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Research Article

ADMINISTRATIVE LEGAL PROCEEDINGS AS AN ELEMENT OF THE LEGAL STATE: EXPERIENCE OF FOREIGN COUNTRIES

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ABSTRACT

The article analyzes the international experience in the development of administrative proceedings as a separate type of judicial process. The system of administrative legal proceedings in France, Germany, Great Britain is being investigated. The author compares the Uzbek model of administrative proceedings with foreign models, points out the advantages and disadvantages.

KEYWORDS

Administrative Proceedings, Constitutional State, quasi-Judicial, General Judicial, Administrative Courts, Administrative-judicial, Tribunal, Rule of Law, Code of Administrative Proceedings, Supreme Court.

INTRODUCTION

Different legal systems of states have their own specific ways to protect the rights of individuals and legal entities from illegal decisions, actions (inaction) of public authorities and officials, but

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one of the most important ways of protection is the institution of administrative proceedings. Recognized by world practice, a special procedure for considering administrative cases with the adoption of the Code of the Republic of Uzbekistan on administrative proceedings [1] has become an integral part of the general system of judicial protection of the rights and legitimate interests of individuals and legal entities in the Republic of Uzbekistan.

In the science of administrative law, it is customary to distinguish four the main models of the organization of administrative proceedings: administrative, general judicial, quasi-judicial and administrative-judicial [2]. Describing each of the models, it can be noted that one of the first states in which administrative justice began to develop, and at the same time an example of an administrative model, is France, where administrative justice bodies are part of the executive branch of government and are not controlled by courts of general jurisdiction.

THE MAIN FINDINS AND RESULTS

Thus, the French model is based on the interpretation of the principle of separation of powers, according to which the legislative, executive and judicial powers should not interfere in each other's affairs. The resolution of disputes about administrative law is accompanied by an assessment of the actions of administrative bodies, which are special subjects of law. Hence, the verification of the actions of these subjects and their legal assessment should be removed from the competence of general courts and transferred to the system of special institutions formed within the framework of the executive branch itself - administrative tribunals, acting as courts of public law. They are divided into two types: a) administrative courts (administrative tribunals) and b) administrative courts (tribunals) of special jurisdiction [3]. They also include financial courts (such as the Court of Accounts, Regional Courts of Accounts, the Court of Budgetary and Financial Discipline) and others, such as the National Court of Asylum, the Higher Council of Education, Commissions for the Compensation of Repatriated Persons , departmental commissions for the provision of social assistance, departmental commissions for persons with disabilities.

N. Bonnal notes that the principle of collegiality is used in the work of administrative courts.

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Decisions are usually made by a panel of three judges, and significant cases are heard in a plenary session of the entire court [4].

According to the French Department of Legal Information, as of July 2022, there are 42 administrative courts in France, 31 on the French mainland (including 5 in Ile-de-France) and 11 abroad [5].

The Administrative Courts of Appeal, composed of chambers of various specializations, act as administrative courts of second instance.

The Code of Administrative Justice of France (hereinafter referred to as the CAJ of France) gives administrative courts of appeal the right to consider appeals against judicial acts issued by administrative courts of first instance, taking into account the competence of the Council of State as an appellate instance and the competence determined by the CAJ of France [6].

There are currently nine administrative courts of appeal in France. The heads of the administrative courts and administrative courts of appeal under the CAJ of France may, if the parties so agree, arrange for the conciliation of the parties and appoint one or more persons to carry it out. The Code establishes that, in addition to judicial powers, administrative courts and administrative courts of appeal exercise advisory functions. The Council of State is the highest administrative judicial institution in France. The Council of State is empowered to consider cases as a court of last instance on cassation complaints against decisions taken by various administrative judicial bodies, as well as to consider cases as a court of first instance or appeal [6].

In turn, the general judicial model is characterized by the absence of specialized bodies of administrative justice, and the consideration of complaints from individuals against the actions of executive authorities takes place by courts of general jurisdiction. This model functioned in Uzbekistan and other countries of Central Asia until they had administrative courts [7].

With the quasi-judicial model functioning in the UK, there is a system of special tribunals for the consideration of administrative and judicial disputes, controlled by courts of general jurisdiction.

The main act regulating the considered public relations in the UK is the Act of 2007 “On

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Tribunals, Courts and Law Enforcement" [8]. Currently, the UK has a system of tribunals, which are quasi-judicial bodies and occupy an intermediate position between the executive and the judiciary. These bodies are designed to resolve a wide range of disputes, mainly between the individual and the state.

The main elements of this system are the first-level tribunals and the superior tribunals, which consist of several chambers. The tribunals may review their decisions not only on applications from persons, but also on their own initiative. Also, the decisions of the tribunals can be appealed to the court. The Supreme Tribunal is vested with the right to set precedents that are binding on first-tier tribunals.

In addition to these bodies, the administrative court system of Great Britain includes the Administrative Court, which is a specialized court in the royal bench of the Supreme Court, and has the competence, in particular, to review decisions of courts, tribunals, other bodies, etc. [9]. The Court of Appeal, the Supreme Court, the County Courts, the Crown Court and the Magistrates' Courts also have certain competence in the field of administrative proceedings.

The presence of such bodies in Great Britain speaks, in our opinion, of the increasing importance of administrative proceedings, especially in a state with Anglo-Saxon traditions in the legal system.

The administrative-judicial model is presented in Germany in the form of a system of specialized administrative courts, which are part of the country's unified judicial system and have all the features of autonomous justice bodies.

The historical feature of the German administrative justice is that initially the administrative courts were not separated from the executive branch, and only after the constitutional principle of the separation of powers was consolidated did they become truly independent judicial bodies.

Currently, the German Constitution directly provides for both the separation of powers and the possibility of going to court if the rights of a person are violated by state power (Article 19 of the Basic Law) [10]. This guarantee is inalienable even in view of the existence of a preliminary appeal against the action, act or inaction of a subject of public authority within the framework of internal departmental control [11].

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As O.V. Krivelskaya notes [12], administrative justice in Germany:

Firstly, it can be considered as the activity of administrative courts of general and special jurisdiction, functioning within the entire judicial system and administering justice, namely: protection of the subjective rights and legitimate interests of individuals from illegal actions of public authorities (executive authorities and local self-government) and their officials.

Secondly, it can be understood as a special procedure for resolving public law disputes of an unconstitutional nature between individuals and public administration bodies, which is implemented by administrative courts of general and special jurisdiction in a special procedural form, which, in essence, is administrative legal proceedings.

Thirdly, it can be defined as an institution for protecting the rights of individuals from illegal actions of public authorities and their officials, including a set of legal means, principles and mechanisms.

The German administrative justice system guarantees the provision of natural and legal persons with effective legal protection against acts, decisions, administrative orders and public law agreements of public authorities that do not comply with the law, as well as their actions against specific persons.

The system of administrative courts in Germany consists of three links and includes:

– 51 administrative courts of the federal lands;

– 15 Supreme Administrative Courts of the federal lands;

– Federal Administrative Court [13].

The formation of the first two links - the administrative court and the highest administrative court of the federal land, is under the jurisdiction of the respective federal lands. These courts act as the first instance in resolving disputes within the framework of administrative justice. In addition, Higher Administrative Courts have been established in all federal states. The Higher Administrative Courts decide on appeals against judgments and decisions of the administrative courts. Features of administrative justice in a particular federal state are regulated by a separate law. The head of the system of

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administrative courts is the Federal Administrative Court.

According to R. Leitoff [14], administrative courts in Germany are inherently not just administrative tribunals (quasi-judicial bodies), as it is implemented in other foreign countries, but rather independent bodies administering justice, which include at least, one professional judge and, in some cases, several non-professional judges.

The main normative legal act regulating the procedure for the creation, organization and functioning of administrative courts is the Code of Administrative Court Procedure of March 19, 1991 [15].

As an essential guarantee, § 1 of the German Code of Administrative Procedure enshrines the principle that administrative courts are independent of both the administrative authorities and other branches of the judiciary.

In accordance with paragraph 45 of the German Code of Administrative Procedure, the administrative courts of the Länder resolve as first instance all disputes that they are entitled to consider in accordance with the administrative legal procedure.

Paragraph 40 of this Code reads: "All public law disputes that do not relate to the field of constitutional law are considered in the courts of administrative jurisdiction, unless federal law refers the resolution of these disputes to the competence of another court".

After analyzing this norm, we can conclude that this norm is a reservation and the rejection of the principle of enumeration arising from it ensures the independence of the protection of the rights of a citizen from the type of state action. It does not matter whether a citizen opposes an administrative act (for example, an order to demolish a house built without permission), against an actual action (for example, high noise levels as a result of the activities of state institutions) or against statutes (for example, orders of local governments on collection of payments). He can apply to the courts of administrative jurisdiction to resolve any public law disputes.

In accordance with paragraph 46 of the above code, the Higher Administrative Courts of the Lands consider, in the order of appeal proceedings (review cases, both in relation to factual circumstances and to questions of law),

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complaints against judicial acts adopted by administrative courts of first instance [15].

Along with this, the Higher Administrative Courts of the Länder also act as administrative courts of first instance in relation to certain categories of disputes, for example, with certain aspects of the use of atomic energy and nuclear fuel, the construction, operation and reconstruction of certain types of power plants, etc.

The Federal Administrative Court is the cassation instance, considering complaints against judicial acts of administrative courts of first and second instances in accordance with paragraph 49 of the Code of Administrative Procedure [15].

As M.S. Sinyavskaya notes, the competence to consider cases in the first instance of the two highest levels of the German administrative justice system (the Higher Administrative Courts of the Länder and the Federal Administrative Court) is determined according to the subject-subject principle. Cases not directly related to their competence are subject to consideration by other administrative courts of first instance [16].

A key feature of administrative proceedings in comparison with the civil process in Germany is the leading role of the court. If in civil proceedings the collection and presentation of evidence is the business of the parties, and the court is limited to consideration of the evidence presented by them, then in the administrative process the court takes the initiative to collect evidence, having the opportunity to request all the documents necessary for the correct resolution of the case [16].

The similarity of the mechanisms of administrative proceedings in Germany and France lies, first of all, in the specialization in the field of public administration and the functional purpose of the judiciary. This helps them to penetrate deeper into the essence of the cases being resolved, to make more qualified decisions on them [17].

In the Republic of Uzbekistan, administrative legal proceedings were formed on the basis of generally recognized norms of international law within the framework of judicial and legal reform, the purpose of which is to strengthen the status of the judiciary as the most important guarantee of the effective protection of the rights, freedoms and legitimate interests of citizens, ensuring the true independence of the courts, strengthening

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their role in the formation of a democratic state and a strong civil society.

The Constitution of the Republic of Uzbekistan formed the legal basis for the formation and development of administrative justice: everyone has the right to appeal to the court against illegal actions of state bodies, officials, public associations (Article 46) [18].

Administrative legal proceedings are one of the forms of implementation of judicial power, among which the Constitution of the Republic of Uzbekistan also names criminal, civil, economic and constitutional legal proceedings. All these proceedings received independent legal regulation in special laws and codified acts: criminal - in the Code of Criminal Procedure, civil - in the Code of Civil Procedure, economic - in the Economic Procedure Code, constitutional - in the Constitutional Law on the Constitutional Court of the Republic of Uzbekistan and a number of other legislative constitutional legal acts.

With the adoption of the Code of the Republic of Uzbekistan on administrative proceedings [1], a complete system of administrative and procedural regulation of relations related to challenging decisions, actions (inaction) of public authorities and their officials appeared in court. The system of judicial protection against illegal actions or decisions that violate the rights and freedoms of citizens, which has been in force since 1991, and the partial regulation in the Code of Civil Procedure and the Code of Administrative Liability of the procedures for considering relevant cases, obviously, did not constitute an impeccable system that ensures effective protection of the rights, freedoms, legitimate interests of citizens and organizations. Mainly, this system could not be considered appropriate from the point of view of the unity of the subject, the logic of the interaction of substantive and procedural legal regulation.

The adoption of the Code of the Republic of Uzbekistan on Administrative Procedure is a very significant and important event in the development of the country's judicial system, in improving the legal system, bringing the structure of justice into proper order, corresponding to the standards of ensuring the rights, freedoms, legitimate interests of individuals and organizations.

The administrative court system in Uzbekistan consists of:

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– the Supreme Court, which is the highest body of judicial power in the field of administrative proceedings;

– the Administrative court of the Republic of Karakalpakstan, administrative courts of regions and the city of Tashkent;

– inter-district administrative courts.

In accordance with Article 18 of the Law of the Republic of Uzbekistan "On Courts" [19], the Supreme Court of the Republic of Uzbekistan has the right to oversee the judicial activities of lower courts.

Supreme Court of the Republic of Uzbekistan:

– considers cases within its competence as a court of first, appellate and cassation instances, including repeatedly in a cassation court, as well as on newly discovered circumstances;

– considers topical issues of judicial practice at the Plenum of the Supreme Court of the Republic of Uzbekistan and provides clarifications on the application of legislation;

– studies the organizational activities of the Administrative Court of the Republic of Karakalpakstan, administrative courts of regions and the city of Tashkent, inter-district courts;

– exercises control over the implementation by the courts of the explanations of the Plenum of the Supreme Court of the Republic of Uzbekistan;

– carries out a systematic analysis of judicial practice and judicial statistics;

– organizes work to improve the skills of judges and employees of the court apparatus.

The Judicial Collegium for Administrative Cases operates within the Supreme Court. The Chairman of the Judicial Collegium for Administrative Cases is the First Deputy Chairman of the Supreme Court of the Republic of Uzbekistan [19].

The next link in the system of administrative legal proceedings is the Administrative Court of the Republic of Karakalpakstan, the administrative court of the region, the city of Tashkent consists of the chairman, deputy chairman of the court, judges and act as part of presidiums and judicial collegiums.

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Administrative court of the Republic of Karakalpakstan, administrative court of the region and Tashkent city:

– considers cases within its powers as a court of first and appellate instances;

– supervises the judicial activities of inter-district administrative courts;

– generalizes judicial practice and judicial statistics, carries out their systematic analysis;

– prepares reviews of judicial practice;

– organizes work to improve the skills of judges and employees of the court apparatus [19].

The last link in the administrative justice system is the inter-district administrative courts, which consist of a chairman and judges. In the inter-district administrative court, where there are more than six judges, the position of deputy chairman of the court is being introduced.

Deduction: after analyzing the above models of the organization of administrative proceedings, we came to the conclusion that the model of administrative proceedings functioning in Uzbekistan is similar to the German model, which provides for a separate system of administrative courts. We believe that the resolution of a dispute about the right should be carried out within the framework of the judiciary, and not the executive, as in France and Great Britain.

Of course, one cannot exclude the possibility of considering a dispute in a body that belongs to the executive branch, for example, dispute resolution commissions in various state bodies. However, the main body intended to resolve disputes should be the court.

CONCLUSION

In general, all models of administrative proceedings have much in common with each other, they are united by one common goal - to effectively control the legality of acts and actions of public authorities in relation to persons of private law. The presence of various bodies protecting the rights and freedoms of citizens creates a mechanism without which the functioning of a modern legal state is impossible.

Different countries have their own specific ways to protect the subjective rights of citizens, but one of the most important is the institution of administrative proceedings, which serves as an

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effective means of monitoring the activities of executive authorities.

Administrative legal proceedings are an integral feature of a modern legal state; and its creation and development is the task of every democratic state.

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