Zhetpisbayev B.A.,
Tynybekov S.T.

Administrative justice in Kazakhstan: what should it be?

The issues about what Kazakhstani administrative justice should be in modern Kazakhstani legal science are still open. With that, it is gratifying to note that the research on the development of administrative justice issues is conducted in several alternative directions. At all stages of the reform of the state, were in dire issues that were aimed at improving the administrative legislation and, in general, administrative law.

Key words: justice, law, public administration, administrative, rights.

Жетпісбаев Б.А.,
Тыныбеков С.Т.

Қазақстандағы әкімшілік әділет: ол қандай болуы керек?

Қазіргі қазақстандық құқықтық ғылымда қазақстандық әкімшілік юстицияның қандай болуы керектігі туралы мәселелер ашық түрде айтылуда. Сонымен қатар қазақстандық әкімшілік юстиция мәселелері зерттеу саласында баламалы бағытта жүргізіліп жүр. Мемлекеттік реформалар қалыптасуы кезеңдерінің барлығында әкімшілік заң шығарушылықты жетілдіру, жалпы әкімшілік құқық бағытындағы шешімдерді шешу күрделі мәселе болып келеді.

Түйін сөздер: юстиция, заң, мемлекеттік басқару, әкімшілік құқық.

Жетписбаев Б.А.,
Тыныбеков С.Т.

Административная юстиция Казахстана: какой ей быть?

В современной казахстанской правовой науке вопросы о том, какой должна быть казахстанская административная юстиция, остаются по-прежнему открытыми. Вместе с тем отрадно отметить, что исследования по разработке проблем административной юстиции ведутся в нескольких альтернативных направлениях. На всех этапах государственного реформирования остро стояли вопросы, решения которых были направлены на совершенствование административного законодательства и, в целом, административного права.

Ключевые слова: юстиция, закон, государственное управление, административное право.

© 2017 Al-Farabi Kazakh National University

UDC 342.9

Zhetpisbayev B.A., [*]Tynybekov S.T.

Al-Farabi Kazakh National University,
Kazakhstan, Almaty
[*]E-mail: serikkaly@rambler.ru

ADMINISTRATIVE JUSTICE IN KAZAKHSTAN: WHAT SHOULD IT BE?

Modern reforms in public administration aimed at the implementation of administrative – legal policy of the Republic of Kazakhstan since gaining sovereignty, characterized by the tendency of a government to form administrative – legal mechanisms of protection the rights, freedom and legal interests of a citizen and a person from unlawful actions and decisions of the state bodies in the sphere of administrative and legal relations arising in the field of public administration.

And in this aspect it represents considerable interest emerging in the depths of the Kazakh State Institute of Administrative Justice forming mechanisms of protection the rights and freedom of a citizen and a person in the sphere of public-law disputes. The activity of the government in this direction can be divided into three stages, especially since this periodization conditioned by the adoption of major policy documents of Kazakhstan, of conceptual and systemically important character:

– Stage 1 – from 1994 to 2002 (State program of legal reform in the Republic of Kazakhstan, 1994);
– Stage 2 – from 2002 to 2010 (Concept of Legal Policy of the Republic of Kazakhstan for the period from 2002 to 2010);
– Stage 3 – from 2010 to 2020 (Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020).

At all stages of the state reform, there were issues aimed at improving the administrative legislation and, in general, administrative law. Another basic idea of the reforms was the idea of the formation of the administrative procedures, which was to become a full-fledged form of justice realization along with criminal and civil proceedings.

In this context, the development of the problem of administrative and legal relations arising in the process of creation, organization, and legislative support of the activity of administrative justice is the most significant.

It is important to note that until the end of the XIX century public law was a branch of law regulating the activity of public administration and public service. But scientists studying administrative law as Rudolf Gneyst, L. Shteyn and O.Mire in the second half of the XIX century transfer the study of these legal institutions from the state law to a new branch of law – the right

of management or the right of the executive power which in the end of XIX to the early XX century in Western Europe and then in Russia was named «administrative law». This name was the most successful as it had the features of the generic concept, and could combine into one the different parts of administrative legal activities.

In addition, we should emphasize the following detail. The authors of the concept «administrative law» were the French who originated this term based on development and regulation of the institute of administrative justice. In the XVIII – the first half of the XIX century the elaboration of issues, associated primarily with policy activity and protection of public order («decorum»), that is, the development of the substantial part of administrative law was the characteristic feature of the German specialists in this sphere. The French administrative centralization, carried out by Napoleon I and the mechanisms of protection the rights of citizens against the omnipotence of officials created by him contributed to the formation of the Institute of Administrative Justice, which becomes a part of administrative law in the countries of Western Europe and Russia in the late XIX – early XX century.

Accordingly for Kazakhstani administrative law the issues of administrative justice are innovative as they are developed actively only over the last decade.

The problems of administrative justice were developed intensively and efficiently in the pre-revolutionary period of its evolution and the only post-Soviet reformations gave new impulses to activate the research in this area in the administrative and legal science of Russia. However, significant changes that differ by fundamental and doctrinal scientific results in the field of administrative law have not occurred and legislation governing these relations has not been formed in Russia.

The issues about what Kazakhstani administrative justice should be in modern Kazakhstani legal science are still open. With that, it is gratifying to note that the research on the development of administrative justice issues is conducted in several alternative directions:

In the first case, the administrative justice is considered as an activity of both

ordinary courts and specialized administrative courts and quasi-judicial bodies, resolving public law disputes connected with the appeal of illegal decisions of the authorities violating the rights and legitimate interests of individuals and legal entities;

– In the second case, the administrative justice is understood as an activity of specialized administrative courts resolving disputes in a special procedural order;

– In the third case, accentuation of the research attention is focused on judicial control, which is an integral part of administrative justice functions. In this case, the researchers suppose that its implementation is possible in a strictly specific form caused by peculiarities of relations of two independent branches of power- executive and judicial. This group of researchers suppose that in this case the twofold objective is achieved in the process of judicial control: protection of individuals and legal entities from the abuses of power by authorities, as well as improvement of the activity of authorities in the interests of society in total. If we look at the problem more broadly, the improvement of this type of control is appropriate to consider as an essential element of the reforms – both judicial and administrative. In this context, the researchers suggest to consider wider the features of the institute of administrative justice, consisting in considering the disputes by special courts under the special rules on the violation of public rights of citizens and legal entities in the administrative process.

Judicial control is one of the procedural and legal forms of administrative resolution of a legal dispute, the judicial procedural form provides equality of procedural provisions of trial participants – government bodies and individuals or legal entities. The legal dispute becomes possible in case of violation of public rights of citizens and legal entities;

– The fourth conducting research based on the thesis that the administrative and legal disputes are resolved in the trial, and this, in their opinion, is the basis for the consideration of the Institute of Administrative Justice in relation to the judiciary. In addition, they pay special attention to the fact that administrative justice is characterized by the existence of separate legal entities range (citizens, legal persons, public authorities, the subjects of executive power, officials). The judges (officials) considering in managing disputes, as a general rule have special knowledge and skills in specific areas of public administration, activities of executive authorities and their interaction with the subjects of legal relations. Thus, administrative justice is expressed in considering the disputes by special courts for well-defined rules concerning violation of public rights of citizens and legal persons in the administrative process.

– least common is the range of researches based on the conviction that administrative proceedings is understood in two ways, in the form

of consideration of administrative violation cases and in the form of complaints of physical and legal entities against actions (inaction) and legal acts of the administrative authorities and their officials. So we are talking about that the subject of legal regulation are the administrative offenses on the one hand, and the administrative dispute on the other. At the same time, special attention is drawn to the fact that in the foreign law there is no concept of an administrative offense arising from the sense of Art. 2 CAO of the Republic of Kazakhstan. Accordingly, as a matter of administrative justice is invited to consider only an administrative dispute, which is understood mainly as an administrative – contentious (litigatory) rather than for penalty jurisdiction, whereas under the subject of administrative proceedings proposed to understand both administrative dispute and administrative offense. Therefore, to describe the subject of administrative proceedings proposed to use the more general category – «administrative and legal conflict».

Thus, the analysis of the current administrative and legal literature of Kazakhstan indicates that the range of research the problems of administrative legal relations arising from the specific legal nature of administrative justice is diverse in content and represents a set of theoretically reasonable ideas which contribute to the development of both the practice of law enforcement activities, and the formation of national legislation on administrative justice. It seems that in the near future Kazakhstan will develop its own concept of legal model of Kazakhstan's Administrative Justice, which creates for Kazakhstan new opportunities for further integration into the international legal space.