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Place of administrative legal proceedings in the judicial system of the Republic of Tajikistan

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Abstract

In this article, the concept of the judicial system was given and the place of administrative legal proceedings in the judicial system of the Republic of Tajikistan was determined. The legal framework for administrative proceedings has been clarified. A small comparative legal analysis with administrative legal proceedings of the Russian Federation was carried out.

This article examines the problems of introducing the institution of administrative proceedings in the judicial system of the Republic of Tajikistan as an independent part of the judiciary along with courts of general jurisdiction, Constitutional and Economic courts.

This work also established all the necessary regulatory legal acts of the Republic of Tajikistan regulating

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administrative proceedings, which are scattered in various codes.

The comparative legal analysis discusses the historical attempts in the Soviet period to structure the model of administrative justice. The similarities and differences in legal regulation between the administrative proceedings of the Russian Federation and the Republic of Tajikistan were also identified based on a comparative legal analysis.

Within the framework of this article, to further improve the judicial system in the Republic of Tajikistan, it is proposed to develop a scientifically grounded Administrative concept of legal proceedings, and also disclose the main goals of the proposed concept.

In the course of reforming the judicial system, it is proposed to expand the concept of administrative proceedings in the Republic of Tajikistan. This article also indicates the essential need for codification of regulatory legal acts of the Republic of Tajikistan in the field of administrative proceedings.

Keywords: Judicial system, administrative legal proceedings, Code of Administrative Procedures, administrative justice, Civil Procedure Code.

The judicial system and administrative legal proceedings

The judicial system of the Republic of Tajikistan (RT) consists of three types - courts of general jurisdiction (including military courts), headed by the Supreme Court of the Republic of Tajikistan, economic courts headed by the Supreme Economic Court of the Republic of Tajikistan, and the Constitutional Court of the Republic of Tajikistan, and a separate judicial system for administrative proceedings - is absent. They are divided based on of jurisdiction, i.e. competencies, powers to consider certain categories of court cases and make appropriate decisions. These three types of courts form the subsystems of the judicial system of the Republic of Tajikistan, which is organizationally isolated and in no way dependent on each other. This independence of them is expressed in the fact that they finally resolve by themselves the cases under their jurisdiction and do not have the right to review each other's decisions (the Constitutional Court of the Republic of Tajikistan cannot review the decision of any other court, the Supreme Court - the decision of the Constitutional Court and the Economic Court, the Supreme Economic Court -

Constitutional Court and courts of general jurisdiction). This circumstance, i.e. the existence in the form of three independent, unconnected judicial structures, is often assessed as a flaw that weakens the judiciary.

Currently, in the Republic of Tajikistan, cases arising from disputed administrative legal relations are resolved by courts of general jurisdiction following Chapter 6 of the Code on Administrative Procedures of the RT of 2007,[1] (hereinafter referred to as the CAP RT); subsection 3 of the Civil Procedure Code of the Republic of Tajikistan (hereinafter referred to as the Code of Civil Procedure of the Republic of Tajikistan), as well as economic courts based on section 3 of the Code of Economic Procedure of the Republic of Tajikistan (hereinafter - CEP RT). However, these cases, which by their legal nature are administrative cases, following the indicated codes, are considered not in administrative, but in civil proceedings. Moreover, these cases do not have an exact legal and doctrinal definition, their specific characteristics are not indicated, and the legislative regulation of the process of their resolution is contradictory and lacks the necessary systematicity and integrity.

[1] Code of Administrative Procedures of the Republic of Tajikistanhttp://base.spinform.ru/show_doc.fwx?rgn=17361 accessed 7, February 2020

In the post-Soviet period, administrative legal proceedings as a mechanism for resolving administrative-legal disputes began to be considered by scholars as to the most important element of the judicial system of post-Soviet countries and the form of exercise of the judiciary. This issue has become the subject of numerous studies in which the issues of administrative justice and administrative legal proceedings as its main form have received a very solid development, including in the works of E.B Abrosimova, A.B. Zelentsova, I.V. Panova, N.G. Salischeva, A.K. Solovieva, Yu.N. Starilova, N.Yu. Hamaneva and others.

Currently, interest in the institution of administrative proceedings in the states of the post-Soviet space, in particular in the Central Asian republics, has noticeably increased. For example, in the works of scholars, many important theoretical and practical issues were highlighted regarding the organizational and procedural aspects of the consideration by courts of administrative disputes in Central Asian states. However, both for all the republics of the region, and for Tajikistan, numerous problems remain unresolved regarding the conceptual justification of the modern approach to understanding administrative proceedings and its adequate regulatory environment.

The modern legal science in the Republic of Tajikistan, when studying the problems of administrative

justice and administrative legal proceedings, is based on the studies of Russian scholars, since these countries have the same legal and judicial systems.

Administrative legal proceedings are one of the forms of administrative justice and a necessary institution of the rule of law, which is regulated by the norms of judicial administrative-procedural law, serves the judicial protection of subjective public rights and legitimate interests of citizens and organizations from unlawful decisions and actions (inaction) of state authorities and officials and designed to ensure the rule of law in public administration through various forms of judicial control, including as a norm control.

Accordingly, the main functions of administrative legal proceedings are the function of human rights and judicial control in the process of resolving administrative disputes.

This author's definition of administrative proceedings and its functions differ significantly from the dominant approaches in the national legal doctrine, which reduce justice to only its two forms, such as civil and criminal proceedings.

In modern conditions, the procedural doctrine of Tajikistan is undergoing a complex and contradictory process of gradually overcoming the prevailing approach to administrative legal proceedings as far back as the Soviet period, as proceeding cases about administrative offenses with

the simultaneous separation of the subject field of administrative justice from the scope of civil procedure regulation. This is evidenced by the adoption of the Code "On Administrative Procedures of the Republic of Tajikistan" dated 5/3/2007 (hereinafter - CAP RT) and the inclusion in it of norms on lawsuit proceedings on administrative disputes. However, these CAP RT rules are practically not applied, since when the code was put into effect from the Civil Procedural Code of the RT, the legislator did not remove the rules governing the resolution of cases arising from administrative legal relations in the form of non-search civil proceedings, and the courts continue to apply these norms based on the provisions of an obsolete theoretical paradigm.

In the modern period of the development of the legal system of the Republic of Tajikistan, CAP RT cannot be considered as a code of administrative legal proceedings, although it reflects many new theoretical approaches that express the essence of the modern understanding of this type of legal proceedings. In this code, the national legislator officially fixed the existence of administrative proceedings in the Republic of Tajikistan as a form of protection and restoration of violated subjective public law. It was introduced the legal construction of an administrative lawsuit and thereby recognized the legal form for resolving public law disputes in administrative proceedings.

The provisions on judicial procedures contained in the CAP of the Republic of Tajikistan comply with new ideas for administrative legal proceedings as a judicial administrative-contentious process for the national legal doctrine and correspond to its conceptual understanding as an institution of the rule of law, the construction of which is guided by the Constitution of the Republic of Tajikistan.

Regulatory legal acts in the field of administrative legal proceedings

Establishment of the institution of administrative legal proceedings in the Constitutional Law "On Courts of the Republic of Tajikistan" 2001[2] marked the beginning of the development of legislation on administrative legal proceedings in the country, the formation of judicial administrative-procedural legislation. It served as the basis for the development of draft legislative acts governing the creation of special courts in the country to consider cases arising from administrative and other public law relations.

[2] Constitutional Law "On Courts of the Republic of Tajikistan" https://www.legislationline.org/download/id/3783/file/Tajikistan_const_law_courts_2001_am_2010_RU.pdf accessed 23, March 2020

The creation of a full-fledged institute of administrative justice was one of the fundamental tasks of the judicial reform carried out in Tajikistan since the beginning of the 90s of the last century. Being the most important form of protecting the rights and freedoms of human and citizen, administrative justice is called upon to ensure the comprehensive and effective implementation of the principle of legality in the activities of executive bodies and public servants. However, the administrative justice system as an independent power was never created, and cases arising from administrative legal relations are considered along with civil and criminal cases in courts of general jurisdiction.

Currently, the rules governing administrative proceedings are scattered across several codes:

- Code of Administrative Procedures of the Republic of Tajikistan (CAP RT);

- The Civil Procedure Code of the Republic of Tajikistan (Code of Civil Procedure of the Republic of Tajikistan);

- The Economic Procedural Code of the Republic of Tajikistan (EPC RT);

- Procedural Code of Administrative Offenses of the Republic of Tajikistan (PCAO RT).

Place of administrative legal proceedings in the judicial system of the Republic of Tajikistan

In the modern system of administrative law of the Republic of Tajikistan, three sub-industries, represented by three sets of administrative-procedural rules, can be distinguished as its structural components:

1) A sub-industry that includes the rules governing administrative proceedings in cases arising from administrative and other contentious public law relations (the right to administrative proceedings or the judicial right to administrative disputes).

An indispensable condition for the establishment of the rule of law in the Republic of Tajikistan is the expansion of the set of rules that provide for the resolution of administrative disputes and the protection of the rights and legitimate interests of citizens and organizations from illegal acts of public administration bodies.

According to Article 115 of the Code of Administrative Procedures of the Republic of Tajikistan, the subject of a dispute in proceedings about administrative procedures in court may be:[3]

[3] Code of Administrative Procedures of the Republic of Tajikistanhttp://base.spinform.ru/show_doc.fwx?rgn=17361 accessed 7, February 2020)

- compliance of the administrative act with the laws of the Republic of Tajikistan decrees of the President and decrees of the government of the Republic of Tajikistan;

- the obligation of the administrative authority to redress;

- the obligation of the administrative authority to adopt an administrative act or to carry out any other action according to the administrative procedure.

2) A sub-industry, the content of which is composed of rules governing positive (non-jurisdictional) administrative procedures (administrative procedure law or administrative procedure law).

The term procedure (from Latin, procedo - I promote) has such meanings as a part of an operation, process, or officially established, provided for by the rules method and procedure for the implementation, conduct of affairs. In the legislation, this term is used quite widely. The definitions of specific types of procedures were given. For example, a customs procedure is defined as a set of norms that define, for customs purposes, the requirements and conditions for the use and (or) disposal of goods in the customs territory of the customs union or beyond. For customs regulation, the following types of customs procedures are established for goods:

- release for domestic consumption;

- export;

- customs transit;

- bonded warehouse;

- processing in the customs territory;

- processing outside the customs territory;

- processing for domestic consumption;

- temporary import (admission);

- temporary export and others (a total of 17 species).

As the following example, we can also mention the procedures used in the bankruptcy case against the debtor and their definition. These include observation, financial recovery, external management, bankruptcy proceedings, restructuring of a citizen's debts, sale of a citizen's property, an amicable settlement. For example, supervision refers to the procedure applied to the debtor to ensure the safety of its property, analyze the financial condition of the debtor, draw up a register of creditors' claims and hold the first meeting of creditors.

3) The sub-industry, including the procedural rules of the law of administrative punishments, represented by the norms of the Procedural Code of Administrative Offenses of the Republic of Tajikistan (administrative and punitive procedural law arising from the Code of Administrative Offenses).

In case of violation of the norms of the Code of Administrative Offenses RT (CAO RT), during the consideration of the case in the court of administrative proceedings, the Procedural Code of Administrative Offenses of the Republic of Tajikistan (PCAO RT) is applied.[4]

According to Article 3, the Code of Administrative Offenses of the Republic of Tajikistan regulates the following relations:

- general provisions and principles of legislation on administrative offenses;

- acts (actions or inaction), which are an administrative offense;

- Establishment of the administrative responsibility of individuals and legal entities for violation of the rules and norms provided for by this Code;

- determination of the types of administrative penalties and the rules for their application;

- determination of a judge, state body and officially authorized to consider cases of administrative offenses;

[4] Code of the Republic of Tajikistan on Administrative Offenses http://www.adlia.tj/show_doc.fwx?Rgn=2145 accessed 31, December 2019)

- establishing the procedure for conducting proceedings in cases of administrative offenses, including measures to ensure the proceedings in these cases;

- determination of the execution of administrative penalties.

The existing legislative framework that is complex in structured according to outdated doctrinal schemes of the Soviet era, which defines the judicial procedural form for considering administrative cases, creates ambiguities in the terms “administrative procedural legislation”, “administrative process”, “administrative cases”, and “administrative legal proceedings”. The lack of any developed theory of administrative justice in the country, the underdevelopment of its conceptual apparatus prevents the formation of a full-fledged modern strategy for the development of administrative court proceedings. The situation is aggravated by the inconsistency of judicial practice in administrative legal cases and the dominance in the doctrine of the notions of administrative justice as legal proceedings, which has as its subject exclusively cases of administrative offenses.

In this context, along with the reform of the mosaic, lacking logical harmony and the necessary systematic, administrative and procedural legislation of the Republic of Tajikistan, the task is to create an organizational structure of administrative justice that is adequate to modern conditions,

including specialized administrative courts capable of resolving disputes within an adequate administrative and procedural form.

A small comparative legal analysis with the Russian Federation

In Russian jurisprudence, administrative justice and its form such as administrative legal proceedings are considered in the historical, comparative-legal, theoretical, and institutional legal aspects. At the same time, attempts to conceptually substantiate an adequate model of administrative justice in Russia during the Soviet period did not end with effective normative legal regulation, since administrative justice was considered as a bourgeois institution for a long time, and administrative legal proceedings in the prevailing doctrine were reduced to proceedings on administrative offenses. However, in the works of D.N.Bakhrakh, A.A. Demina, I.I. Evtikhieva, A.E. Luneva, V.I. Remneva, N.G. Salischeva, D.M. Chechot, and other scholars of this period created a solid foundation for further research on administrative justice.

Although in the Russian Federation, unlike the Republic of Tajikistan, a separate "Code of Administrative Legal Proceedings of the Russian Federation" dated 08.03.2015

N 21-FL, (CALP) was adopted, the administrative justice system as an independent branch of the judiciary considering cases of administrative proceedings does not exist. As well as in the Republic of Tajikistan and the Russian Federation, cases arising from an administrative offense or a statement of claim of an administrative nature are considered in courts of general jurisdiction.

It is also important to note that judicial administrative procedural law in the Russian Federation (RF) as in the Republic of Tajikistan is intertwined with civil procedural law. Unlike the Republic of Tajikistan in the Russian Federation, by isolating from the Civil Procedure Code several chapters on cases from public legal relations were excluded and introduced into CALP.[5] The general part of the CALP is also built based on the general provisions of the Civil Procedure Code and the Arbitration Procedure Code of the Russian Federation, and based on a comparative analysis, it is quite the same in structure with the administrative legal proceedings of the Republic of Tajikistan, except some features and the presence of Federalism.

[5] "Code of Administrative legal Proceedings of the Russian Federation" http://www.consultant.ru/document/cons_doc_LAW_176147/ accessed 8, March 2020

Conclusion

To further improve the judicial system in the Republic of Tajikistan, it is proposed to develop scientifically based Administrative Concept legal proceedings, give it the status of a program document, and include this Concept in the justice reform exercise in the Republic of Tajikistan.

This concept should be based on the notion of administrative legal proceedings not only in cases arising from administrative offenses but also as a lawsuit administrative process in disputes arising from public law relations, which has as its primary task the protection of the rights and legitimate interests of citizens and organizations from unlawful administrative acts and ensuring the rule of law in public administration.

The main purpose of this Concept should be to justify the content and the need to adopt a modern Code of Administrative Procedure, in its level and purpose similar to those adopted in Russia and several other states of the post-Soviet space. Thus, based on such changes, it is possible to reform the judicial system by creating administrative courts.

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