

## **The Theory, Practice and Problems of Legislative Regulation of Administrative Procedures in the Republic of Kazakhstan**

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**Abstract:** At the present stage the sharpest problems interfering positive social and economic development of our country, administrative arbitrariness and corruption in public authorities and local government continue to remain. Absence or contradictoriness of the legislation, bureaucratic complexity of procedures of registration, licensing, certification, coordination of investment projects create serious difficulties on a way of realization of constitutional laws and freedom of citizens. The tasks facing to the state and a society demand revision of legal regulation of mutual relationships of executive authority, citizens and organizations. In process of acquaintance with world experience of interaction organization of executive authority and private persons there is a reconsideration of scientific approaches to concept and content of administrative process of Kazakhstan. The question on necessity of embedding in process of new, unknown for Kazakhstan law institutes is brought up. For construction of effective interaction of private persons and executive authority in the foreign democratic states administrative procedures are admitted as one of the major institutes. The majority of domestic experts consider administrative procedures as an institute providing formation of a legal state and realization of rules fixed in the Constitution of the Republic of Kazakhstan [1].

**Key words:** Administrative Legislation • Guarantee of Citizens Protection • Bureaucracy Arbitrariness • Administrative Reform • Modernization of the Government System • Effective Functioning of Economy • Civil Society.

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### **INTRODUCTION**

In the conditions of building in Kazakhstan of the rule of law, the questions of protection of citizens' rights, private businessmen, commercial and noncommercial organizations in relations with the state authorities and local governments have special value.

Now there is an active search of perfection ways of Kazakhstan administrative legislation for the purpose of an establishment of guarantees of citizens' protection from bureaucracy arbitrariness testifies to the importance and actuality of the research of administrative procedures [2-5]. The administrative reform is directed on modernization of the government system, achievement of effective functioning of economy and building of a civil society. In this connection theoretical studying of new for Kazakhstan administrative law institute successfully functioning in many foreign countries is extremely necessary now.

Working out and acceptance with account of requirements of Kazakhstan legal validity of normative legal acts on administrative procedures will allow to reach considerable successes in the government: to overcome administrative barriers; to modernize executive power system; to create conditions for development of economic freedom; to determine strategic reference points of the country development; to render the population qualitative public services and effectively to operate a state ownership; to transfer to accurate technology of working out, acceptance and execution of solutions.

**The Aim of the Research:** Consists in the analysis of the problems of Kazakhstan legislation in force on administrative procedures and in determination of ways of its perfection, research of administrative process structure of Kazakhstan for explanation of a parity of the concepts "administrative procedures" and «administrative process», "administrative procedures" and «administrative

proceedings and formulation of principles» on which the legislation on administrative procedures should be built.

**The Methods of the Research:** In the article there are used methods of the historical analysis, dialectic, system-structural, comparative-legal, formal-logic, technical-legal, statistical and others. So, the method of the historical analysis allowed to follow genesis of legal regulation of administrative procedures in the Republic of Kazakhstan; the comparative-legal method cooperated to comparison of the Kazakhstan legislation and rules of international law regarding the theory and practice of legislative regulation of administrative procedures in RK; the statistical one was applied when determining of a share of administrative procedures in a profitable part of the republican budget. Used methods do not exclude possibility on occasion a simple statement of the facts for the purpose of giving of the corresponding argument of necessary evidentiary force.

**The Main Part Procedure:** Is a normative regulation of activity and has administrative and legal essence. Administrative procedure characterizes a normative reference point for the resolution of administrative situations and acceptance of the administrative solution. Legal procedure is determined by substantive and procedural rules which serve for realization of the rights and duties in the process of their application. Thus, legal procedure is divided into substantive and procedural. Substantive procedure consists in realization of substantive laws and duties by means of normative regulation of legal activity. Procedural procedure is connected with realization of legal sanctions and application of forced measures [6].

The procedure characteristic as forms of a normative regulation allows determining its role in sphere of the administrative activity connected with ordering of administrative process. Here administrative procedure determines stages-set of normative regulated consecutive actions which realization is directed on achievement of administrative result, realization of administrative aims and tasks. Thus administrative procedure acts as a regulation of legal activity and becomes a normative reference point of ordering of administrative potential at determination of the competence of public authorities and local government [7].

Procedure consideration as normative supposed behavior led to research of the administrative procedure, evoked to order administrative potential of executive

authorities, with a view of observance of rules of law and instructions at achievement of administrative problems. In this connection, for optimization of executive power functions and quality improvement of administrative actions, the concept of administrative regulations is formulated [8].

From a position of the modern domestic scientific literature the research of the theoretical essence of administrative procedure comes to the methodological problem on parity of the concepts "administrative procedure" and "administrative process". Problem presence is connected with absence in a modern Kazakhstan science of the developed uniform approaches to the concept of administrative procedure, allowing determining a place and an administrative procedure role in administrative process. The solving of this problem requires accurate determination of the concept of administrative process and its structure at research of the legal nature of administrative-legal procedure with a view of systematization of administrative-procedural legislation of the Republic of Kazakhstan. The analysis of the developed Kazakhstan and foreign theory of administrative and jurisdictional concepts of administrative process, studying of the legal nature of administrative-legal procedure and administrative-procedural dispute lead to the following conclusion [8]. It is necessary to name administrative process as jurisdictional activity of the authorities of the executive and judicial power, carried out within the limits of an administrative procedure, determining a normative order of examination of administrative-legal disputes, applications of administrative coercive measures and case solution of administrative offences[9]. Allocation by the author of a procedural administrative procedure-a normative regulation of activity of the executive and judicial power authorities which is a component of administrative process will be result for the solving of the methodological problem of a parity of administrative procedure and administrative process. With that end in view in the work there is offered author's concept of the administrative-procedural code of the Republic of Kazakhstan. Administrative procedure presence in a field of activity of executive authorities causes occurrence of the public relations connected with realization of the competence of executive power. The administrative procedure is considered as a normative regulation of activity of the executive authorities, providing an order of acceptance of administrative solutions by officials, including examinations and resolutions of concrete administrative cases [10]. The substantive legal regulation

of daily activity of the executive authorities, not connected with the resolution of disputes and application of coercive measures, will not be administrative process as its content is determined by the substantive field rules of law regulating a procedure of substantive legal activity. The substantive administrative procedure in the field of executive power activity is characterized by presence of the substantive rule of law, application of procedure parties, administrative case and substantive public relations. The analysis of declarations of normative acts in force allows generating a legislation system of the Republic of Kazakhstan "on administrative procedures", regulating activity of federal executive authorities on examination and resolution of a certain category of administrative cases. System of normative acts determining normative-legal regulation of administrative procedures makes laws (frame laws) and regulations determining an order of executive authority official's activity on examination and resolution of concrete administrative cases.

The analysis of the normative acts determining legal regulation of licensing and registration at regional level allows to designate problems and for their solving to offer to regulate executive authorities activity in laws and regulations with a view of the administrative situations resolution influencing on realization of the various rights and freedom of citizens. Among them the most significant are social rights and freedom [11].

The research of administrative procedures as a tool of legal ensuring of social rights and freedom of citizens led to the conclusion that the federal and regional normative acts regulating administrative procedures, connected with granting to citizens of various kinds of social services, require perfection. It does not allow accurately providing a guarantee of citizens' rights on reception of social privileges. In this connection it is offered in the laws in force in social protection sphere, to provide the special section devoted to a procedural order of granting of social services, to determine its stages and sequence [12].

Necessity of allocation of legal institute of administrative procedures is caused by that at the present stage of development of administrative law in RK have already developed homogeneous administrative-procedural legal relationships which are allocated among other administrative-procedural relationships with the following characteristic lines: positive non-conflict legal relationship, developing between executive authority, on the one hand and citizens, organizations-on the other hand; external public legal relationship concerning realization by citizens and organizations of the rights and

legitimate interests; content of these legal relationships-realization in them of constitutional laws and freedom of citizens in government sphere; the purpose of these legal relationships is ensuring and protection of the rights, freedom and legitimate interests of the person and the citizen, establishment of reliable guarantees to private persons from administrative arbitrariness.

The purpose of administrative proceeding is achievement of concrete result-resolution of individually-concrete administrative case. Considering necessity of ordering of the legal terms, proved allocation in administrative law of the Republic of Kazakhstan of institute of administrative procedures, also optimization of legislative regulation, the concept of administrative procedures is expedient for treating in narrow (own) meaning: as established by the rules of law and order of fulfillment of administrative actions for the resolution by executive authority and officials of concrete individual cases of the positive, non-conflict character, directed on ensuring of interaction of executive authority with citizens and also by legal entities with a view of realization of the rights and legitimate interests of the last ones. The rules of law, regulating administrative-procedural relationships, now do not represent the separate group of legal rules and there are in numerous legal acts that complicate formation of independent institute of the administrative procedures assuming a special legal regime of regulation. The highest level of a legislative regulation of administrative-procedural relationships is marked within the limits of registration, license, allowing proceedings and proceedings according to citizens' appeal. However regulation of administrative-procedural relationships in subordinate normative legal acts has fragmentary character as each executive authority establishes own procedural rules. Despite variety of the normative acts regulating the relationships of private persons and executive authority in Kazakhstan, the majority of them do not contain sufficient legal guarantees for realization ensuring of constitutional laws of citizens and organizations [13].

For appropriate regulation of mutual relationships of citizens, organizations and executive authority it is expedient to give a kind of three-level system to legislation on administrative procedures: at the first level of the legislation the law on administrative procedures is kept, at the second one - the laws regulating separate procedural proceedings, at the third one-the normative legal acts accepted to execute laws and administrative regulations of executive authorities. The three-level system of the legislation on administrative procedures will

allow to optimize legislative work and to harmonize the Kazakhstan legislation on administrative procedures with the foreign one. In the law on administrative procedures it is expedient to establish rules of examination of administrative cases at each of stages. In that case there will be no necessity completely to cancel laws in force.

## CONCLUSION

For the legislation on administrative procedures of the first, second and third levels the principles of administrative procedures, first of all the principles of legality, priority of the rights and freedom of the person and the citizen, expediency, proportionality (harmony), legal stability, coordination of procedures, efficiency, impartiality, openness and transparency should play a systematizing role.

For ensuring of effective interaction of citizens, organizations and executive authority it is obviously necessary to make changes, first of all, into the following federal laws: «On the state registration of legal entities and individual businessmen», «On the state registration of the rights to real estate and transactions with it»; «On licensing of separate kinds of activity», «On order of examination of appeals of citizens the of Republic of Kazakhstan» and also Building development code of RK. It is necessary to provide in them compulsion of realization of the right of the parties of procedure on fair hearing and the principle of one window in work of executive authority, also to fix possibility of use of the electronic-digital signature at interaction of the parties of administrative procedure.

Realization in Kazakhstan of the state project «Available accommodation-2020» causes necessity of inclusion in force of the legislation on administrative procedures of relationships between executive authority and citizens, also legal entities within the limits of participation in share building [14].

**Summary:** The importance of procedure principles consists that they are the tool with which help the constitutional values are embodied in the rules of law regulating separate administrative proceedings therefore, in particular: presumptions of the applicant decency and activity of executive authority are fixed by examination of administrative cases; administrative cases are resolved in as much as possible short terms; declarations on minimalist of requirements to the proof of the citizen rights are established; predictability of executive authority

actions is reached; administrative barriers are overcome; positive productivity, quality and efficiency of services rendered by the state are provided; possibility of reception of the exhaustive and objective information on a course and results of preparation, examination and solution-making by executive authority is guaranteed.

In the bill of administrative procedures it is expediently: to establish as the parties of administrative procedures the persons which are involved by executive authority in proceeding, whose interests can be presumably mentioned by accepted solution, accurately to fix the rights and duties of the procedure parties among which to establish the right of private persons to fair hearing and the duty of executive authority to notify the parties of procedures about the preparing solution and to open the corresponding information.

## REFERENCES

1. Constitution of the Republic of Kazakhstan. Astana. 30<sup>th</sup> of August, 1995.
2. The law of the Republic of Kazakhstan «On the state registration of legal entities and individual businessmen» of 31. 01. 2006.
3. The law of the Republic of Kazakhstan «On the state registration of the rights to real estate and transactions with it» of 26. 07. 2007.
4. The law of the Republic of Kazakhstan «On licensing of separate kinds of activity» of 11. 01. 2007.
5. The law of the Republic of Kazakhstan «On order of examination of appeals of citizens of the Republic of Kazakhstan» of 12. 01. 2007
6. Menski, W., 2006. Comparative Law in a Global Context: The Legal Systems of Asia and Africa. Cambridge: Cambridge University Press, pp: 81-90.
7. Arnscheidt, J., B. Van Rooij and J.M. Otto, 2008. Lawmaking for Development: Explorations into the Theory and Practices of International Legislative Projects. Leiden: Leiden University Press, pp: 99.
8. Calavita, K., 2010. Invitation to Law and Society: An Introduction to the Study of Real Law. Chicago: University of Chicago Press, pp: 54.
9. Cooter, R. and T. Ulen, 2008. Law & Economics, 5<sup>th</sup> ed. Boston: Pearson/Addison Wesley, pp: 63-72.
10. Ivanovsky, A.V., N.A. Savanovich and V.A. Hlabordov, 2011. Administrative procedures: theory and practice. Minsk: Academy of Public Administration under the President of the Republic of Belarus, pp: 72-81.

11. Gritsenko, E.V. and O.A. Nogina, 2010. Administrative procedures in the economy: Improving the legal regulation. St. Petersburg: St. Petersburg State University, pp: 45-54.
12. Zyuzin, V.A., 2006. Administrative procedures. Current issues in the framework of entrepreneurial activity. Law and Order, 10.
13. Lindsey, T., 2006. Law Reform in Developing and Transitional States. Abingdon: Routledge, pp: 63.
14. # 821 Decree of the Government of the Republic of Kazakhstan of the 21<sup>st</sup> June 2012 on approval of the Program «Available accommodation-2020» (with changes and additions as of 30. 09. 2013)