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КОНСТИТУЦИЯСЫ МЕН ЗАҢНАМАСЫ: ДИАЛОГ ЖӘНЕ ҮДЕМЕЛІ ДАМУЫ»
АТТЫ ХАЛЫҚАРАЛЫҚ ҒЫЛЫМИ-ПРАКТИКАЛЫҚ КОНФЕРЕНЦИЯ
МАТЕРИАЛДАРЫНЫҢ ЖИНАҒЫ**

**СБОРНИК МАТЕРИАЛОВ
МЕЖДУНАРОДНОЙ НАУЧНО-ПРАКТИЧЕСКОЙ КОНФЕРЕНЦИИ
«КОНСТИТУЦИЯ И ЗАКОНОДАТЕЛЬСТВО РЕСПУБЛИКИ КАЗАХСТАН В
КОНТЕКСТЕ МОДЕРНИЗАЦИИ ОБЩЕСТВЕННЫХ ПРОЦЕССОВ: ДИАЛОГ И
ПОСТУПАТЕЛЬНОЕ РАЗВИТИЕ», ПОСВЯЩЕННОЙ КОНСТИТУЦИОННО-
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В сборнике материалов международной научно-практической конференции рассмотрены вопросы, касающиеся актуальных аспектов конституционной и судебно-правовой реформы, проводимой в рамках национальной идеи построения Справедливого Казахстана.

The collection of materials of the international scientific and practical conference considered issues related to the current aspects of constitutional and judicial law reform, carried out within the framework of the national idea of building a just Kazakhstan.

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COMPARATIVE ANALYSIS OF ADMINISTRATIVE JUSTICE IN THE REPUBLIC OF KAZAKHSTAN AND POLAND.

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Abstract. The article discusses the system of administrative justice in the Republic of Kazakhstan and Poland. Thus, the article examines the competence of the prosecutor in the administrative proceedings of the Republic of Kazakhstan and the system of administrative courts in Poland. The main attention is paid to the identification of the main competence of the prosecutor, the system of administrative courts in Poland.

This article considers the prosecutor as a subject of administrative proceedings. The main forms of his participation in administrative proceedings are investigated.

Key words: administrative justice, courts, justice, administrative proceedings, procedure, administrative body.

Аңдатпа. Мақалада Қазақстан Республикасы мен Польшадағы әкімшілік әділет жүйесі қарастырылады. Осылайша, мақалада Қазақстан Республикасының әкімшілік сот ісін жүргізудегі прокурордың құзыреті және Польшаның әкімшілік соттар жүйесі қарастырылады. Прокурордың негізгі құзыретін, Польшадағы әкімшілік соттар жүйесін анықтауға баса назар аударылады. Осы бапта прокурор әкімшілік сот ісін жүргізудің субъектісі ретінде қаралады. Оның әкімшілік сот ісін жүргізуге қатысуының негізгі нысандары зерттеледі.

Түйін сөздер: Әкімшілік әділет, соттар, сот төрелігі, әкімшілік іс жүргізу, рәсім, әкімшілік орган

Аннотация. В статье рассматривается система административной юстиции в Республике Казахстан и Польше. Вместе с тем, в статье анализируется компетенция прокурора в административном судопроизводстве Республики Казахстан и система административных судов Польши. Основное внимание уделяется определению основной компетенции прокурора, системы административных судов в Польше.

В данной статье прокурор рассматривается как субъект административного судопроизводства. Исследуются основные формы его участия в административном судопроизводстве.

Ключевые слова: административная юстиция, суды, правосудие, административное производство, процедура, административный орган.

On July 1-st 2021, a new the Code of Administrative Procedure and Proceedings (*thereinafter* - CAPP) entered into force. The CAPP aims to regulate the public law relations between an administrative body and a person in respect of whom the public functions of that administrative body are used as prescribed by law.

After acquiring independence, post-Soviet states began the process of building democratic nations, whose supreme values were declared to be individuals, their rights, and freedoms. This process included such processes, as relationship building between the state and the individual, conflict resolution among citizens and their unions as related to actions (inactions) and decisions of public authorities. The establishment and development of administrative justice period is beginning, and its essence lies in the system of decision making by administrative agencies, boards, committees and specialized courts. The meaning of administrative justice is accurately given in the following thesis: far more citizens have their rights defined by these agencies than by courts of general jurisdiction [1, p. 84].

In the course of study, general scientific theoretical methods were applied. The method of cognitional understanding of scientific and theoretical materials was the main method for all the work.

Some other methods were used in examining and analyzing the basic principles of the administrative procedures. For example, the method of literature analysis was used; the generalization method – was used when highlighting the basic principles; and the logical method – was used when analyzing problematic issues.

One of the topical issues of improving legislation is the determination of the status, competence, and activities of the Prosecutor's Office of the Republic of Kazakhstan in administrative proceedings.

It should be stated that the control and supervisory forms of activity inherent in the prosecutor's office give the dynamics of the transformations taking place in society. Becoming at the same time one of the factors of democratization, building the rule of law in Kazakhstan [2, p.370-373]

In this respect, the main essence of the supervisory activity of the prosecutor's office, as is known, is aimed at suppressing offenses, ensuring the rights and freedoms of citizens. It is based on principles such as transparency and legality.

In addition to this, according to paragraph 1 of Article 83 of the Constitution of the Republic of Kazakhstan, the Prosecutor's Office on behalf of the State carries out, within the limits and forms established by law, supreme supervision over the observance of legality on the territory of the Republic of Kazakhstan, represents the interests of the State in court and carries out criminal prosecution on behalf of the State¹⁴⁵.

In accordance with paragraph 1 of Article 6 of the Law of the Republic of Kazakhstan «On the Prosecutor №. 155-VII on November 5, 2022, the Prosecutor's office oversees the activities of state, local representative and executive bodies, local self-government bodies, institutions, their officials, other organizations, regardless of the forms of ownership, as well as the acts and solutions¹⁴⁶

According to paragraph 2 of article 6 of the Law, the prosecutor represents the interests of the state in court¹⁴⁷

According to paragraph 6 of Article 27 of the CAPP, the rights, freedoms and legitimate interests of a minor under the age of fourteen, as well as a person recognized as incapacitated, are protected in court by their legal representatives, the prosecutor¹⁴⁸.

145. Constitution of the Republic of Kazakhstan

146. The Law of the Republic of Kazakhstan «On the Prosecutor's Office» on November 5, 2022 No. 155-VII ZRK

147. The Law of the Republic of Kazakhstan «On the Prosecutor's Office» on November 5, 2022 No. 155-VII ZRK

148. Administrative Procedural Code of the Republic of Kazakhstan dated June 29, 2020 No. 350-VI

Due to paragraph 6 of Article 27 of the *CAPP*, the rights, freedoms and legitimate interests of a minor under the age of fourteen, as well as a person recognized as incapacitated, are protected in court by their legal representatives, the prosecutor¹⁴⁹.

Due to paragraph 2 of Article 31 of the *CAPP*, the prosecutor enters into the process to give an opinion on administrative cases arising from tax, customs, budgetary relations, relations in the field of protection, restoration and preservation of the environment, use and reproduction of natural resources in the implementation of economic and other activities¹⁵⁰.

Due to the article 31, paragraph 3, of the *CAPP*, the prosecutor has the right to apply to the courts for redress and protection of the interests of:

1) persons who, because of physical, mental or other circumstances, are unable to protect them on their own;

2) persons, societies and the State, if necessary to prevent irreversible consequences for the life, health or security of the Republic of Kazakhstan¹⁵¹.

According to paragraph 6 of Article 31 of the Administrative Procedural and Procedural Code of the Republic of Kazakhstan, the prosecutor who filed the claim enjoys all procedural rights. The prosecutor bears all the procedural duties of the plaintiff, except for the right to conclude a reconciliation agreement¹⁵².

Considering that one party is always a state body and its official, endowed with public authority, who cannot be considered equal with the capabilities of an individual and a legal entity. The role of the court, expressed in its active participation in administrative proceedings, is important for providing them with equal opportunities.

In our opinion, the role of the prosecutor is very important. Since he also protects the rights, freedoms and legitimate interests of persons who, due to physical, mental and other circumstances, cannot independently exercise.

Thus, we are of the opinion that the work on improving administrative legislation should be continued.

It is necessary to consider the foreign experience of administrative proceedings. In particular, those countries in which administrative courts operate. In our opinion, one of such States is the Republic of Poland. The system of Polish administrative courts is regulated by the following laws:

- 1) The Constitution of the Republic of Poland¹⁵³;
- 2) The law «On the arrangement of common courts» 2001.¹⁵⁴;
- 3) «On the administrative judicial system» 2002.¹⁵⁵;
- 4) «On proceedings in Administrative Courts 2002 and other regulatory acts.

According to the article 1 of the Law «On the administrative judicial system» administrative courts administer justice by monitoring the activities of public administration, as well as resolving disputes on competence and jurisdiction between local territorial self-government bodies, local collegial bodies, these bodies and government administration bodies¹⁵⁶.

The system of Administrative courts in Poland consists of two links: the Supreme Administrative court of the Republic (hereinafter referred to as the Supreme Administrative Court) and the Voivod Administrative Courts¹⁵⁷.

149. Administrative Procedural Code of the Republic of Kazakhstan dated June 29, 2020 No. 350-VI

150. Administrative Procedural Code of the Republic of Kazakhstan dated June 29, 2020 No. 350-VI.

151. Administrative Procedural Code of the Republic of Kazakhstan dated June 29, 2020 No. 350-VI

152. Administrative Procedural Code of the Republic of Kazakhstan dated June 29, 2020 No. 350-VI.

153. Konstytucja Rzeczypospolitej Polskiej. URL: <http://www.sejm.gov.pl/prawo/konst/polski/kon1.htm>

154. Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sędziów powszechnych. URL: <http://www.isap.sejm.gov.pl/DetailsServlet?id=WDU20010981070>

155. Ustawa z dnia 25 lipca 2002 r. – Prawo o ustroju sędziów administracyjnych. URL: <http://www.isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269>

156. Ustawa z dnia 25 lipca 2002 r. – Prawo o ustroju sędziów administracyjnych. URL: <http://www.isap.sejm.gov.pl/DetailsServlet?id=WDU20021531269>

157. Naczelny Sąd Administracyjny. URL: <http://www.nsa.gov.pl>

It should be noted that cases falling within the competence of Administrative Courts are considered by the Voivodsky Administrative Courts at the first instance. A Voivodsky Administrative Court is created for one or several voivodeships on the basis of an order of the President of the Republic on the proposal of the Chairman of the Supreme Administrative Court. The President also establishes their location and scope of competence. He has the right to create nonresident departments (outside the main location) of the court and liquidate them. The Chairman of the Supreme Administrative Court determines the number of judges and vice-chairmen of the court in the Voivodsky Administrative Court. He also establishes the structure of the court.

The bodies of the Voivod court are:

- chairman of the court;
- general meeting of the judges of the Voivodsky Court (hereinafter referred to as the general meeting);
- as well as the collegium of the court [3. pp. 124-152].

The Chairman of the Voivodsky court in the field of management is subordinate to the Chairman of the Supreme Administrative Court. The President of the Republic of Poland, by his decree, determines the detailed procedure for supervising the administrative activities of the voivodeship courts. The Polish Supreme Administrative Court oversees the activities of the Voivodsky Administrative court in the field of justice, in particular, considers appeals against decisions of the Voivodsky Administrative court and adopts resolutions explaining legal issues, as well as considers other cases in the first and second instances that fall within the competence of the Supreme Administrative Court on the basis of other laws¹⁵⁸.

In general, Polish Administrative courts use two methods when considering cases:

- 1) forcing public authorities to make administrative decisions;
- 2) or their cancellation. It should be noted that the main task of administrative courts is to protect a person from unlawful interference and from the inaction of the authority.

The Supreme Administrative Court consists of:

- 1) Chairman;
- 2) vice-chairmen;
- 3) judges.

The bodies of the Supreme Administrative Court are:

- 1) Chairman;
- 2) General Meeting of Judges;
- 3) Collegiums¹⁵⁹.

On the proposal of the General Meeting of Judges, the President of the Republic of Poland by his order establishes the number of judicial positions of the Supreme Court. The Chairman of the Supreme Administrative Court directs its activities and represents it in external relations. He has the right to inspect the activities of the Supreme Administrative Court, attend closed court sessions, and may demand explanations and elimination of violations.

The Chairman of the Supreme Administrative Court publishes a collection of decisions of Administrative Courts. There are three chambers in the Supreme Administrative Court:

- 1) financial;
- 2) economic;
- 3) general administrative¹⁶⁰.

The activities of each of them are led by a vice-chairman. The financial Chamber oversees the practice of tax cases, as well as cases of compulsory collection of monetary collateral.

158. URL: <http://www.krs.pl/en/>

159. On the administrative judicial system of Poland 2002//Polish Law on the System of Administrative Courts — Constitutions of States (Countries) of the World (worldconstitutions.ru)

160. On the administrative judicial system of Poland 2002//Polish Law on the System of Administrative Courts — Constitutions of States (Countries) of the World (worldconstitutions.ru)

The Chamber of commerce oversees judicial practice on issues of economic activity, protection of industrial property, budget, currency, banking regulation, securities turnover, insurance, duties, prices, tariff rates, as well as payments.

The General Administrative Chamber oversees cases that are not within the competence of the Financial and economic Chambers.

The President of the Republic appoints the Chairman of the Supreme Administrative Court for a 6-year term of office from two candidates submitted by the General Meeting of Judges.

General Meeting of Judges of the Supreme Administrative Court:

a) considers the Chairman's information on the annual activities of the Supreme Administrative Court;

b) submits candidates for judicial positions to the Council of Judges;

c) selects candidates for the position of Chairman;

d) establishes the quantitative composition of the Board, as well as selects its members¹⁶¹.

The Collegium of the Supreme Administrative Court:

a) distributes activities in the Supreme Administrative Court;

b) submits to the General Meeting of Judges an opinion on candidates for judicial positions;

c) expresses an opinion on other issues submitted by the Chairman.

A person may be appointed to the posts of a judge of the Voivodsky Administrative court:

1) having Polish citizenship and enjoying all civil and political rights;

2) having an impeccable reputation;

3) graduated from a higher educational legal institution in Poland and received a master's degree or a foreign education recognized in Poland;

4) capable of exercising the duties of a judge, taking into account the state of health;

5) over 35 years old;

6) having a high level of knowledge in the field of public administration, as well as in the field of administrative law and other areas of law related to the action of public administration bodies;

7) or who has at least 8 years of experience in the position of a judge or prosecutor, or who has been practicing law for at least 8 years, held the position of legal adviser or notary, or for 10 years held positions in state institutions related to the application or administrative law-making, or worked as a judicial assistant in voivodeship administrative court for at least two years. The requirements referred to in paragraph 7 do not apply to persons in the position of professor or with a scientific degree of Doctor of Law¹⁶².

Also, a separate judicial authority was restored, referred to as the Chief Administrative Court, operating as a court of appeal with general material jurisdiction covering administrative decisions and cases of the inaction of administrative authorities despite their duty to issue such decisions. The scope of cognition of the Chief Administrative Court was gradually extending, and in 2004 a two-level model of the administrative judicial system was established, operating on an appeal basis. This model sparks off many controversies as to its practical application. The lengthiness of its proceedings is another problem of the Polish administrative judicial system [4].

To be appointed as a judge of the Supreme Administrative Court, it is necessary to have an age of 40 years, work experience of at least 10 years as a judge or prosecutor, to practice law for 10 years, to be a legal adviser or notary.

The requirement to reach the age of 40 does not apply to a judge who has held the position of a judge of the Voivodeship Administrative Court for at least three years. The Chairman of the Supreme Administrative Court may temporarily delegate a judge of the Voivodeship Court with his consent to perform the duties of a judge in the Supreme Administrative Court. On the proposal of

161. On the administrative judicial system of Poland 2002//Polish Law on the System of Administrative Courts — Constitutions of States (Countries) of the World (worldconstitutions.ru)

162. On the administrative judicial system of Poland 2002//Polish Law on the System of Administrative Courts — Constitutions of States (Countries) of the World (worldconstitutions.ru)

the Chairman of the Supreme Administrative Court, the Minister of Justice has the right to temporarily delegate a judge of general jurisdiction from the Appellate District Court of General Jurisdiction to perform the duties of a judge in the Administrative Court.

It should be noted that the Chairman of the Supreme Administrative Court, the Chairman of the Voivodsky Administrative court, as well as other persons leading and supervising administrative activities, have the right to inspect the activities of the relevant Voivodsky Administrative court, attend a court session held in closed mode, may require explanations, as well as the elimination of violations committed.

The President of the Republic of Poland, by his order, determines the positions and qualifications of judicial officials, as well as the detailed grounds for presenting remuneration and a summary table of the basic salary, the amount of additional payments for the position held.

Thus, Poland has a developed system of administrative proceedings. Some aspects of its functioning may also be of interest to the Republic of Kazakhstan.

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THE APPLICATION OF THE GENERAL CRIMINAL LAW STANDARDS TO THE SYSTEM OF THE JUDGES' DISCIPLINARY RESPONSIBILITY – THE PROPOSAL OF THE ELI STANDARDS FOR JUDICIAL INDEPENDENCE

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Abstract: This article reviews the possibility of applying the rules of criminal proceedings to judiciary disciplinary proceedings. Especially the question of need of nullum crimen sine lege and non-retroactivity principles in the disciplinary procedures is being answered. According this principles applicability, the distinction between the minor and fundamental offenses is outlined. The problem is envisaged in the context of constitutional and judicial crisis taking place in the European countries. As the point of reference serve the draft European Law Institute (ELI) Standards for Judicial Independence.

Keywords: judicial independence, disciplinary proceedings, criminal law standards, European Law Institute, Mount Scopus International Standards of Judicial Independence

1. The proposal on the ELI Standards for the Judicial Independence and its concept of the disciplinary procedure

In the recent time a problem of the judicial independence and preserving its culture has emerged to the central political challenge. The independent position of judiciary, being a