1) the procedure for exercising rights, in which citizens are obliged to provide state bodies and officials with a minimum number of documents confirming legally relevant facts;

2) the minimum period for the exercise of the rights and protection of the legitimate interests of citizens;

3) the minimum number of cases in which the draft decision on the exercise of citizens' rights was approved;

4) advance notification of citizens about the place and time of consideration of the case by a competent person or body;

5) the opportunity to get acquainted with the case materials related to the appeal, the personal participation of a citizen in the appeal proceedings;

6) prevention of cases when the consideration of a citizen's application is entrusted to a person who is not interested in an objective solution of the issue.

In addition, the procedure for exercising citizens' rights should not allow: consideration of a complaint at the expense of the person who filed the complaint or the one who filed in person's interests; appeal to officials whose actions are subject to appeal; the possibility of disclosing information about private life, personal and family secrets without the consent of citizens; creation of information about the identity of a citizen not related to the procedure.

Administrative bodies, in the exercise of their administrative functions and powers, make decisions by publishing administrative regulations. An administrative regulation refers to regulations of the individual application, a written official document of the specified form, which is: a single request; an individual request or relating to a certain set of people; creation, modification, termination, or suspension of the rights and obligations of a certain person or set of people.

Conclusions

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Violation of the legislation of the Republic of Kazakhstan on administrative proceedings is the basis for recognising an administrative regulation as illegal if this violation has led or may lead to the adoption of an incorrect administrative regulation. An administrative regulation that is in effect cannot be considered illegal for formal reasons. An illegal administrative regulation may be completely or partially cancelled. Upon cancellation of illegal administrative regulation, a decision is made on the legal consequences of recognising an administrative regulation as illegal. An administrative regulation may be declared invalid both from the moment of its adoption and from the moment of its recognition as illegal. An illegal administrative regulation is subject to mandatory cancellation. When cancelling an illegal favourable administrative regulation, the principle of protecting the right of a participant in administrative proceedings to trust is considered.

A participant in administrative proceedings may not invoke the principle of protecting the right to trust in the following cases:

1) the regulation based on which the administrative regulation was drawn up is recognised as unconstitutional;

2) a deliberate inaccuracy of the document or information provided by the participant in the administrative proceedings is established;

3) administrative regulation is adopted as a result of the commission by a participant in administrative proceedings of illegal actions established by a verdict or a court decision, a decision of the prosecutor, the criminal prosecution body, the body (official) authorised to consider cases of administrative offences;

4) an administrative regulation affects public interests, the security of the state, or may lead to serious irreversible consequences for the life and health of people.

An unlawful favourable administrative regulation is also subject to compensation for damage resulting from its cancellation by part of the administrative proceedings, the right to trust which is protected by the laws of the Republic of Kazakhstan, in accordance with the provisions of the civil legislation of the Republic of Kazakhstan. Consequently, the analysis of the legislation of the Republic of Kazakhstan and the powers of foreign legislation on administrative procedures for the development of this institution is not only of national but also international importance. The accumulated experience allows the Kazakh legislature to adopt the existing model of regulation of administrative procedures and adapt it to the features of the legal system of Kazakhstan.

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Conflict of Interest

None.

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Адміністративні процедури в Республіці Казахстан та зарубіжних країнах: Теоретико-порівняльний аналіз

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Анотація

Актуальність. Актуальність заявленої проблеми обумовлена тим, що результати адміністративної реформи свідчать про те, що вона в основному спрямована на зміну структур державних органів (міністерств, служб, агентств), перегляд їх функцій, внутрішніх організаційних процедур. Існування правових норм, що регулюють порядок здійснення юридично значимих дій у сфері виконавчої влади, не пов'язаних з судовим переслідуванням або вирішенням публічно-правових спорів, ніколи не заперечувалося в адміністративному праві. Підвищена увага дослідників і законодавців до процедурних аспектів діяльності органів виконавчої влади зумовлена проведенням адміністративних реформ у пострадянських країнах, спрямованих на створення компактного та професійного державного апарату, який ефективно виконує управлінські функції та забезпечує сприятливі умови для діяльності фізичних і юридичних осіб.

Мета. Метою дослідження є теоретико-порівняльний аналіз адміністративних процедур в Республіці Казахстан та зарубіжних країнах, дослідження особливостей адміністративних процедур. Предметом дослідження є положення адміністративного законодавства Казахстану.

Методологія. Під належною адміністративною процедурою розуміється врегульована адміністративно-правовими нормами процесуальна діяльність органів публічної адміністрації, спрямована на реалізацію їх компетенції, надання публічних послуг громадянам та їх об'єднанням для реалізації їх прав і свобод, виконання обов'язків, не пов'язаних з судовим переслідуванням або розглядом публічно-правових спорів.

Результати. Дана робота є новим комплексним дослідженням теорії і практики вдосконалення досліджень з теорії адміністративних процедур в Республіці Казахстан і зарубіжних країнах, щодо особливостей адміністративних процедур.

Висновки. На основі проведеного аналізу планується розробити науково обґрунтовані пропозиції та рекомендації щодо підвищення ефективності організації дослідження адміністративних процедур.

Ключові слова: адміністративне право; адміністративні процедури; теоретико-порівняльний аналіз; судово-експертна діяльність; оперативно-розшукова діяльність.