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BASIC PRINCIPLES OF ADMINISTRATIVE AND PROCEDURAL PROCEEDINGS

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Abstract: This article focuses on the study of the principles established in the Administrative procedure process code of the Republic of Kazakhstan. This code is a new document for our country. Scholars in the field of administrative law have different views on administrative procedural principles. All of them are based on the basic principles of the organization and functioning of Executive authorities in the administrative process. Principles as the most important social phenomenon for the state should reflect the basic, objectively necessary and stable laws and distinguish them from other types of legal acts. Thus, the administrative principles of judicial proceedings are the basis of the entire administrative judicial system and its individual institutions. Non-compliance or improper compliance with the principles in administrative court proceedings is the basis for recognizing decisions, actions and judicial acts as illegal. Non-compliance with or improper implementation of these principles in administrative proceedings and administrative proceedings is the basis for recognizing decisions, actions and judicial acts as illegal.

It also considers the need to comply with the principles of administrative proceedings, as well as the possible consequences of their non-compliance and neglect. In the described article, I reveal the need for responsible and strict compliance with all the principles of administrative proceedings, at all stages of the trial. Moreover, the article reveals not only the procedural duty of courts to comply with the principles, but also the parties to administrative proceedings, and also addresses the issues of possible abuse of rights, under the imitation of the exercise of their rights, in which the principles of legal proceedings are enshrined.

Keywords: principles of law, administrative procedural and procedural proceedings, principles of administrative proceedings, combination of collegial and individual consideration of cases, transparency, competition, dispositivity, efficiency.

The word «principle» (Latin: principium – beginning, foundation, first cause, origin[1]) has many meanings. The explanatory dictionary of V. I. Dahl gives the following definition of the principle: «Scientific or moral foundations, rules, foundations that do not deviate from»[2]. A slightly different interpretation of the principle is contained in the dictionary of the Russian language by S. I. Ozhegov: «The basic starting position of theory, education, worldview and theoretical programs; beliefs, perspectives, the main features of a device»[3]. Based on the given definitions of the term «principle», we can say with confidence that in whatever sphere this term is used, it will certainly mean some basic, fundamental concept (idea) that will permeate this sphere.

The principles of law are the basis of any branch of law and the legal system as a whole. Even the Romans knew the Maxim: «Principium estpotissima pars cuiuque rei» [4].

Problems about the role of the principle of law in the scientific literature are interpreted differently depending on the type of legal thinking. In correlation with legal thinking, theoretical and practical issues of legislation and law enforcement, including the legal essence of the principles of law, will be predetermined.

Therefore, S. S. Alekseev interprets the principle of law as the first normative and dominant principle of law, which determines its content, its foundations and affects the laws of public life in it. The principles permeate the law, revealing their content in the form of the first cross-cutting ideas and their main principles, regulations and guidelines [5, p. 102].

From this we derive instructions on the principles of administrative procedure - their direct effect, specific rules. However, in any case, they are not issued in the form of declarations,

but rather serve as their «supporting structure», with the help of which the entire system of administrative procedural rules is built and formed. The procedural principles are intended to serve as a guide for law enforcement officials, as well as (very importantly) for law enforcement officials.

The second feature is versatility. Thus, the principles of the administrative process of law allow us to understand and realize the need to improve the law on administration and procedures. They should be taken into account when developing new, more progressive rules for administrative proceedings.

The third feature is the hierarchy of the principle. There are at least three «levels» in the field of administrative principles. First, General legal principles and General principles of administrative law. Second, the principles of the administrative process. Finally, the actual principles of administrative procedures. Each subsequent layer «follows» the previous layer, but at the same time introduces a new one that reflects the details of the «narrowing» regulatory area [6, p. 126].

Consequently, the principles of administrative process Express the legal views of modern society and the state, as well as the goals, methods and means of the activities of the bodies for authorizing and courts for reviewing and resolving administrative cases.

The principles of the management process can be divided into two groups: 1) General legal principles, including constitutional principles (legality, national language, democracy, etc.); 2) Industry-specific principles, which are ideas of regulation and guidance enshrined in the rules of law relating to governance and procedures.

Because the Constitution RK is a legal base for the entire legal system, it is necessary to allocate the constitutional principles of the administrative process that directly enshrined in the Constitution, and, therefore, affect the whole system of administrative-procedural norms. To the constitutional principles of administrative-jurisdictional process apply principles of justice only by courts (paragraph 1, article 75 of the Constitution), the independence of judges and their subordination to the law (paragraph 1 of article 77 of the Constitution), equality of the parties (paragraph 1 of article 14 of the Constitution); administrative and regulatory procedures are characterized by the principles of legality and the principle of equality of all persons before the law.

The administrative procedure and procedure code of the Republic of Kazakhstan (hereinafter referred to as the APPC) includes thirteen principles of administrative procedures and administrative proceedings (articles 5-17). According to their direct purpose, they can be divided into General, administrative and procedural principles.

The principle of legality, as one of the main General legal principles, is characteristic of the work of any subject of public relations. Legality is the basis of normal life in a civilized society and guarantees the interests of citizens and equality before the law [7, p. 167]. Without its observance, it is impossible to build a true legal state based on the will of a truly functioning civil society. Therefore, the provisions on legality are declared at the highest level - in the Basic law. According to article 34 of the Constitution of Kazakhstan, «everyone is obliged to observe the Constitution and legislation of the Republic of Kazakhstan...»[8].

In studies of the General theory of law, the principle of legality is understood as the principle of law, which is a strict and unwavering adherence to the democratic system of society, all subjects of legal communication and by-laws. Subjectivity, consisting of full and practical implementation of requirements, proper, rational and effective application of rights. Excludes minor arbitrariness in the activities of state bodies and authorities [5, p. 104].

In our view, the universal nature of this principle makes it possible to extend this action to all stages of the trial and to all participants in the trial. If the claims of the person participating in the court or court proceedings are in accordance with the law, a fair trial may be conducted on the basis of the provisions of the law. Thus, this indicates the existence of a specific situation, and not that it should be unacceptable and should be confirmed in accordance with regulations (article 130 of the APPC RK).

In the scientific literature, there are different opinions about the content of the principle of legality in legal proceedings. Some believe that the application of this principle lies in the independence of judges and their subordination to the law [9]. Other - the content and limitations of the principle of legality in a broader sense, the correct application of the law by the court in the consideration and resolution of judicial disputes, as well as the rules of substantive and procedural law in all subjects of procedural issues. It was suggested that the signs should be confirmed by strict and precise compliance [10]. According to the latter position, the principle of legality applies not only to the court as an accreditation body for dispute resolution, but also autonomously to all participants in the judicial process and their actions.

Principle of justice. This principle freely applies to the rights and freedoms of participants in administrative legal relations involving the application of fair punishment and other administrative and legal measures of coercion that require appropriate application, depending on the circumstances of the dispute. The principle of fairness seems to determine the importance of ultra-legal administrative procedures performed by administrative bodies and their personnel.

Justice is usually expressed through the opposite principle of equality [11, p. 217].

The principles of protection of rights, freedoms and legitimate interests are set out in article 13 (2) of the Constitution of the Republic of Kazakhstan, article 8 of the universal Declaration of human rights, article 14 (1) and article 6 (1) of the International Covenant on civil and political rights. Accordingly, they guarantee judicial protection and the protection of human rights and fundamental freedoms. When declaring the state's obligation to ensure that it exercises its right to judicial protection, judicial protection must be fair, competent, complete and effective.

It is advisable to distinguish two aspects of the implementation of the principle of integrity of judicial protection in administrative proceedings. 1) judicial protection must be provided for all types of claims, including violations of the authorities and their rights by the authorities. 2) theright to judicial protection is guaranteed by the state through an accessible judicial body and national compensation in the form of national compensation for damage caused by illegal actions (inaction) of the state. The judicial power must restore the violated rights and legitimate interests of citizens and businesses, compensate for the damage caused, and protect their rights and freedoms from unjustified restrictions or violations.

Principle of proportionality. The current principle of proportionality can be considered as one of the most important principles for the application of administrative procedures. It combines the principles of legality and convenience (rationality). In the case of a «good intermediary» of law and principles of law, proportionality is a universal balance of all basic legal phenomena, including the principles of interrelated procedures.

The application of this principle consists of three stages. The first step is to determine the legitimacy of the selected tool. The second step is to confirm the suitability of these tools for achieving the goal. The third is the (narrowly proportional) proportion of actions performed in accordance with the goals achieved, the need for which is determined. Here, the administration should make sure that the actions taken are not too «harsh» or too «soft». That is, on the one hand, it does not impose unreasonable restrictions on the rights of citizens, on the other - it allows you to achieve the desired results. The principle of proportionality applies only when the law allows for administrative discretion [6, p. 133].

The principle of limits on the exercise of administrative discretion. According to article 11 of the APPC RK, state bodies and authorities are obliged to exercise administrative discretion within the limits established by the legislation of the Republic of Kazakhstan. According to article 4 APPC RK administrative discretion - one of the possible solutions based on the powers of government, evaluate their legality, within the purposes and restrictions established by the legislation of the Republic of Kazakhstan.

Its importance is maximized when there is no necessary regulatory framework for resolving administrative disputes, when there are mandatory requirements for such regulation. In such cases, administrative freedom is an effective means of addressing certain regulatory

shortcomings and contributes to a rapid, professional and appropriate response to changes in public life.

In this case, administrative discretion functions as an element of objective necessity. This is an important specific technical and legal tool for achieving the goal of legal impact.

At present, one of the things that requires special attention to the study of administrative matters is not finding out the knowledge of ingenious inventions about the existence of legal grounds is its own. The main element that is important for the possible use of discretionary powers to allow some agencies the right to instructions under the laws of opportunity and in some cases the addition of other contradictions.

The principle of priority of rights. According to article 12 APPC RK all doubts, contradictions and ambiguities in the legislation of the Republic of Kazakhstan on administrative procedures shall be interpreted in favor of the participants of administrative procedures.

The principle of the rule of law is one of the components of the system that guarantees the right of participants to protection. The presence of irreparable doubts should prevent the court from taking action.

The implementation of this principle is a prerequisite for bringing the rules of administrative proceedings closer to the internationally recognized principles and norms of international law, improving the quality of judicial acts adopted, as well as reducing the number of appeals, disciplinary measures and Supervisory complaints. This helps to respect the law and build confidence in justice.

The principle of protection of the right to trust. Legal expectation is a phenomenon that has long been known in German public law [12]. It was developed in the 19th century. In the practice of the Supreme administrative court of Prussia [13]. The principle prohibiting the violation of legitimate expectations is that the person whose rights are affected by the decision should not suffer from sudden changes in the views and policies of state institutions, and the rights of such persons are compensated. The doctrine of legitimate expectations must work in situations where existing legal norms, previous administrative practices, or other circumstances (such as Agency promises) allow a legitimate person to trust certain legal consequences [14]. These requirements are part of the Federal law of the Federal Republic of Germany of 1976, part 2 of part 2 (Cancellation of illegal acts) and part 2 of part 49 (Cancellation of legal acts). It seems to be reflected in the most concentrated way. However, the effect of this principle is quite broad. The Federal Republic of Germany believes that people should be given the opportunity to present their position at hearings if state authorities change their previous practice [13]. These decisions also have a written justification obligation [15]. Unfortunately, kazakh legislation does not establish a general provision for the protection of legitimate expectations or a specific provision for the cancellation of adopted administrative acts.

The principle of prohibiting abuse of official requirements. The principle of prohibiting abuse of official requirements (prohibition of superformalism). This rule prohibits civil servants from requiring citizens and legal entities to comply with legal requirements, including the rules of internal organizations, if this can be done without taking into account administrative bodies. You can't just refuse permission to meet (unless, of course, the law explicitly requires it). This principle has many purely procedural aspects. Therefore, at the beginning of the procedure, you can not refuse to accept a document only if it is associated with an obvious and correctable error in the document. When documents are issued to unauthorized persons, the latter must be sent to the competent authority separately (not returned to the applicant). A refusal to accept a document will not be accepted for consideration just because it is easy to correct errors in it. Finally, the main conclusion to be drawn from this principle is that refusal of the application (voluntary acceptance of other shortcomings) is not allowed only in the context of a formal violation of administrative procedures.

The principle of presumption of reliability. According to article 15 APPC RK, when implementing administrative procedures, it considers materials, objects, documents and information provided by participants in administrative procedures to be reliable until the

authorities and authorities establish counteraction.

A literal interpretation of the term allows us to conclude that we have received official information from the participants in the process, and its use guarantees a sense of honesty in our actions. In other words, we can talk about assessing the reliability of such information - citizens and other persons have the right to trust official information if it is not proven. In general, authentication is the responsibility of participants to ensure that materials, objects, documents, and information are accurate and that users are properly authenticated.

Participants in the process have the following rights when using materials, objects, documents and information: a) expectations from other persons in relation to lawsuits and decisions based on the assessment of the reliability of this information; b) request compensation for damages resulting from the use of incorrect information.

Active role of the court. It should be noted that in General, the equality of the parties in any judicial process can not be considered as a conflict between one party and the other and the absolute passivity of the court. The process involves a certain activity of the court [16, p.10]. Thus, on the basis of paragraph 2 of article 16 APPC RK, the court is not limited to explanations, statements and motions of the participants in the administrative process provided in their deliberations, evidence of administrative cases and other materials, but all the situations de facto important for the proper settlement of administrative cases, studying comprehensively, fully and objectively. In accordance with paragraph 2 of article 33APPC RK fixed rule according to trial to be determined by the assignment rule checks only at the request of the persons participating in business, or at the initiative of the person.

In accordance with article 112 and 113 APPC RK, the court recognized the compulsory attendance of participants in the administrative process and has the right to summon them to court under threat of penalty if they fail to appear.

In Germany, there is a similar principle of administrative procedure, called the principle of inquiry, established by article 86 of the administrative courts Act. In accordance with this principle, the court is obliged not only to explain the rights and obligations of citizens, but also to advise them, especially on the part of ignorant citizens, in the event of a formal error in court [17, p.316].

In a French administrative court, a judge formally orders that information be passed to the other party in order to take steps for investigation or special verification, such as an investigation, additional investigation, or document request. The Council of state of France, the highest body of administrative proceedings, considers administrative cases both in this case and in cases of appeal and disciplinary punishment, and always provides the administration with evidence in the case, as well as the reason for the decision being appealed [18, p.447-448].

Consequently, the principle of the active role of the court in administrative proceedings means that it not only helps the applicant to assist the court in conducting a particular procedural proceeding, but also serves as a judicial guide in this process.

The principle of reasonable time for administrative proceedings. According to article 17 of the APPC RK, administrative procedures, including the creation of certain procedural procedures, will be completed within a reasonable time.

When determining a reasonable time, such circumstances reflect the legal and actual complexity of the administrative case, the degree of use of procedural law and the fulfillment of the procedural obligation in the administrative process. The measures taken, the sufficiency of the procedure and the effectiveness of the court's actions are taken to speed up the consideration of administrative cases.

The importance of this principle, in combination with or in conjunction with other principles of administrative procedure, ensures that administrative disputes are resolved accurately and in a timely manner and that judicial tasks are effectively performed within a reasonable time frame. Guarantee and minimize the cost of funds and efforts of both the court and the parties to the dispute. This situation requires that the parties review the case as soon as possible, regardless of the court. In our opinion, it is unacceptable to postpone trials for months

or years, including preliminary ones, in order to create a new opposition to the opposing parties.

Currently, these conditions apply to the court when resolving cases arising from administrative and other public legal relations (citizens or legal entities or individual entrepreneurs). The difference in the terms of consideration of court cases of the same category is primarily due to the complexity of their resolution. As already noted, in cases of challenging normative legal acts, non-normative legal acts, actions (omissions) of authorities with the participation of legal entities, as a rule, it is necessary to collect and evaluate more evidence and establish more legal facts than in cases involving citizens.

To implement the principles of procedural economy in administrative procedures, it is recommended to establish the following rules. 1) reasonable time should be understood the period from the date of receipt of the application before the court decision, given the legal and factual complexity of the claim process, conduct of participants, and the possible validity of the lawsuit, an objective consideration of the case, making reasonable and impartial decisions. 2) the administrative dispute must be considered within a reasonable time, but not more than 3 months. The proposed rule provides the court, which has assessed the degree of complexity of administrative proceedings, the opportunity to make decisions on it as soon as possible, without exceeding the established limits, with the conscientious performance of their obligations by the participants in the process. Do. At the same time, a violation of the principles of procedural economy is when the court had the opportunity to consider a simple case in a short time, but considered it wherever possible.

Conclusions: Relevance of the study of administrative procedures and principles, identification of gaps in the regulation of relations between administrative bodies and individuals, legal integration at the Federal and regional levels of uniform procedural rules for the implementation of their functions by administrative bodies. Because of the lack and principle of interaction with the public. This situation is the result of the inadequate legal safeguards to ensure the realization of constitutional rights of citizens and organizations: priorities of the rights and freedoms of man and constitutional obligations of the state to respect and protect these rights (paragraph 2 of article 13 of the Constitution RK). The existing regulation of these important issues by acts of varying legal force is fragmentary and incomplete, and is the result of each Executive body setting its own rules of procedure. They often conflict with each other, which makes a person consciously vulnerable. The inequality of the parties to administrative legal relations is due to the nature of these relations, since these relations are characterized by the bad faith of one of the subjects (administrative body). The resulting imbalance in the balance of rights and obligations is a necessary element of administrative legal relations, the elimination of which leads to the creation of a management and control tool, the implementation of its main tasks and functions. Nevertheless, the inequality of the subject should not be expressed by the arbitrariness of the authorities. And the main task of the state is to provide an individual with appropriate legal remedies against abuse of power by the authorities.

At present, the level of legal protection of citizens in relation to state bodies requires the development of effective mechanisms for the effective functioning of state bodies and ensuring legal protection of citizens in the exercise of their rights. It is low due to the partial legal validity of certain administrative actions.

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Түйін: Бұл мақала Қазақстан Республикасының Әкімшілік іс жүргізу кодексінде белгіленген принциптер мәселелерін зерттеуге мамандандырылған. Бұл кодекс біздің еліміз үшін жаңа құжат. Әкімшілік құқық саласындағы ғалымдардың әкімшілік іс жүргізу қағидаларына әртүрлі көзқарастары бар.

Олардың барлығы әкімшілік процестегі атқарушы биліктің ұйымдастырылуымен қызметтуінің негізгі принциптеріне негізделген. Қағидалар мемлекет үшін ең маңызды әлеуметтік құбылыс ретінде негізгі, объективті қажет және тұрақты заңдарды бейнелеп, оларды басқа құқықтық актілер түрлеріне нажыратуы керек. Сонымен, сот ісін жүргізудің әкімшілік принциптері бүкіл әкімшілік сот жүйесінің, оның жекелеген институттарының негізі болып табылады. Әкімшілік сот ісін жүргізуде қағидалардың сақталмауы немесе дұрыс орындалмауы шешімдерді, іс-әрекеттерді және сот актілерін заңсыз деп тану үшін негіз болып табылады. Осы қағидалардың орындалмауы немесе тиісінше орындалмауы әкімшілік ісжүргізу және әкімшілік ісжүргізу кезінде шешімдерді, іс-әрекеттерді және сот актілерін заңсыз деп тану үшін негіз болып табылады.

Сондай-ақ, әкімшілік ісжүргізу қағидаларын сақтау қажеттілігі қарастырылады, сондай-ақ оларды сақтамау мен ескермеудің ықтимал салдары ашылады. Сипатталған мақалада мен сот ісінің барлық кезеңдерінде әкімшілік іс жүргізудің барлық принциптерін жауапкершілік пен және қатаң сақтау қажеттілігін ашамын. Сонымен қатар, бұл бапта соттардың ғана емес, сонымен қатар әкімшілік ісжүргізу тараптарыныңда процессуалдық міндеттемелері ашылған, сонымен қатар олардың сот ісін жүргізу принциптері бекітілген құқықтарын жүзеге асырудың имитациясы кезінде құқықтарды теріс пайдалану мәселелері қарастырылған.

Кілт сөздер: құқық қағидалары, әкімшілік іс жүргізу және процессуалдық іс жүргізу, әкімшілік іс жүргізу қағидалары, істерді алқалық және жеке қараудың үйлесімділігі, ашықтық, бәсекелестік, дискреттілік, тиімділік.

Аннотация: Данная статья специализируется на изучении вопросов принципов, установленных в Административном процедурно-процессуальном кодексе Республики Казахстан. Данный кодекс - новый документ для нашей страны. Ученые в области административного права имеют разные взгляды на административные процессуальные принципы. Все они основаны на

основных принципах организации и функционирования органов исполнительной власти в административном процессе. Принципы как важнейшее социальное явление для государства должны отражать основные, объективно необходимые и стабильные законы и отличать их от других типов правовых актов. Таким образом, административные принципы судопроизводства являются основой всей административной судебной системы, ее отдельных институтов. Несоблюдение или ненадлежащее соблюдение принципов в административных судебных процессах является основанием для признания решений, действий и судебных актов незаконными. Несоблюдение или ненадлежащее исполнение этих принципов в административном производстве и административном производстве является основанием для признания решений, действий и судебных актов незаконными.

Также рассматривается необходимость соблюдения принципов административного судопроизводства, а также раскрываются возможные последствия их неисполнения и пренебрежения. В описанной статье, мной раскрывается необходимость ответственного и неукоснительного соблюдения всех принципов административного судопроизводства, на всех стадиях судебного разбирательства. Более того, в статье раскрывается не только процессуальная обязанность судов по соблюдению принципов, но и сторон административного судопроизводства, а также затрагиваются вопросы возможного злоупотребления правами, под имитацией реализации своих прав, в которых закреплены принципы судопроизводства.

Ключевые слова: принципы права, административно-процессуальное и процессуальное производство, принципы административного судопроизводства, сочетание коллегиального и индивидуального рассмотрения дел, прозрачность, конкуренция, диспозитивность, эффективность.