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ADMINISTRATIVE JUSTICE IN THE POST-REFORM PERIOD HISTORICAL LEGAL AND COMPARATIVE LEGAL ANALYSIS

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ABSTRACT

This research is devoted to the description of the administrative jurisdiction institute at the post-reform period. Studying it is an extremely important aspect in the creation of a unique, efficient and coherent system of administrative justice in post-Soviet Kazakhstan. The immediacy of the problem is enhanced in the context of the implementation of institutional reforms aimed to ensure the rule of law, including the field of public administration and local self-government. The legal community and the Kazakh government put on the agenda questions concerning the organization and methods of the administrative justice institution functioning. In this regard, not only a foreign experience in creating an administrative justice system and a description of the current state of this institution in Kazakhstan, but also a historical analysis of the subject of study is interesting.

The purpose of this research is the further improvement of the Kazakhstan current in the field of public relations.

The achievement of this purpose is seen in solving the following tasks:

1) to determine the main factors that led to the administrative justice institution appearance;
2) to mark the evolutionary stages of the administrative justice development in modern Kazakhstan;
3) to identify the borrowings and the contradictions between the administrative justice institutions of the post-reform period and the modern period.

The methodological basis of the research is the historical-legal and comparative-legal methods of objective reality cognition.

The theoretical basis of the research is the works of leading Russian and European scientists devoted to the study of administrative justice the institution.

The legal basis of the research is the post-reform period legislation.

There are historical stages of the appearance, formation and development of the administrative justice institute in modern Kazakhstan at the research: 1) the integration stage; 2) the revolutionary stage; 3) the Soviet stage; 4) the post-Soviet stage (transitional and final periods); 5) modern Kazakhstan stage. This research covers the post-reform period of the development of the administrative justice institution. Its lower limit is the final moment of the Russian-Kazakh integration, and the upper limit is the initial moment of the Soviet regime establishment. The determination of chronologically successive stages of the appearance and development of the administrative justice institution is connected with the author's hypothesis that administrative justice is the judicial control exercise in the field of public administration and local self-government. In this regard, the research analyzes the judicial procedure for the consideration and resolution of public law cases, called as the affairs of state administration in the era of the Great Reforms.

A number of similarities and differences between the judicial order of consideration and resolution of public law disputes under the legislation of the post-reform period and under the current legislation of the Republic of Kazakhstan are determined. Mainly, they indicate the continuity of traditions in the part of legal proceedings. It has been established that the Republic of Kazakhstan inherited many features of the post-reform legislation regarding the implementation of legal proceedings in cases of state administrations. The evidence of this situation is that nowadays separate exemptions and some additions that have taken place during the functioning of the 1864 court bailiffs at the territory of modern Kazakhstan are being applied to such cases.

ADMINISTRATIVE JUSTICE IN THE POST-REFORM PERIOD (HISTORICAL LEGAL AND COMPARATIVE LEGAL ANALYSIS)

INTRODUCTORY PARAGRAPH.

At the present stage, the Kazakh public is in search of an answer to the question of what administrative justice should be in the Republic of Kazakhstan, who and, most importantly, how should it be implemented. As the leader of the nation N.N. Nazarbayev correctly says, “we need to look into the past in order to understand the present and see the contours of the future”[1].

[1] **Nazarbayev N.N. Independence of Kazakhstan: lessons of history and present // Report at the solemn meeting dedicated to the 5th anniversary of the independence of the Republic of Kazakhstan. Selected speeches: in 3 volumes. – Astana: Publishing House “Saryarka”, 2009. Vol. III. 1995-1998, P. 256.**

One of the answers to the questions can be obtained from a study of the most important institution – administrative justice – in its historical development.

Hypotheses

In general and special legal literature, two points of view are often found regarding the moment of the emergence of the institution of administrative justice: 1) administrative justice arose in the pre-reform period, that is, before the Great reforms of Emperor Alexander II; 2) administrative justice arose in the post-reform period, that is, after the Great reforms of Emperor Alexander II. "It is the second point of view, as noted by the administrative scientist Yu.N. Starilov, has more supporters"[2].

Substantiation of hypotheses

Thus, some authors connect the emergence of administrative justice with the acquisition of subjective public rights by citizens, since, in its traditional understanding, it is an institution for the protection of subjective public rights. Taking this point of view, V.A. Gagen can be recognized as one of those researchers who completely ruled out its existence in the pre-reform period, and if he admitted thoughts of its existence, then only in a different sense and with a different essence. In his words: "... in the pre-reform era, you can find administrative justice only in appearance, in form, but not in essence, because there were no subjective public rights that should be protected by administrative courts". The author believes that this institution arose thanks to the reforms of Alexander II.

S.A. Korf, the professor of the Imperial University in Helsinki wrote: "The state of the 18th century, police and absolute, did not know administrative justice, nor did it, or rather, did not recognize the subjective public rights of its citizens" [3]. According to the author, administrative justice appeared exactly when the struggle between police states and legal states in the 19th century left the historical scene.

A similar opinion is observed in the teachings of the German state scientist G. Jellinek, who also recognized administrative justice as a great achievement of the states that appeared in the 19th century. "Although it is also used to protect objective law," wrote G. Jellinek, referring to administrative justice, "in the closest way, however, it serves as a guarantee of subjective public rights of both individuals and unions" [4].

Another group of authors, including I.V. Panova, connects the emergence of administrative justice with the organization and functioning of public authorities. When studying the history of the emergence of the institution in

[2] Starilov Yu.V. Administrative justice in Russia before 1917: the development of theory and the formation of legislation. Access provided by the Comitas Gentium France Russie website. URL: http://new.comitasgentium.com/sostav-gruppy-comitas-gentium/avtory-publikatsij/item/62-administrativnaya-yustitsiya-v-rossii-do-1917-goda-razvitie-teorii-i-formirovanie-zakonodatelstva#13

[3] Administrative justice in Russia: Book. 2: Outline of current legislation. Book. 3: Essay on the theory of administrative justice. Book. 2 - 3 / Korf S.A. - S.Pb .: Type. Trenke and Fusno, 1910, P. 391.

[4] Jellinek G. Law of the modern state: General doctrine of the state. Vol. 1 / Jellinek G .; Per .: Gessen V.M. (Ed.), Shalland L.V. (Ed.) - S.-Pb .: "Social. Benefit", 1903, P. 588.

Russia, the author pays attention to the accumulated experience of administrative justice in the pre-revolutionary period, which seems to him the most instructive. "Complaints proceedings in Russia, – writes I.V. Panov, – began to take shape simultaneously with the formation of public authorities and the emergence of the bureaucratic class". The theory of administrative justice allows it to attribute the initial stage of the emergence of administrative justice bodies in Russia to the Middle Ages, and as the first act, from which the right of complaint followed, mention the Code of Laws of 1497.

However, the opinion of I.V. Panova takes place, since it finds support among other researchers, for whom the opinion of theoretical scientists (Kovalevsky and Taranovsky) that the history of administrative justice originates from the Middle Ages seems to be more preferable[5].

A functional-organizational approach to the definition of administrative justice is given by E.B. Luparev has reasons to believe about the existence of administrative justice in an earlier period, the proof of which is the administrative case related to the state interest on the collection of drinking arrears from the merchant P. Savostin. The author convinces us that in this case, arising from tax legal relations, the central institution of the Russian Empire acted as a court of first instance – the chamber collegium created by Peter I to manage state revenues, fees, duties and arrears. The decision of the chamber collegium was appealed to the First Department of the Governing Senate on appeal. Based on the documents found in the Russian State Archive of Ancient Acts, the author believes that the courts, in one form or another, considered administrative cases before the judicial reform of 1864[6].

Alternatives to hypotheses

Reasoning about administrative justice allows us to say that its first shoots appeared in pre-revolutionary France or, conversely, in autocratic Russia, which was experiencing a crisis of fragmentation of the feudal system. Not being a supporter of the first or second points of view, and moreover, avoiding unnecessary discussion about the genesis of administrative justice, the authors note that the events that have entered the history of powerful Russia under the name "The Great Reforms of Alexander II" are important for the formation of the Kazakh model of administrative justice, and in the history of modern Kazakhstan – "Administrative reforms of 1867-1868".

The determining factor in the formulation of the author's hypothesis

Historical facts indicate that the process of joining modern Kazakhstan to the Russian Empire, which began in the 30s of the 18th century, took two centuries and ended only in the second half of the 19th century. And it is not known how long this process would have lasted and how this process would have ended, if not for the reforms of Emperor Alexander II, which put an end

[5] Boyakhchyan S. Administrative courts of the United States and France in the context of the reception of the experience of creating administrative justice // Topical issues of public law. Scientific and practical journal. - Omsk, 2013, No. 10. - P. 5.
[6] Luparev E.B. The genesis of legal regulation of administrative justice in Russia in the pre-Soviet period: an attempt at a new historical retrospective // Society and Law. 2016. No. 3 (57). - P. 171-172.

to it. Of course, history does not accept such words, but it so happened that the policy of Russian-Kazakh integration did not just coincide with the events that took place in 1861-1865 in the Russian Empire, and flowed from them. In our opinion, it was the reforms of 1861-1874 as a whole that created the conditions for the dynamic development of the Russian Empire and, in particular, modern Kazakhstan that was part of it. In addition, according to reliable information, many predecessors of the national liberation idea, welcoming the democratic reforms of Alexander II, lived by the inspiration of his Great reforms. "Valikhanov, wrote professor S.F. Udartsev, – he recognized the unity of the historical destinies of Kazakhstan and Russia, the progressiveness of the influence of Russian and Western European culture, supporting the entry of Kazakhstan into Russia as a whole as a progressive phenomenon" [7].

Initially, it should be noted that the peasant reform of Alexander II, focused on the abolition of serfdom, made it possible to modernize other spheres of the state and society. Especially in the new conditions, the rights and freedoms of citizens demanded from the imperial reforms their complete security and reliable protection, for which Alexander II made the first attempts to create a fair and humane justice, to separate the judiciary from all other authorities and give it, thereby, independence. In particular, the following reforms were carried out: 1) the Peasant Reform of 1861; 2) financial reform of 1862-1864; 3) Zemstvo reform of 1864; 4) educational reform in 1863-1865; 5) judicial reform of 1864; 6) censorship reform of 1865; 7) municipal reform of 1870; 8) military reform of 1874.

One of the results of reforms was the adoption in 1864 of normative legal acts in the field of legal regulation of the structure, organization and functioning of the judiciary. These include: the establishment of judicial institutions; the statute of criminal proceedings; Charter of Civil Procedure; Charter on Punishments Imposed by Justices of the Peace. The listed statutes were in effect on the territory of over forty Russian provinces, including the Orenburg, Turkestan, West Siberian and Steppe provinces. In the Decree to the Governing Senate of November 20, 1864, Emperor Alexander II substantiated the prerequisites for the adoption of the above Judicial Charters. In his words: "... We find that they are fully consistent with Our desire to establish in Russia a speedy, rightful, merciful and equal court for all Our subjects, to elevate the judiciary, to give it proper independence and generally to establish in Our people that respect for the law, without which social welfare is impossible and which should be a constant guide of the actions of everyone, from the highest to the lowest" [8].

It follows from this that the judicial reform was carried out under the auspices of the establishment in autocratic Russia of the rule of law and the independence of the judiciary. To do this, it was required to properly arrange the judiciary, organize the judicial system, determine the ways of its

[7] Judicial Reform Note / S.F. Udartseva. - Ed. 2nd, add. and corrected. - Almaty: Zheti Zhargy, 2004 .- P. 26.

[8] Decree to the Governing Senate of November 20, 1864 by Emperor Alexander II. / In the book. Judicial Charters November 20, 1864. - P. 2.

functioning, streamline the interaction of the autocratic authorities, and also provide, with the help of laws, everyone material and intangible benefits. It is worth noting here that at the current stage of development, young Kazakhstan, under the influence of a long tradition, is carrying out institutional reforms to ensure the rule of law by courts.

Author's hypothesis

The modern view that positions the administrative justice as belonging to the judicial power to ensure the rule of law in the field of public administration and local self-government, exercised by it through judicial control, is more convincing. This understanding of administrative justice allows the authors to single out the years 1861-1874 as an important milestone in the history of the emergence of administrative justice in modern Kazakhstan, which is also important for its further development. Therefore, to study the history of the emergence and development of the institution of administrative justice in modern Kazakhstan should begin with the period of post-reform Russia.

Evolutionary stages of administrative justice

There are several successive stages in the history of the emergence and development of the institution of administrative justice. *The first stage of integration* originates from the moment of the complete annexation of modern Kazakhstan to the Russian Empire and covers *the post-reform period*. *The second stage*, associated with the establishment of Soviet power in 1917, is called *pre-Soviet or revolutionary*, since the transformations were accompanied by uprisings. *The third stage* in the development of the institution of administrative justice covers *the Soviet period*. *The fourth – post-Soviet stage* took place at the end of the last century, when acts of Soviet legislation were still in force on the territory of the former Kazakh SSR. This stage lasted until the adoption of codified acts of the Republic of Kazakhstan regulating the procedure for considering and resolving public legal disputes. Therefore, within the framework of it, *transitional and final periods* can be distinguished. *The fifth modern Kazakhstani stage* is the beginning of the third millennium to the present day. This work is devoted to the historical-legal and comparative-legal analysis of the institution of administrative justice in the post-reform period.

The main part (disclosure of the content of the author's hypothesis)

In *the post-reform period*, public-law disputes affecting the interests of the state and the clergy were called the affairs of state administration. To them, in accordance with Article 1282 of the Charter of Civil Procedure, included cases involving the interest of the treasury, specific and court departments and other government institutions and departments, as well as the affairs of monasteries, churches, bishops' houses and all Christian and Mohammedan spiritual institutions[9].

[9] **Charter of civil proceedings 1864 / In the book, Judicial Charters, November 20, 1864. - P. 148.**

According to tsarist laws, all cases related to the interests of the state can be divided into the following categories:

1) cases on disputes arising between the treasury and private people;
2) cases on disputes arising between private people and different spiritual departments;
3) cases on disputes arising between different state administrations and religious departments;
4) cases on disputes arising between different government departments.

The first category of cases is subject to study. Proceedings in cases related to the interests of the treasury were carried out according to the general rules of civil procedure, taking into account some exceptions established by Articles 1282-1299 of the Charter of Civil Procedure. Basically, these exemptions concerned the rules of jurisdiction and jurisdiction, the composition of the court, the terms of appeal, representation and surety, mediation and conciliation procedures, interim measures and the order of execution of decisions. Before proceeding to their detailed study, attention should be paid to the procedure for considering and resolving cases related to the interests of the treasury, regulated by judicial regulations and located on the territory of the Orenburg, Turkestan and West Siberian provinces.

Legal proceedings on cases of state administrations in the Kazakh region

So, in accordance with the paragraph 97 of the Interim Regulation on the management of Akmola, Semipalatinsk, Ural and Turgai regions, all other criminal cases of Kazakhs that are not subject to military court and court under the general laws of empires, as well as all their mutual claims and litigation for any amount, dealt with by the people's court[10]. Claims involving the interests of the treasury are not subject to the jurisdiction of the County Judges (item 1, paragraph 125), since they performed the duties of the Justice of the Peace and the judicial investigator. Criminal and civil cases outside the jurisdiction of a military or district court are subordinate to the Chambers of the Civil and Criminal Courts, respectively, the cases of state departments were considered and resolved by the Regional Boards of Akmola, Semipalatinsk, Ural and Turgai regions.

Supervision over judges acting in the Orenburg, Turkestan and West Siberian provinces (until 1882) was also carried out by the Regional Boards of Akmola, Semipalatinsk, Ural, Turgai, Semirechensk and Syrdarya regions. Among other things, private complaints were brought to the Regional Board against the County Judges about the slowness, non-acceptance of the recall and the taking of the accused into custody (paragraph 119). In the Semirechensk and Syr-Darya regions of the Turkestan governorate-general, the affairs of the state administrations were considered and resolved in a similar manner, established by the Temporary Regulation on Administration in the Semirechensk and Syr-Darya regions of July 11, 1867. The rest of the cases

[10] Temporary regulation on management in the regions of the Ural, Turgai, Akmola and Semipalatinsk. - St. Petersburg, 1883. - P. 15.

were considered and resolved in accordance with the Charter of Civil Procedure of 1864 with some amendments and additions.

In addition, during the period under study, the administrative procedure for the consideration and resolution of public and law disputes as such was absent, or it is difficult to define it due to the confusion of administrative and judicial powers at the local level. From individual paragraphs of the above Regulations, the powers of county and volost governors, as well as village foremen, which in some way remind of the administrative or pre-trial procedure for resolving public law disputes, follow. Nevertheless, they have nothing in common with those who were present at the subsequent stages of the development of the studied institution. This determines the study in this work, mainly, of the judicial procedure for the consideration and resolution of some cases from the category of public law. In this part, we will restrict ourselves to the consideration of the Regional Board, which combined the functions of the administration and the court, as well as the District Chief and the Judicial Investigator. Taking into account clause 25 of the Regulation on the management of the Akmola, Semipalatinsk, Semirechensk, Ural and Turgai regions, it should be assumed that the Regional Board was in charge of all administrative complaints, for the consideration and resolution of which there were no specialized institutions. Marriage and family and quitrent cases, for which the Charter of civil proceedings established a special procedure for consideration, were subject to resolution by the people's court in accordance with the norms of the customary law of Kazakhs, that is, by the courts of beys, created by analogy with world institutions. Complaints against the decision of the court of beys, made on marriage and family matters, could be considered and resolved by the district governor in an administrative manner, whose decision was subsequently appealed to the Governor.

General characteristics of legal proceedings in cases of state administrations

One of the characteristic features of the implementation of proceedings in cases that have arisen between private individuals and government departments, it is manifested in the fact that mediation or conciliation procedures are not applicable to them. Consequently, the category of these cases was not subject to consideration and resolution in an abbreviated manner, or termination on grounds of reconciliation of the parties. In contrast to the category of cases under consideration, the peculiarity of the implementation of proceedings in cases that arose between ministries and main departments on challenging state property was that these disputes could be settled independently without a trial. If they did not reach a mutual agreement, the dispute was subject to consideration and resolution by the 1st Department of the Governing Senate. It is worth paying attention to the fact that the current legislation of the Republic of Kazakhstan on civil proceedings also does not allow the possibility of terminating cases arising from public legal relations in connection with the reconciliation of the parties. In particular, mediation or conciliation procedures are not applicable to cases of challenging legal acts, decisions, actions or inaction of government bodies and officials, as well as subjects of administrative activity equated to them.

In accordance with Articles 117 and 498 of the Civil Procedure Charter, the oath is taken as proof of what it was committed, and cannot be refuted by any other evidence[11]. Therefore, taking the oath on the cases under consideration is not allowed. This serves as proof that when considering and resolving cases that arose between private individuals and government departments, the court is not bound by the arguments of the parties. It should be noted that the recognition by a public authority, official or civil servant, declared by citizens or legal entities of the requirements for the adoption of a legal decision by Kazakh courts is not mandatory.

Within the meaning of the provisions of the Charter of Civil Procedure, there are no grounds for the compulsory execution of court decisions made on claims against state departments, accordingly, court decisions are not enforced by bailiffs. These actions were carried out by the court by sending a copy of the decision for execution to the appropriate department of the state administration. Similarly, the decisions of Kazakhstani courts on challenging the legality of legal acts, decisions, actions or inaction of state authorities, civil servants, officials are enforced. The imperial court is also entitled, guided by Art. 1296 of the Charter of Civil Procedure, at the request of a private person, write a writ of execution for presentation directly to the department that is obliged to execute the court decision. According to Article 893 of the Charter of Civil Procedure, a court decision that has entered into legal force is binding for everyone, including the court that made the decision. Kazakhstan, which is characterized by the continuity of traditions, inherited the outlined procedure for the execution by the imperial courts of acts issued following the consideration and resolution of civil cases arising from public legal relations, because enforcement proceedings in this category of cases are not initiated.

Unfortunately, the adoption of measures to secure a claim or to ensure the execution of a court decision in the future did not fall within the competence of the court considering and resolving cases that arose between government departments and private individuals. The court is only empowered, at the request of a private person, to prohibit the state administration from taking actions related to the alienation of the disputed property until a final decision is made on the case.

The essence of the revision procedure, which took place in the implementation of proceedings in cases that arose between the treasury and private individuals, was that the interest of the treasury and its institutions is protected in it not only by their representatives, but also by the court itself, regardless of requests, representations and complaints[12]. In contrast to them, disputes between various government departments that have arisen over real estate are considered and resolved by an investigative procedure, the essence of which is

[11] Civil Procedure Charter: [State order 1876, vol. X, part 2]: with extracts from the decisions of the Civil Cassation Department of the Governing Senate. - 2nd ed. - Moscow: V.N. Marakuev and L.F. Snegirev, 1885. - III-XVI. - P. 133.

[12] Judicial statutes, November 20, 1864: outlining the reasoning on which they are based: Part 1 - / published by the State Chancellery. - 2nd edition, revised. - St. Petersburg: in the printing house of the 2nd branch of the Own E. I. Chancellery, 1867. - P. 604.

that they do not allow appeal, and they go back to the audit from the courts in the First Department of the Senate[13].

At the same time, no exceptions from the general rules of civil proceedings were applied to the cases of noble, urban, rural and zemstvo communities. There are explanations for this: the affairs of the zemstvo concern only a known area, and not the entire state[14]. The affairs of the nobility, urban and rural also did not belong to the affairs of state administrations, because state administrations are the bodies of government power[15]. On the contrary, according to the norms of the legislation of the Republic of Kazakhstan governing the procedure for considering and resolving cases arising from public legal relations, a party in these cases may be a legal entity empowered by law to exercise the powers of managing entities.

It is also worth noting that in the framework of the proceedings in cases related to the interests of the treasury, individuals, using the right of poverty, could file a petition with the District Court to exempt them from paying legal costs. Although the right to poverty, confirmed by the official or public authorities, is awarded by the court, the certificate of the right to poverty was issued by the District Court only after hearing the opinion of the prosecutor. In addition, the right to poverty does not exempt a private person from paying all legal costs in the event of a court ruling in favor of the treasury.

Summarizing the above, the **criteria with the application of which legal proceedings are carried out in cases of state administrations** can be designated:

1) cases of state administrations in courts are conducted by special representatives or attorneys (Articles 1285 and 1286);
2) in the affairs of state administrations, taking the oath is not allowed (paragraph 3) of Article 118, Article 497 (6);
3) cases of state administrations are not subject to arbitration Article 1368 (4);
4) claims involving the interest of state administrations, with the exception of claims for the restoration of disturbed possession, are not subordinate to district magistrates, honorary magistrates and the congress of justices of the peace Article 31 (2);
5) state administrations are exempt from payment of stamp duties, as well as court and clerical duties (Article 879);
6) interim measures are not taken at the suit of private individuals against the state administration (Article 1291);
7) claims of private individuals against the state administration, the preliminary execution of decisions is not brought into effect (Article 1291);
8) claims against officials of administrative or judicial departments are examined and resolved by a special or joint presence (Articles 1320-1322);
9) in cases related to disputes arising between the treasury and private persons, an investigative and revision procedure for their consideration and resolution has been established;

[13] **Ibid, P. 604.**
[14] **Ibid, P. 607.**
[15] **Ibid, P. 607.**

10) a court decision made on the basis of the consideration and resolution of cases arising between private individuals and government departments is enforced by the Treasury Chambers, the Chambers of State Property and other local departments or by the heads of local departments (Articles 1284 and 1292);
11) the participation of a prosecutor in civil proceedings in cases affecting the interests of the treasury for giving an opinion is mandatory (Article 1290);
12) in cases involving the interests of the treasury, the number of courts for individuals is limited to two: the first instance and the appeal instance;
13) in cases involving the interests of the treasury, the prosecutor is authorized to file a cassation appeal against the cancellation of decisions made in favor of a private person (Article 1294).

A special procedure for legal proceedings in cases of state administrations

In relation to the following categories of cases, a special procedure for legal proceedings has been established, which should be discussed:

1) cases arising from contracts for work, supply and return to the rental content of quitrent clauses;
2) cases related to the acquisition of immovable property or infringement of ownership;
3) cases related to the recovery of remuneration for damage and losses caused by orders of officials of administrative departments;
4) cases related to recovery of damages from judges, prosecutors and other officials of the judicial department.

Thus, ***the proceedings on cases arising from contracts for work, supply and return to the lease content of quit-rent clauses*** was carried out by the District Court. According to general rules, proceedings on cases arising from contracts for work, supply and return to the lease content of quitrent clauses were carried out in a departmental or judicial order. However, private individuals were not provided with such ample opportunities to appeal against decisions, actions or inaction of state government bodies, because they did not need to comply with the pre-trial procedure for resolving disputes arising from contractual relations. Complaints could be filed in one of the established procedures. In addition, when a complaint was filed in a departmental manner, the dispute was subject to consideration and resolution by a higher government agency, the decision of which was subsequently appealed to the 1st Department, bypassing the court presence. Appealing the decisions, actions or inaction of the state administration bodies in a departmental manner excluded the possibility of their subsequent appeal in court. For example, private individuals could not, in court, sue the treasury for the issuance of amounts not paid by the treasury, or documents retained by it, or a claim for compensation for losses caused as a result of illegal decisions, actions or inaction of state administration bodies, after appealing them against departmental order. However, on a positive note, a claim against the treasury is filed within six months, calculated from the date of issuance of settlements or payments by the state administration bodies or requesting them to return the bail.

Proceedings in cases related to the seizure of real estate or infringement of possession were carried out not by the police department, but by justices of the peace, but on such a condition that the case does not allow the taking of an oath or reconciliation of the parties. The dispute is brought before a magistrate if the six-month period has not elapsed since the seizure or breach of possession, and if it has, then the District Court. These cases were initiated on the basis of claims of private individuals for seizure or claims of individuals or companies that own the property of the state administration on the right of use to restore the violated property.

The District Courts, Chambers of Justice and the Cassation Department carried out ***proceedings in cases related to the recovery of compensation for damage and losses caused by orders of officials of administrative departments***. According to the rules of jurisdiction, claims for the recovery of remuneration from officials holding lower positions up to the ninth grade were initiated by the District Court, from the eighth to the fifth grade – by the Trial Chamber, and above the fifth grade – by the Cassation Department. Cases of this category were considered and resolved as part of a special presence specially created for this. A special presence in the District Court was established in the composition of two members and the President of the District Court, under whose chairmanship the court session was held, as well as two counselors of the Chambers of Treasury and State Property, or the senior of them in service and the closest chief. The composition of the special presence in the Trial Chambers consisted of the following persons: the senior president (presiding) of the Trial Chamber and two of its members; governor; the chairman of the Treasury Chamber and the manager of the State Property Chamber, or the senior of them in service and the closest chief. In the Cassation Department, claims against officials are considered and resolved by the General Meeting of the Joint Presence of the First and Civil Cassation Department.

The decisions made by the courts in accordance with the rules of the first instance court were considered only on appeal, and within 4 months. Thus, appeals against the decision of the Special Presence of the District Court were submitted to the Trial Chamber, the Special Presence of the Trial Chamber – to the Cassation Department, and the Joint Presence of the Cassation Department - to the General Assembly of all Cassation and First Departments of the Governing Senate.

Proceedings in cases involving recovery of damages from judges, prosecutors and other officials of the judicial department were carried out by the District Courts or the Cassation Department. According to the rules of jurisdiction, requests for recovery of damages from the officials of the District Courts were considered and resolved by the Chambers of Justice, and from the chairman, members and prosecutors of higher judicial departments – by the Cassation Department. At the same time, it must be borne in mind that remuneration for harm and losses caused as a result of incorrect or biased actions of officials of the judicial departments are sought in the order of civil proceedings (Article 1331 of the Charter of civil proceedings), caused from

mercenary motives – in the order of criminal proceedings (Article 1070 of the Charter of criminal proceedings), and others – in the order of disciplinary proceedings.

"In tsarist Russia", according to Starilov, "administrative justice has not yet developed into an effective and democratic legal institution that would ensure that officials are brought to justice for their illegal actions in the service"[16]. Other researchers write that the Russian justice of the pre-reform period was distinguished by almost total legal ignorance of officials of the judicial department. G.A. Filonov and V.S. Chernykh also admit that the special procedure for giving the court officials, the lack of a proper guarantee of the independence of the court from the state administration, was a deviation from many principles of legal proceedings. On the contrary, A.I. Tiganov believes that the reform of the judiciary, along with the consolidation of new principles of the judiciary and legal procedure, has established a number of legal guarantees of professional activity for officials called upon to administer justice[17]. Among them, the cited author attaches importance to the empowerment of judges with the rights and advantages corresponding to their status, as well as a special procedural procedure for bringing judges to justice.

There are two things worth saying in this part. First, the initiation of disciplinary proceedings against a judicial official is left to the discretion of the higher judicial authorities. It was an extreme measure, when it was not possible to restore the disturbed order or eliminate its consequences by other means. Upon detection of violations of the law in the activities of lower judicial departments, higher judicial departments took measures to restore the disturbed order or eliminate its consequences either independently or at the direction of the Minister of Justice. The grounds for initiating disciplinary proceedings without bringing them to trial were the following circumstances: violation of the rules of the internal structure or office work in the courts; non-fulfillment or improper fulfillment by an official of the judicial department of his duties; abuse of office. For example, the accumulation of cases in the courts, their slowness or suspension, failure to comply with orders of higher departments, incompleteness of the law, and much more.

Secondly, the judicial or supervisory authorities did not have the right to initiate disciplinary proceedings against an official of the judicial department and impose disciplinary sanctions on him, which was one of the guarantees of ensuring the independence of the courts and the independence of judges. By virtue of the powers granted to them, the prosecutors limited themselves only to informing the higher judicial departments and the Minister of Justice of information about violations of the law in a particular court. In accordance with Article 262 of Institutions of judicial rulings, the following penalties were applied to officials of the judicial department: 1) a warning; 2) remark; 3) a reprimand without entering into the service record; 4) deduction from salary; 5) arrest; 6) transfer from a higher position to a lower position[18].

[16] Administrative proceedings in the Russian Federation: the development of theory and the formation of administrative procedural legislation. Anniversaries, conferences, forums. - Issue. 7 / Yu.N. Starilov. - Voronezh: Voronezh State University Publishing House, 2013. - P. 30.

[17] Tiganov A.I. Op.cit., P. 40.

[18] The establishment of judicial rulings. / In the book of Judicial Charters, November 20, 1864. - P. 36.

Supervision function and its varieties

Speaking about the independence of the judiciary, which was touched upon at the beginning of the work, it is worth paying attention to the means of ensuring the rule of law in the process of carrying out legal proceedings, which was the supervision of judicial decisions and officials of the judicial department. Given the red tape in the courts, the anachronism of the judiciary, the lack of education of judges, the Institution of Judicial Regulations from 1864 provided for four types of supervision:

1) *departmental supervision*, carried out by higher judicial departments over the acts and actions of officials of lower judicial departments;
2) *close supervision*, carried out by the first-present or the chairman, over the speedy and correct movement of affairs, the exact fulfillment of their duties by officials, as well as the observance of order and ensuring security in courtrooms and in deliberation rooms;
3) *general supervision* exercised by the Minister of Justice (acting as the Attorney General) of judicial acts and actions of officials of all judicial departments;
4) *prosecutorial supervision*, carried out by the chief prosecutors of the Cassation Department, prosecutors of the Judicial Chambers or the District Court and their comrades for the protection of laws in judicial departments.

The essence and subject of the supervision function

According to the legislation of the post-reform period, the essence of supervision consisted, firstly, in observing the actions of officials of the judicial department, and secondly, in conducting an audit of judicial acts. Institutional oversight functions were independently carried out by the Cassation Department, the Chambers and the District Courts. Senators, by the conclusion of the general meeting of the Cassation Department, on the proposal of the Minister of Justice, agreed with the Emperor, carried out an audit in the judicial departments. Moreover, Article 252 of the Charter of Civil Procedure prohibited the judicial authorities from deciding on the correctness and legality of the actions of prosecutors. Supervision was also established over the conduct of office work by the offices of the judicial departments and belonged to the presidents of the judicial departments, chief prosecutors in the respective Departments, secretaries or chief secretaries. The statutes of 1864 vested the Minister of Justice with the authority to conduct an audit of judicial acts; he carried it out personally or through his assistants, and in some cases authorized the Chambers of Justice to conduct audits in the District Courts.

Judicial control

Having considered the functions of supervision, it is possible to move on to the issue of the function of judicial control, conditionally assigned to forensic investigators, whose appearance is due to the need to separate the courts from the police, and at the same time, the less favorable criminological situation that has developed in a certain period of time in rural areas. For example,

Ch.N. Akhmedov connects this with the fact that, having freed themselves from serfdom, having received personal freedom, a certain part of the peasant population showed itself prone to committing crimes[19].

Touching upon the issue of judicial control exercised over the correct course of pre-trial investigation in criminal cases, it should be said that the procedural figure of the Kazakhstani investigating judge resembles judicial investigators who were a consequence of the Great reforms of Emperor Alexander II. Criminal cases related to the deprivation or restriction of rights and under the jurisdiction of military judges were subject to preliminary examination by the County Judge, acting as a Judicial Investigator, with notification of this to the Governor, who, in turn, transferred the materials of the investigation to the Military Judicial Commissions. The forensic investigator had to find out the following circumstances: "whether any of the preventive measures was taken against the persons suspected of a crime to evade the investigation and the court, and whether it should be immediately strengthened, facilitated or canceled the measure taken by the police or other place for this restraint" [20]. In all cases in which there was a deprivation or restriction of rights, criminal cases were investigated by the County Judges by order of the Judicial Investigators. It should be added that investigating judges, unlike judicial investigators, have very broad powers, the list of which is expanding each time.

CONCLUSION

The implementation of proceedings in cases related to the interests of the treasury according to the general rules of civil proceedings, taking into account some exceptions established by the Charter of civil proceedings of 1864, to some extent remained in the legislation of the Republic of Kazakhstan on civil proceedings. It remains to recognize the exceptions from the general rules of civil proceedings as a relic of the past from the time of the Great Reforms of Alexander II, or as a feature of our state, which is characterized by the continuity of the customs of legal proceedings. Nevertheless, in general, the exemptions indicate the absence at the moment of a unified procedure for considering and resolving cases arising from public legal relations. As of 2019, Kazakhstani courts are considering and resolving cases arising from public legal relations, according to the general rules of civil proceedings, applying some exceptions and certain additions to them. Recall that these rules were present in the 1997 Civil Procedure Code of the Republic of Kazakhstan, which had expired, and then they were transferred to the new Civil Procedure Code of the Republic of Kazakhstan from 2015. Thus, public law disputes are considered and resolved in a special claim procedure, which is established as a type of public proceedings. The administrative procedure for considering and resolving complaints against decisions, actions or inaction

[19] Akhmedov Ch.N. A forensic investigator in the Russian law enforcement system: the formation, development and legislative registration of his activities // Bulletin of the St. Petersburg University of the Ministry of Internal Affairs of Russia No. 3 (63) 2014. - P. 12.

[20] Order to judicial investigators of June 16, 1860 / The collection of laws of the Russian Empire (2). - St. Petersburg, 1830-1885. - Vol. 35 (1): 1860: No. 35891. - P. 715.

of managing entities is carried out according to the rules established by the law of the Republic of Kazakhstan "On Administrative Procedures".

Along with this, cases of a public and legal nature are subject to consideration and resolution in accordance with the procedure established by the legislation of the Republic of Kazakhstan on criminal proceedings by investigating judges, as well as on administrative offenses by judges of specialized inter-district administrative courts. A detailed analysis of these issues requires separate coverage, or rather, the characteristics of the institution of administrative justice of the Republic of Kazakhstan at the present stage.

According to the legislation of the modern period, separate exemptions and some additions are not applied to disputes arising from contractual legal relations, since they, unlike cases arising from contracts of work, supply and return to the rental content of quit-rent clauses regulated by the legislation of the post-reform period, are not public and legal disputes. This is the difference between them.

Among the positive aspects of the reforms carried out, it can be noted that the judiciary in terms of the implementation of civil proceedings was separated from the executive, and in terms of the implementation of criminal proceedings, it was separated from the prosecution power. The desire to separate the judiciary from the police is also observed in the implementation of proceedings in cases of administrative offenses. However, prosecutors, who were directly subordinate to the Minister of Justice, who formed the executive branch, were attached to all judicial departments, representing their separate branch. Therefore, it is impossible to fully agree with the fact that there was a separation of the executive branch from the judicial branch. Nevertheless, it is noteworthy that in order to achieve a balance between prosecution and defense, the institution of the Bar (attorneys at law) appeared in opposition to the institution of supervision. Although it is difficult to say that the principles of adversariality and equality of the parties were fully respected in the proceedings. On the one hand, this is explained by the legal position of prosecutors under the new model of the judicial system and legal proceedings, in which they acted as the guardian of the law, and on the other, by the release of the judiciary from incriminating functions, which are unusual for it, in particular.

Despite all the shortcomings, the great reforms of Alexander II are characterized very positively in the assessments of predecessors and contemporaries, because in this era they first spoke about the independence of the judiciary, attached importance to the position of a person in society, many new institutions appeared and much more. The study showed that in the post-reform period, administrative justice existed in the form of an unbranched, disordered, ineffective system of protecting the rights of citizens, and its characteristic features still exist today.

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