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ADMINISTRATIVE COMPLAINT AS AN INSTITUTE OF LAW

The article considers an integral part of society as an institute of administrative law arising from social relations in ordinary life. The aspects of the elements of administrative justice are considered and studied. Necessary facts affecting the emergence of this institute of law are established. Procedural peculiarities of consideration of administrative case, relations that are the subject of administrative case are categorized. The concepts of administrative appeal and the concept of administrative claim are studied in detail and their differences are stipulated. The peculiarities of the order of consideration of classification types of complaints are stated.

This study aims to assess the effectiveness of administrative appeal as a mechanism of legal protection by analyzing normative legal acts, judicial practice and international standards and practices.

This study takes a comprehensive approach, including analysis of legislation and judicial practice, as well as comparative legal analysis between countries.

This work is important in order to better understand the role of administrative appeal in our legal system. In addition, the practical significance of the work lies in the use of its conclusions to improve legislation and optimize administrative procedures.

The contribution of the institute of administrative appeal in ensuring human rights and freedoms and its difference from administrative lawsuit is determined.

It is studied that administrative appeal as an institute of law is the only special system, which realizes a special function, inseparable in social relations, relations between the state and the people.

Key words: administrative law, complaint, general and special complaint, administrative action.

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Әкімшілік шағымдану құқық институты ретінде

Мақалада қоғамның ажырамас бөлігі қоғамдық қатынастардан қарапайым өмірде туындайтын әкімшілік шағымдануды құқық институты ретінде қарастырылады. Әкімшілік әділет элементтерінің аспектілері қарастырылып зерделенеді. Аталған құқық институтының туындауына әсер ететін қажетті фактірлер белгіленеді. Әкімшілік істі қарау процедуралық ерекшеліктері, әкімшілік іс пәні болып табылатын қатынастар жіктеледі. Әкімшілік шағымдану түсінігі мен әкімшілік талап арыз түсініктері толық зерделеніп олардың айырмашылықтарына көз жүгіртіледі. Жіктелген шағым түрлерінің қарау тәртібінің ерекшеліктері мәлімделеді.

Бұл зерттеудің мақсаты нормативтік құқықтық актілерді, сот практикасын және халықаралық стандарттар мен әзірлемелерді талдау арқылы құқықтық қорғау тетігі ретінде әкімшілік шағымданудың тиімділігін бағалау болып табылады.

Бұл зерттеуде заңнама мен сот практикасын талдауды, сондай-ақ елдер арасындағы салыстырмалы-құқықтық талдауды қамтитын кешенді тәсіл қолданылады.

Бұл жұмыс өте маңызды, өйткені ол біздің құқықтық жүйеміздегі әкімшілік шағымның рөлін жақсы түсінуге мүмкіндік береді. Сонымен қатар, жұмыстың практикалық маңыздылығы оның нәтижелерін заңнаманы жетілдіру және әкімшілік рәсімдерді оңтайландыру үшін пайдалану болып табылады. Әкімшілік шағымдану институтының адам құқықтары мен бостандықтарын қамтамасыз етуге қосатын үлесі және әкімшілік талап-арыздан айырмашылығы айқындалады.

Әкімшілік шағымдану құқық институты ретінде қоғамдық қатынастарға, мемлекет пен халық арасындағы қарым қатынаста ажырамас ерекше функцияны жүзеге асыратын жалғыз берден бір ерекше жүйе екені зерделенеді.

Түйін сөздер: әкімшілік құқық, шағым, жалпы және арнайы шағым, әкімшілік талап-арыз.

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Административное обжалование как институт права

В статье рассматривается неотъемлемая часть общества как институт административного права, вытекающего из общественных отношений в обычной жизни. Рассматриваются и изучаются аспекты элементов административной юстиции. Устанавливаются необходимые факты, влияющие на возникновение данного института права. Процессуальные особенности рассмотрения административного дела, отношения, являющиеся предметом административного дела, классифицируются. Подробно изучаются понятия административного обжалования и понятия административного искового заявления и оговариваются их различия. Заявляются особенности порядка рассмотрения классификационных видов жалоб.

Данное исследование направлено на оценку эффективности административного обжалования как механизма правовой защиты путем анализа нормативных правовых актов, судебной практики и международных стандартов и практик.

В данном исследовании применяется комплексный подход, включающий анализ законодательства и судебной практики, а также сравнительно-правовой анализ между странами.

Данная работа имеет важное значение, позволяя лучше понять роль административного обжалования в нашей правовой системе. Кроме того, практическое значение работы заключается в использовании ее выводов для совершенствования законодательства и оптимизации административных процедур.

Определяется вклад института административного обжалования в обеспечение прав и свобод человека и отличие от административного иска.

Изучается, что административное обжалование как институт права-единственная особая система, осуществляющая особую функцию, неразрывную в общественных отношениях, отношениях между государством и народом.

Ключевые слова: административное право, жалоба, общая и специальная жалоба, административный иск.

Introduction

Administrative appeal serves an indispensable function in modern states governed by rule of law; protecting rights and liberties for its citizens through administrative appeal mechanisms is thus of great relevance, especially as its effective functioning directly affects citizens' trust in legal systems and authorities. Although numerous works on administrative law exist, several unanswered questions linger concerning procedures, effectiveness and accessibility related to administrative appeal remain, making this topic relevant.

Our study examines administrative appeal within the legal regulation system in Kazakhstan. To do this effectively and to optimize this existing mechanism of administrative appeal. Therefore, an in-depth examination of legal rules related to its process as well as practice is performed and evaluated in our work. Its purpose is essentially aimed at investigating its efficiency as a mechanism of appeal; accordingly we propose ways in which its effectiveness could be increased or optimized further.

To achieve its intended aim, this work seeks to complete three main tasks: analysis of the legal framework regulating administrative appeals; study and generalization of experience with applying administrative appeals in courts across Europe; identification and suggestions on ways to solve problematic aspects; as well as identification and suggestion on ways to solve those problematic aspects through various research methodologies such as normative, comparative-legal analyses as well as system analyses.

Hypothesis for this research project: an improved mechanism of administrative appeal contributes to increased legal protection of citizens and enhanced state body efficiency. As such, its significance both theoretical and practical stands; results could be used further develop administrative legislation or its application practice.

This article contributes to increasing knowledge and understanding of administrative appeal among legal professionals and citizens in Kazakhstan, which is crucial in creating legal culture. This article presents an in-depth examination of administrative appeals in Kazakhstan by comparing its practices

against international standards and experience from other nations; such comparison may help ensure integration of best practices into Kazakhstan's legal system.

This article highlights key weaknesses and deficiencies within the current mechanism for administrative appeals, while suggesting ways to overcome them to increase both efficiency and fairness of administrative proceedings.

Research-backed proposals can significantly advance law enforcement practice and facilitate fairer, more cost-efficient consideration of administrative cases. Scientific conclusions and recommendations laid out in this article provide a foundation for developing and introducing amendments to Kazakhstani law aimed at strengthening administrative procedures. By strengthening administrative appeals, this article contributes to protecting citizens' rights and interests as well as building their confidence in our legal system.

This article makes an invaluable contribution to academic discourse surrounding Kazakhstan's administrative law development, stimulating further study and dialogue within this field.

Research Methodology

Improved administrative appeal procedures and regulatory framework will enhance their efficiency and accessibility for citizens while providing them with additional legal protections. The study consisted of multiple stages of research: an analysis of legal framework; study of judicial practice; comparative legal analysis; sociological research as well as data analysis and formulation of conclusions.

Notably, legal analysis covers legislative provisions pertaining to administrative appeal while narrowing judicial practice examines court decisions and approaches used when hearing cases related to administrative appeals.

Comparative-legal analysis, or the comparison of administrative appeal practices across legal systems, was the main tool used in this research. Surveys and interviews with lawyers, judges, civil servants and citizens to gather perception and effectiveness data regarding administrative appeals also played a pivotal role. Finally data analysis and formulating conclusions followed this step – systematization and interpretation of collected information as well as creation of conclusions and proposals were all essential steps of research success. At the core of my research on Administrative Appeal as an Institute of Law are normative and qualitative analyses:

Normative analysis involves studying and interpreting legislative acts regulating administrative appeals; qualitative analysis of judicial practice allows for the examination and evaluation of court decisions made on these administrative cases. At this research stage, comparative legal methods – specifically an examination of legal norms and practices regarding administrative appeal across countries – was also utilized.

Sociological surveys such as surveys, interviews and questionnaires to collect opinions and assessments from various stakeholders was utilized during this research project. Meanwhile, statistical tools were applied in processing and analyzing collected data.

As part of its aim, this study will produce valuable data regarding the current state and functioning of administrative appeal, identify any problematic aspects, and offer practical suggestions to enhance it as an institution of law. Furthermore, from this work will emerge proposals for amendments in legislative or practice levels pertaining to this field of law.

Literature review

Before writing this article, extensive literature analysis was performed, covering fundamental and contemporary works written by both Kazakhstani and foreign authors. Critical evaluation was applied to these sources to uncover gaps in existing research as well as potential areas for additional exploration of administrative appeals as a critical legal institution.

A key objective of the study was to examine existing problems and challenges facing administrative appeal systems across countries, specifically Asia and America. Researched works provided invaluable insight into administrative litigation and appeal processes within each context – providing essential understanding about complex litigation practices as well as complex administrative litigation challenges in both Asian and American contexts respectively.

These studies provided us with a more complete picture of how different legal systems approach administrative appeal, identified trends and individual characteristics as well as gaps in existing approaches that this article seeks to fill. As such, this literature review serves as the foundation for an in-depth and thorough exploration of administrative appeal as a central institution of law focusing on its importance for legal systems and public administration alike.

Results and Discussion

Performing an important legal role among the rights of citizens, it is recognized among the human rights to protect life, health, freedom and natural rights. The state from year to year improves and develops the procedure for the realization of this right in the field of law, works to ensure the supervision of the execution of state bodies among the tasks of employees, compliance with deadlines, ensuring the protection of rights, convenience in the ranks of regulated rights.

There are several different avenues of rights protection in society that are often used by people, but mainly fall into two categories. They are:

- Protection of the rights of citizens and legal entities from violations of the law;
- protection from unlawful actions of public authorities (Sarpekov 2007, <https://cyberleninka.ru/article/n/perspektivy-razvitiya-administrativnoy-yustitsii-respubliki-kazahstan-s-uchetom-zarubezhnogo-opyta>).

The great contribution of administrative law to the protection of rights and legitimate interests of people from the actions of public authorities.

We all know that citizens often enter into relations with public authorities, which include public law of power. Administrative bodies make and take decisions in daily life, inviting a large number of people. The list of public authorities has countless employees, and in daily life, they make violations in the exercise of the rights of thousands of citizens.

Based on statistical information, the rights of citizens are identified in 55% of complaints (Supreme Court of the Republic of Kazakhstan, 2022, <https://sud.gov.kz/rus/content/appk-vdeystvii>).

For example, a shortcoming committed by one employee in the course of his/her activity in the process of exercising the powers of a state body leads to offenses in the course of realization of the rights of hundreds of persons. Protection of the rights and freedoms of citizens is considered first of all in the actions of state bodies to prevent illegality.

Among the legal relations, the right to appeal is enshrined in the Constitution, international treaties of every developed country and other ratified norms. Administrative complaint and appeal of citizens is the most important way to improve their activities by public authorities and protect the rights of citizens (Constitution of the Republic of Kazakhstan, 1995).

Administrative complaint helps citizens to express their opinions and assert their rights when

making decisions in state bodies. Law enforcement branch, which makes a great contribution to the improvement of legal norms of various branches. In addition, it is recognized as a means of protecting the rights of citizens. Along with judicial protection, executive authorities take appropriate measures by considering citizens' complaints and are an important tool in protecting the rights and freedoms of citizens.

The subject of appeal is related to the actions or inaction of the state body violating the complaint against the local body and legal entities or administrative requirement. The norms of administrative legislation regulate the procedure for consideration of an administrative complaint.

Under the complaint is understood the statement of a citizen about the restoration of rights and interests violated by actions (inaction). Complaint arises in the sphere of legal relations, where the legitimate interests of the rights and interests of citizens established by law are violated. In such a sphere, relations are determined by the output within the framework defined by the mold. The purpose of the claim is the restoration of violated rights and interests (Podoprighora 2014: 50).

But the restoration of violated legal interests cannot be realized. Guarantee of compliance with the lawsuit legal interests and rights. Complaint is a means of protecting the rights and legitimate interests of the individual by state bodies, officials, other employees of the state system. By means of appeal is carried out protection and restoration of citizens of their rights and interests. In the complaint can be seen public and private interests, the nature of appeal aazamatov.

The appeal is not limited only to the protection and restoration of rights. On the one hand, a complaint is a means of protection, prevents extra-legal actions of an employee of a public body and works to ensure legality, on the other hand, it points out the shortcomings that require development in the activities of a public body. As a result, the public body develops its activities and conducts work on the prevention of offenses (Law of the Republic of Kazakhstan «On the prevention of offenses», 2010: https://adilet.zan.kz/rus/docs/Z100000271_/compare/eng).

Is a certain aspect of the complaint, allowing citizens through the complaint to increase their position and meseles in the decisions made by the public authority and employees. Years of experience and backlog of civil lawsuits serve to realize the rights and interests of citizens and protect them.

Citizens exercise the function of complaint only in the course of the struggle to protect their rights, the discussion of the complaint opens the way to eliminate the grounds on which the violation of rights was committed. The right to appeal ensures personal interest in the process of protecting citizens' rights.

The institute of administrative appeal fulfills the following three main functions:

- law enforcement agencies-means of protection of citizens' rights. Along with judicial protection administrative protection, responding to citizens' complaints and taking appropriate measures are reflected in the activities of the enforcement agency, the most important means of protecting its rights and freedoms;

- ruler-a reliable and objective full verification of the facts against the administrative body stated in the complaint;

- restored-restoration of rights in the Fund.

The Administrative Procedural Code of the Republic of Kazakhstan provides for the possibility of appeal of all citizens to the court to eliminate restrictions in the protection of constitutional rights. In court, collectively and individually, citizens may appeal to the heads of state bodies, employees of state bodies, all bodies of permanent and temporary, personal management, to the decisions taken and the position of the administrative management body. The norms of the law establish the beginning and the culmination of the filing of an administrative complaint: in case of infringement of the rights and interests of citizens; in case of obstruction of the exercise of the rights and freedoms of citizens; in case of imposition of illegal obligations on citizens and bringing them to unlawful responsibility. Courts must consider a complaint that infringes the rights and legitimate interests of citizens. Outside the order of consideration of an administrative complaint is established by the norms of administrative legislation of the Republic of Kazakhstan (Administrative Procedural Code Of The Republic Of Kazakhstan 2020: <https://adilet.zan.kz/eng/docs/K2000000350>).

The right to file an administrative complaint is categorized into general and special complaint procedures.

Administrative complaint is enshrined among the common law and natural rights. Every legally capable citizen shall have the right to file a relevant complaint according to his or her need. The right of general complaint is not limited by any rule of law. Any unlawful acts and omissions of all bodies and organizations may be appealed against. The subject of the complaint is recognized as unlawful,

non-purposeful, not accepted by the Company. The basis for the majority of citizens' complaints is insufficient attention of law enforcement agencies to unjust decisions and their comments. In addition, the complaint may consider the interests of persons other than the citizen himself and their interests. Protection of public interests is considered among the subjects of the complaint. Illegality of normative legal acts as a subject of complaint is rare, but it is not possible to say that they do not exist.

The general right of appeal is categorized as an administrative complaint and a court action.

Administrative complaint-"an appeal to management", which provides for the implementation of the appeal by appealing to the administrative-administrative-supervisory body. The complaint has a common understanding and has two sides. The substantive complaint side deals with the complainant's objection to the responsible person. This is based on subjective substantive law, the objection can be expressed through complaints even without offenses. If there are valid reasons for the validity of the administrative complaint in the case of an offense, the administrative authorities check the fact of violation. For this purpose, citizens need to send a complaint to the law enforcement agency, this is a mandatory process.

An administrative complaint is not a statement of claim and is addressed to an administrative body, not to the judiciary. Consideration of an administrative complaint is often considered in the form of a request. The name of administrative complaint is reflected in history as a Canaanite request of the people of the Kazakh Khanate. Similar comparison Russian scholars argue that the request "request formula" during the tsarist rule of the Russians in the 16th century is similar. Administrative complaint is reflected in the form of a claim to the administrative body. It is wrong to claim that the administrative complaint lacks the elements of a claim (Volkov 1974: 93).

An administrative claim or complaint provides for the annulment of an unlawful decision, unlawful actions to cause them harm to victims. The complaint is actionable, many features are superficially similar to an administrative complaint. "Administrative claim does not bind the complainant as a party, it is accepted as a person filing a complaint" (Zagryatskov 1925: 20). Legal relations arising as a result become vertical. The citizen expects the supreme authority to sheishmi on the complaint. Sending an administrative claim to the court generates a special sequence of procedural relations: it reflects law

enforcement and horizontal relations between them resistance arises. The applicant does not expect help from above, but a vertical and independent from the bodies and objective decision. The citizen takes part in the process and in the course of the complaint reflects the opinion and grounds of the public authority against the action and its legality. Legal norms and the citizen's interest in administrative law from the statement of claim are considered. The rights of the citizen whose subjective rights are violated are subject to judicial protection. "During the administrative process, the citizen is recognized as a party-applicant in accordance with the judicial requirements" (Bakhrach 1975:27).

The legal action considers two procedural procedures for consideration of two different complaints: initiation of proceedings on an administrative complaint in an administrative body and consideration of an administrative claim in court.

In addition, it should be noted that the place of administrative law in science is related to the concepts of administrative claim and administrative action. According to the Russian scientist Maslikov M. The limits of administrative complaint are as follows: not only the actions of the parties to a legal dispute are not settled, but also actions contrary to the norms of law are not fully regulated by law. Only actions that are unlawful or contrary to legal interests arise in the proceedings. In addition, one of the parties can ensure that the dispute is resolved by a public body without the intervention of the court. In this case, the court does not require precise or proof, but simply requires the application of adequate, correct rules of law (Maslennikov 1981:676).

It should be noted that it is not a question of reviewing an administrative complaint filed with the state authorities. Lawsuit- means appealing to the court on his claims, striving to find it. The claim is addressed to the court of a citizen to establish the facts necessary in a civil dispute to resolve its issues, and to obtain a decision on its correctness or incorrectness (Historical and etymological Dictionary of the modern Russian language, 1994:356).

Administrative statement of claim is aimed at protecting violated rights and legitimate interests by eliminating illegal decisions, to protect civil rights in order to restore the violated right.

Consideration of complaints by the court in accordance with the law, not only a component of the law enforcement process, but also to establish the material content of the essence of the dispute,

its content, mainly the subjective civil-law basis of the right of a particular citizen (Bakhrach 1975: 37).

Judicial proceedings are defined with a special designation of a number of characteristic features. The following possibilities are envisaged: the appeal of the prosecutor with a complaint, the party of complainants in the case is limited to the representatives of the citizen, the representative of a public association or a labor collective, the conclusion of conciliation is not considered in the judicial process, as its implementation involves a high risk of contradicting the interests of the state. During the examination of the complaint, the participation of third parties is not provided for, and the court considers the participation of the person recognized as necessary.

During the examination of the complaint by the public authority, only its own participation is considered, as it is conditioned by the focus on the adjudication of the individual. The complaint is considered in connection with the permanent address of the defendant. in the course of the complaint, the plaintiff is responsible for proving the claim, and in the course of the court proceedings, the motivated defendant in the case is obliged to provide.

Claim-a means of protecting a violated or disputed right or a legally protected interest through the court (arbitration court). There are two different sides to a claim-material-legal and judicial-legal. In the first case, we consider the possibility of satisfaction of the substantive claim stated on the basis of established factors and legal norms of civil, labor, basic, administrative law, in the second case with the purpose of obtaining a judicial decision to determine the legality of the appeal to the court.

The norms of the law clearly establish the cases of refusal to accept a court decision and leaving the complaint without consideration.

The right of citizens to administrative appeal is recognized as an integral attribute of the state and power. The state legitimizes the way of realization of this right without its restriction. The power fully complies with its requirements in the course of realization of the rights regulated by law.

Conclusion

Nowadays, the protection of citizens' rights is expanded and controlled in all aspects, its requirements are regulated for fulfillment by the information system. But the protection of citizens' rights is not only related to the completeness of the law. Immediate growth of the requirements for the

protection of citizens' rights, as well as their control, increased the statistics, but not the quality of the work of state bodies that ensure their consideration.

To summarize, the institute of administrative appeal is the only institute exercising the right to administrative appeal, which has no special and alternative approach.

Its subject matter and procedural features have distinctive features, not similar to other institutions of appeal, and are focused on the solution that satisfies the issue of administrative appeal. The special subject of administrative appeal and procedure of appeal is a tool of society, citizen, group of interested parties, encouraging to the full implementation of the norms of law, to determine the range of circumstances in which a violation has been committed, to restore the violated right and

prevent further violations, to identify contradictions of norms of sectoral legislation and its improvement.

The opportunities provided by the multidisciplinary tool for consideration of the complaint are considered among the requirements and norms of the administrative procedural and procedural code of the Republic of Kazakhstan.

Thus, the role of administrative claim plays an important role in the development of administrative institution. The only effective tool that increases the level of legitimacy in society is complaints. As a result of complaints there is an opportunity to create a future society with a highly developed legal consciousness, proper observance of legitimate interests. The legal institute of administrative appeal makes a great contribution to the development of the sphere of other law, linking the state and society.

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