Ensuring Sustainable Development of the Kyrgyz Republic: The Impact of Administrative and Judicial Control on the Construction Sector

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Abstract. The article analyzes the legal framework of administrative justice and administrative-judicial control in the Kyrgyz Republic from the point of view of protecting human and civil rights and freedoms for the construction sector. The trends in the development of these institutions in the country are considered. The article examines the features of administrative and legal regulation, elements of administrative law, from the point of view of their direct connection with the problem of ensuring human rights and freedoms and Citizen. Administrative and judicial control is disclosed in the forms determined by the specifics of relations in the specified industry. The main problem in the Kyrgyz Republic today is the creation of mechanisms of administrative justice that would fully ensure the rights and freedoms of man and citizen, guarantee the effectiveness of the judicial system itself, as well as the rule of law. The purpose of this study is to analyze the legal foundations of administrative justice and administrative-judicial control in the Kyrgyz Republic in the context of the protection of human and civil rights and freedoms in the field of public administration for construction. The main research methods are the formal legal and comparative legal methods.

INTRODUCTION

It has been repeatedly noted in the Kyrgyz Republic that the high status of the court and its broad powers, which are indispensable conditions for ensuring judicial protection of citizens' rights and freedoms, do not fully correspond to the organization of the judicial system and the procedural forms in which justice is carried out. Unfortunately, it should be noted that the objective foundations are being formed extremely slowly, allowing the idea of human rights and freedoms to take root in the Kyrgyz Republic and ensure a high degree of their observance in the country.

There is a lack of consistency in the development of a regulatory legal framework that protects and guarantees human rights and freedoms. Repeatedly in scientific research, domestic and foreign scientists point to the need for the creation and provision by the state of real conditions for the realization of the rights and freedoms of man and citizen established by laws.

Since, for example, the Constitution of the Kyrgyz Republic, although it enshrines a fairly wide range of fundamental human rights and freedoms, but they are only legally fixed, formal

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opportunities. In order to implement these norms, appropriate conditions, guarantees, prerequisites are necessary, which have not yet been fully created. Among such guarantees and legal means, the administrative and judicial mechanism for the protection of human and civil rights and freedoms is of the utmost importance.

MATERIALS AND METHODS


The purpose of this study is to analyze the legal foundations of administrative justice and administrative judicial control in the Kyrgyz Republic in the context of the protection of human and civil rights and freedoms in the field of public administration. The objectives of the study are to review regulatory legal acts regulating administrative justice and judicial control over the activities of executive authorities in the Kyrgyz Republic. As the main research methods, the formal legal method was used as a tool used in the process of cognition and transformation of legal reality, as well as the comparative legal method (internal and external) used for the study of normative legal acts [1, 2, 3]. To summarize the results obtained, the method of systematization was used [4, 5, 6].

RESULTS

Legal analysis of the fundamentals of administrative justice and administrative judicial control in the Kyrgyz Republic.

It is well known that the basic rights and freedoms of citizens were established in the constitutions of many Western European countries by the middle of the XIX century. This was the most important achievement of the state-legal thought of that time. The real provision of constitutional rights and freedoms of citizens was entrusted to the executive branch, i.e., to the system of public administration bodies, and ultimately to officials. Then there was a need to study the legal relations between a citizen claiming to exercise his rights and freedoms, and officials (officials) who are obliged to recognize, observe, ensure and guarantee these rights and freedoms. However, American researchers hold the view that every branch of law has incidental effects on the protection or infringement of human rights, whether by constraining or enabling actions which affect other people. Administrative law is, however, particularly vulnerable to the permeation of human rights aims, since, like human rights law, it primarily constrains the exercise of public power, often in controversial areas of public policy, with a shared focus on the fairness of procedure and an emphasis on the effectiveness of remedies [7].

Considering the countries of Europe, for example, we can note that development of French administrative law has consisted principally in the working out of remedies for the protection of private individuals against the arbitrary and illegal conduct of the administrative authorities and in the extension of the control of the administrative courts (particularly the council of state) over the acts of these latter authorities [8].

Administrative justice received its initial development in the second half of the XIX century in France. The Great French Revolution of 1789 paved the way for the formation of modern administrative justice. Thus, the administrative justice system of France was composed of territorial courts – administrative courts of common law, courts of appeal and the Council of State, which is at the head of the entire system [9].

According to the Russian scientist V. S. Chetverikov, special signs of administrative and legal regulation in France are: decentralization of management; the presence of separate administrative courts; high legal culture. By the end of the XIX – beginning of the XX century both the administrativists of Western European states and Russian researchers identified the
following elements of administrative law: an administrative act, a special power relationship and a public law contract. At the same time, their direct connection with the problem of ensuring the rights and freedoms of a citizen was emphasized [10].

Thus, the issuance of an administrative act may restrict and violate the rights of citizens (and then a citizen has the right to apply to the court for protection). A special power relationship is expressed in the establishment of public relations between a citizen and a public service (the state itself). Finally, a citizen could also act as an equal subject in relation to the state power, concluding an administrative contract with it, i.e. in a state governed by the rule of law, it is possible to establish horizontal ties between a citizen and the executive power. In this regard, it should be noted that the principle of equality before the law is expressed in the same subordination to the law and the court, both officials and citizens.

Russian scientist D. N. Voronenkov correctly notes that one of the most important elements of a modern rule of law state is the institution of judicial control over executive authorities. It is the specifics of managerial activity, which is of a subordinate nature, that creates the need for such control by representative, higher-ranking subordinate, as well as judicial bodies [11].

Judicial control is carried out in certain forms due to the peculiarity of the relationship between two independent branches of government - the executive and the judicial. It has a dual purpose: on the one hand, to protect citizens from abuse of power by state governing bodies; on the other hand, to improve the activities of governing bodies in the interests of society as a whole. We can consider the improvement of this type of control as a necessary element of both judicial and administrative reform.

In article 23, paragraph 1. of the Constitution of the Kyrgyz Republic, human rights and freedoms are the highest value. They determine the meaning and content of the activities of all state bodies, local self-government bodies and their officials. Nevertheless, paragraph 2 of the same article states that the rights and freedoms of a person and a citizen may be restricted by the same Constitution and laws in order to protect national security, public order, public health and morals, and the rights and freedoms of others. Such restrictions may also be imposed taking into account the peculiarities of military or other public service. The restrictions imposed must be proportionate to the specified goals. If we consider the Constitution of the Kyrgyz Republic for 2010, then this act did not provide for norms restricting the rights and freedoms of man and citizen. The legal regulation of administrative justice in the Kyrgyz Republic has a constitutional nature (Part 3 of Article 61), and one of the main tasks of the state is the development of extrajudicial and pre-trial methods, forms and methods of protecting human and civil rights and freedoms. In addition, along with civil and criminal proceedings, the Constitution of the Kyrgyz Republic separately distinguishes administrative proceedings. Thus, in accordance with Part 2 of Article 94 of the Constitution of the Kyrgyz Republic, "judicial power is exercised through constitutional, civil, criminal, administrative and other forms of judicial proceedings".

The peculiarities of the legal status of a citizen, in contrast to the legal status of an administrative body, require the state to provide increased protection of the rights, freedoms, and legitimate interests of a citizen of the country. The State is obliged to react quickly and fairly to any violation of these rights and freedoms by State authorities or municipal bodies. Thus, the Constitution of the Kyrgyz Republic lays down a mechanism for the interaction of two branches of government – the executive and the judicial.

One of the forms of judicial control over the protection of citizens' rights in the field of governance is the institution of judicial appeal against unlawful actions (inaction), decisions of the state and municipal administration. In modern states, this institution has gone through quite complex and ambiguous stages of its formation. As a result, institutions for the protection of citizens' rights were created in each country, taking into account the historical situation and the needs of social development. Such, for example, is the Institute of administrative justice.
Administrative justice is a necessary element of the rule of law, the appearance of which in the legal systems of foreign countries dates back to the XIX century. Taking into account world practice, two types of it can be distinguished: independent, independent of courts of general jurisdiction, and a system in which decisions of administrative courts can be appealed to a court of general jurisdiction.

Some authors consider this institution of law both in a broad and narrow sense: in a broad sense - as justice carried out on the basis of citizens' appeals regarding the legality of the actions of government bodies and officials, including citizens' claims to the executive branch (for recovery of damage caused by illegal actions of state bodies); in a narrow sense - how courts consider complaints against acts of governing bodies and officials.

In the Kyrgyz Republic, the issues of administrative justice are particularly relevant. There are two forms of administrative justice in the Kyrgyz Republic: administrative legal proceedings as the most developed form of administrative justice in organizational and procedural relations, where administrative disputes arising between citizens and state bodies and their officials are considered in court and quasi-judicial proceedings carried out by administrative jurisdiction bodies (state bodies) operating in the system of executive power, local self-government [12].

Moreover, judicial power, being an independent type of state power, is implemented in various organizational and legal forms. These include the administration of justice, judicial administration, judicial supervision and judicial control in public administration [13].

In the Kyrgyz Republic, the legal foundations of judicial control over the observance of law and order in the activities of public authority and local self-government bodies are primarily related to ensuring the constitutional right of a person and citizen to the protection of his rights and freedoms by the State (article 40 of the Constitution of the Kyrgyz Republic), including judicial protection. Such protection is the most effective and accessible for everyone, since any decision and action (inaction) of state bodies, local self-government bodies, public associations and officials can be appealed in court.

It should be noted that the sectoral legislation in some cases directly indicates the possibility of judicial appeal of actions (inaction), decisions, normative and non-normative acts that violate the legally protected interest of a citizen (Part 1 of Article 10 of the Civil Code of the Kyrgyz Republic).

It should be noted that the verification by the courts of the legality and constitutionality of regulatory legal acts of public authorities is one of the important tools of checks and balances in the mechanism of separation of powers. On the one hand, the "deterrence" of legislative authorities from attempts to issue "illegal" laws that violate the balance of power in the state and, on the other hand, the control of the court over regulatory legal acts of executive authorities, which allows them to restrain them from illegal rulemaking carried out with excess of authority.

In modern Kyrgyzstan, there is a practice of settling a wide range of issues at the subordinate level, that is, with acts of executive authorities, which are adopted in large numbers. This allows us to conclude that without a system of judicial guarantees that ensure the inviolability of public rights of citizens, there can be no rule of law. At the same time, judicial control over courts of general jurisdiction should become a guarantor, the purpose of which is to protect the rights, freedoms and legitimate interests of citizens by judicial cancellation of illegal actions of state authorities and local self-government bodies.

The formation of the relevant powers of the courts of general jurisdiction in the Kyrgyz Republic allowed for a radical impact on the functioning of State authorities.

Thus, with regard to the protection of the rights and freedoms of citizens of the Kyrgyz Republic from illegal actions (inaction) of state bodies and local self-government bodies in recent years, we can say, a breakthrough is taking place. Our country has changed its approach to this issue and started preparing a legal platform. In particular, a number of regulatory legal
acts regulating the procedure for appealing actions (omissions) of state bodies and local self-government bodies have been adopted. These include, first of all, the Administrative Procedure Code of the Kyrgyz Republic (APC). This act establishes the procedure for legal proceedings in disputes arising from administrative-legal (public-legal) relations, procedural principles and rules for the consideration and resolution of these disputes in court. The task of administrative proceedings is to protect the rights, freedoms and interests of individuals, the rights and interests of legal entities in the field of administrative-legal (public-legal) relations from violations by administrative bodies and their officials through fair, impartial and timely consideration of administrative cases.

Article 5 of the Code establishes the right of any interested person, in accordance with the procedure established by law, to apply to the court for the protection of their violated or disputed rights, freedoms or legally protected interests. Although this is possible only after the pre-trial procedure for appealing administrative acts, actions (inaction) of administrative bodies has been observed, that is, judicial challenge of such acts is possible only after compliance with this procedure. This procedure is regulated by the Law of the Kyrgyz Republic dated July 31, 2015 No. 210 "On the basics of administrative activities and administrative procedures". The Law establishes the foundations of administrative activities of a public legal nature; regulates legal relations between administrative bodies and individuals, legal entities in the implementation of administrative procedures; determines the procedure for appealing an administrative act, actions and inaction of administrative bodies.

Thus, if previously the interested person had a choice: to appeal the action (inaction) an administrative body to a higher authority or court, and, as a rule, the choice was made in favor of the court, today there is no such alternative. A person must undergo a pre-trial appeal procedure, and, in case of dissatisfaction with the result, can apply to the court. Thus, Article 113 of the Code states that the court refuses to accept the claim if the plaintiff does not comply with the pre-trial dispute resolution procedure established by law and the possibility of applying this procedure is lost. On refusal to accept the claim, the judge makes a reasoned ruling, which must be issued within five days from the moment of applying to the court. The determination is handed over or sent to the plaintiff simultaneously with the return of the documents submitted by him. Refusal to accept the claim prevents the plaintiff from re-applying to the court with a claim against the same defendant, on the same subject and on the same grounds. A private complaint (representation) may be filed against the court's decision to refuse to accept the claim. At the same time, if the plaintiff has not lost the possibility of applying the pre-trial procedure, the court returns the claim (Article 115 of the Code). On the return of the claim, the court adopts a reasoned determination, where it is obliged to indicate to which court the plaintiff should apply if the case is not within the jurisdiction of this court, or how to eliminate the circumstances preventing the initiation of the case. The ruling on the return of the claim must be made within five days from the date of its receipt in court and handed over or sent to the plaintiff with all the documents attached to the claim. A copy of the ruling on the return of the claim is sent to the person who filed the claim, together with the claim and all the materials attached to it. A private complaint (representation) may also be filed against the court's ruling on the return of the claim.

DISCUSSION

The adoption of the Constitution of 2021 led to a change in the form of government in the Kyrgyz Republic with a parliamentary-presidential system towards a presidential-parliamentary form of government; a change in the powers of various branches of government (Jogorku Kenesh, executive authorities), and the legal status of the civil service and municipal service has also changed. Thus, our country is once again on the verge of significant administrative
reforms, which will lead to difficulties in the development and establishment of mechanisms for the protection of human and civil rights and freedoms, including through judicial protection.

CONCLUSION

Summing up, I would like to say that, despite the proclamation of the Kyrgyz Republic as a democratic, secular, legal, social state since the moment of sovereignty, there are still many unresolved problems. And one of such problems is, today, the creation of mechanisms of administrative justice, the necessary legislative acts of implementation are extremely relevant in our country, since only in this form it can fully ensure the rights and freedoms of man and citizen, guarantee the effectiveness of the judicial system itself, as well as the rule of law. Of course, we observe a positive trend in the approach of the state to ensuring the rights of citizens, which is evident from the adoption of new regulations, such as the Administrative Procedure Code of the Kyrgyz Republic, the Law of the Kyrgyz Republic dated July 31, 2015 No. 210 "On the basics of administrative activities and administrative procedures", thanks to which the citizens of the country (legal and physical persons) "argue" with states. But, to date, law enforcement practice has not yet been formed, the law enforcement agencies themselves are undergoing significant reforms, and this also applies to the judiciary. Since the level of public confidence in the judicial system remains low, despite the fact that, as mentioned above, a new judicial corps has been formed, 41 percent of them are first-time appointed judges who have not previously worked for civil judges. Today, we are in the process of significant judicial reforms.

REFERENCES