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Administrative Procedures: Kazakhstan and Foreign Experience

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The article is dedicated to the issues of the current status and development of administrative procedures in Kazakhstan. The author also considers difficulties which can arise in the preparation of the draft of the Law On Administrative Procedures and possibilities for implementation of foreign experience.

Keywords: *Kazakhstan, administrative law, administrative procedures.*

The main administrative and legal problematics in Kazakhstan has recently focused on three issues: administrative procedures, administrative justice and administrative violations. The vast majority of conferences, round tables and discussions, one way or another, is connected to these issues.

At that, it is interesting that many local lawyers, professional legal communities, and state structures consider attention to administrative violations as top-priority. Much less attention is paid to other various administrative and legal institutions.

It should be recognized that, in many ways due to our foreign colleagues and various projects with different level if success working in Kazakhstan, the most important issues of administrative law (administrative procedures and administrative justice) are put on the agenda, turn into draft laws and are constantly included in the programs of legal reforms.

This approach is very illustrative. For many Kazakhstani lawyers of different levels administrative law has remained a public administration right, a kind of truncheon to impact on citizens and organizations. Another purpose of administrative law is restraining of public administration, protecting the rights of citizens in the public sphere remains in the background.

That is why such a seemingly complicated from the point of view of legal technique act as the Code of Administrative Offenses has been developed and adopted in less than one year[1], but the issues related to administrative procedures and administrative justice are being discussed with varying degrees of intensity for years, and cannot be resolved.

Although if you take a formal look at the Kazakh legislation, then everything is not so bad. Fifteen years ago the Law on Administrative Procedures was adopted[2]. But, in spite of such a promising name, the very administrative procedures were given a very little space there. To date the law contains only 32 articles which refer to state bodies, their competence, functions, and the consideration of citizens' appeals. It is clear that each of these issues deserves one or several acts with tens or hundreds of articles.

Until recently, the value of the law on administrative procedures was that it was the only one in the all Kazakhstan legislation which at least from behind spoke about individual (administrative acts) of state bodies. But, as a result of the adoption of the Law on Legal Acts in Kazakhstan, issues related to individual acts were withdrawn from the Law on Administrative Procedures.

Many other issues on administrative procedures (participants, stages, types, entering into force of acts, execution of acts and etc.), which are characteristic for the laws on administrative procedures of different countries, were absent in the law On Administrative Procedures and, today, are absent in the Law on Legal Acts.

But since the procedural activities of the public administration cannot in principle remain without normative regulation, such activity has been become being regulated by laws and subordinate acts affecting various aspects of state administration: registration, licensing, control and supervision, consideration of applications, etc[3].

[1] July 5, 2014 a new Code of Administrative Offenses was adopted in Kazakhstan. Gazette of the Parliament of the Republic of Kazakhstan. 2015. no. 18-II, article 92.

[2] Law of the Republic of Kazakhstan On Administrative Procedures from November 27, 2000. Gazette of the Parliament of the Republic of Kazakhstan. 2000. no 20, article 379.

[3] See, for example: The Entrepreneurship Code of the Republic of Kazakhstan from October 29, 2015. Gazette of the Parliament of the Republic of Kazakhstan. 2015. no. 20-II, 20-III. article 112; Law of the Republic of Kazakhstan On the Procedure for Con-

At the same time, the relevant normative legal acts are traditionally aimed at explaining the procedural actions of public administration; there is no place for the rights and freedoms of citizens, with the exception of the right to appeal, in such procedures.

A very important stage in the development of administrative procedures was the appearance of the institute of public services after taking of a decision at the political level to move the public administration to the so-called "corporate governance model". At that, we shall note that the impulse to the development of this institute became dissatisfaction of business, and especially investors, with an excessive bureaucratization of government bodies. At a certain stage, first of all, the economic development of the country faced a clumsy state apparatus, stagnant forms of work, numerous corruption manifestations, including due to the lack of transparency in administrative activity, and the redundancy of licensing functions that were traditional for bureaucracy.

Due to the new administrative and legal institute the standards, regulations, registers for public services, quality assessment and monitoring systems for these services began to be developed. At the same time, there was no serious discussion of what shall be understood as a public service; whether it differs from a state function, and if differs by whom and with relation to whom it may be exercised.

For some time general provisions on public services were in the Law on Administrative Procedures, thus confirming that administrative procedures had to cover the procedures for the provision of public services. But, a separate Law on Public Services[4] was adopted in 2013, which removed public services from under the Law on Administrative Procedures.

To date, the register of public services includes more than 700 items the majority of which is in paper and electronic form[5].The register is very diverse and covers both completely explainable actions: issuing certificates, licenses, permits and those that cause questions:

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sideration of Appeals from Individuals and Legal Entities from January 12, 2007. Gazette of the Parliament of the Republic of Kazakhstan. 2007. No. 2. article 17; Law of the Republic of Kazakhstan On Permits and Notifications from May 16, 2014. Gazette of the Parliament of the Republic of Kazakhstan. 2014. no 9. article 51.

[4] Law of the Republic of Kazakhstan On Public Services from April 15, 2013. Gazette of the Parliament of the Republic of Kazakhstan. 2013. no. 5-6, article 29.

[5] Decree of the Government of the Republic of Kazakhstan On Approval of the Register of Public Services from September 18, 2013. Collection of Acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan. 2013. no. 55, article 769.

providing a hostel for high school students, subsidizing the fee rates on loans, training private entrepreneurs, making an appointment to a doctor.

For the majority of these services, the standards and regulations of public services (approved by the Government Decree), which contain numerous administrative procedures, have been adopted. In addition to the standards and regulations there are still various departmental rules that also contain administrative procedures that are sometimes contrary to the standards and regulations. Sectoral legislation (tax, customs, antitrust) in its turn establishes its own procedural rules.

Thus, there is an obvious spontaneous process of rule-making, both at the level of laws and at the level of by-laws on the issues of administrative procedures. The general trend is that any external activity of the public administration falls under the regime of public services.

In addition to everything said, the e-government project involving contacts between the public administration and citizens solely in electronic form is gaining momentum. The project is very good: today you can register a commercial legal entity in Kazakhstan in one hour without leaving your apartment. Kazakhstan notaries – due to the development of electronic technologies – are already afraid that they will soon be out of work. But the legal support for these processes is not keeping up with the technologies.

Today there is a contradictory situation on the issue of the legal regulation of administrative procedures in Kazakhstan. On the one hand, the issues of these procedures are constantly being discussed. Everyone everywhere talks about the importance of these laws, conferences and round tables are held. On the other hand, there is already an informal opinion on the serious discontent of the state apparatus with the law on administrative procedures and resistance to its adoption. And this is quite understandable: despite all doubts about the effectiveness of good laws in the relevant political and legal environment and culture, a qualitative law on administrative procedures, in any case, will significantly change the format of relations between a citizen and the state apparatus. One can agree or disagree with such an explanation, but the adoption of a new version of the Law on Administrative Procedures (as well as the Administrative Procedure Code) is constantly being postponed.

But the process of preparing of the law, however, like any other possible development of the institution of administrative procedures, will be accompanied by certain difficulties, among which we include:

1. *Non-systematic, and in some cases, sporadic nature of the development of Kazakhstan's legislation*. There are drafts of new acts that do not fit well into the already existing system of legislation and are unpredictable in the future. For example, in Kazakhstan the draft of the Business Code, which, by the way, contains administrative procedures (whole chapters are devoted to permits and notifications, control and supervision activity), was very stormily and even somewhere badly discussed. The majority of Kazakh civil lawyers "fought to the bitter end": no such code is needed; the Civil Code and relevant laws are enough. It will make nothing but confusion. But they heard in response (from those who make decisions) some explanations why it was impossible to go without the Business Code. After a powerful onslaught of the civil lawyers, the accents in the code were shifted to public-legal issues of entrepreneurial activity: in accordance with the Code, commodity-money and other non-property relations based on the equality of business entities, as well as personal non-property relations related to property ones are regulated by the civil legislation of the Republic of Kazakhstan.

But from the standpoint of administrative law (the main public sector involved in this case) the adoption of the code has led to another loop of confusion with acts related to public administration.

We can also mention the recently adopted in Kazakhstan Law on Legal Acts. Its purpose is to regulate matters, normative and individual acts. At that, only three articles have been allotted to individual acts (legal acts of individual application) that were withdrawn from under the Law on Administrative Procedures.

2. Excessive conservatism with respect to administrative and legal institutes even among lawyers. The institutes of administrative law that have long become traditional are still inadequately perceived. A vivid example is administrative contracts, which are also covered by administrative procedures. Despite their real presence in law enforcement practice, the very existence of such contracts is disputed or the scope of their application is severely narrowed, especially by representatives of private-legal sectors[6].

[6] This approach is typical, in principle, in relation to other public legal contracts. See, for example: M. Suleimenov. The Method of Legal Regulation as a Criterion for Distinguishing between Civil and Tax Law. Jurist. 2013. no. 12, pp. 38-41.

3. Technologization of relations between the state and citizens. Certainly, new technologies are very convenient. But they are designed for standard situations. If you go beyond the standard the technologies are stalled. And the machine becomes the main antagonist, everyone shrugs his shoulders: the program is written so, we cannot do anything. As a response: in some legislative acts, provisions have been issued that exempt citizens from responsibility if software fails.

Interaction between citizens and the public administration is increasingly moving into the electronic environment. Of course, as the head of the State Duma Committee on Information Policy, Information Technology and Communications said, we are still far from the situation when the main user of the network will be "a granny with an iPad" [7]. But the trend is obvious and we must be prepared for a new technological format for the relationship between the public administration and a citizen. If in 2004 the number of Internet users in Kazakhstan was estimated at about 3-4% of the population[8], then in 2015 – at 71%[9].

Automation of procedures excludes the possibility of participation of a citizen who is interested in an act or action. Of course, "contactless relations" sharply reduce conditions for corruption, but the risks of erroneous or premature decisions are also sharply increased, when the opportunity to hear a citizen, get or check additional information is excluded.

In this regard, we dare to assume that the approaches developed in administrative procedures in the last century, with all the inviolability of the fundamental principles, should be revised or adjusted taking into account a completely different informational and technological infrastructure in modern public administration.

An offer for simplification of procedures (the right to challenge, the right to be heard, the presence in the consideration of a case, familiarization with the case materials) suggests itself, but with the preservation of the rights and interests of citizens.

Certainly, with the combination of procedural and technological issues, problems will arise: promptness and technological effectiveness, by principle, try to avoid procedural barriers.

[7] http://www.aif.ru/dontknows/actual/1452269 accessed date May 24, 2017.

[8] http://inform.kz/rus/article/2698302 accessed date May 24, 2017.

[9] https://forbes.kz/stats/internet-auditoriya_kazahstana_portret_i_predpochteniya_polzovatelya accessed date May 24, 2017.

4. Judicial practice.

Respect for administrative procedures could be brought up by the courts. But, unfortunately, the courts still do not consider procedural violations significant, especially when it comes to violations committed by the public administration. Procedural deficiencies are often considered in favor of state bodies. Courts do not try to protect an initially weak side (citizen or non-governmental organization). This is very clearly manifested in cases where fiscal interests are at stake.

Some examples that may not be very successful for the topic of the article but very revealing are the provisions of the new Code of Administrative Offenses. This Code excludes the judge's right to send a protocol on an administrative offense to a correction. Judges shrug their shoulders: without a properly drafted protocol they cannot impose a penalty[10]. We just cannot wrap our heads around the very fact that procedural violations can serve as a basis for liberation from administrative responsibility. And a way to solve a problem that is not based on law has already appeared: correction of a protocol "in working order" [11].

One more acute issue, connected both with administrative procedures and with administrative justice, in respect to which we do not have the consent, in particular, with our German colleagues: the compulsory appeal of administrative acts to a higher authority before going to court. We are told: a preliminary appeal will increase the percentage of correcting mistakes and relieve the courts. We answer – only not in our politico-legal and bureaucratic culture. The interests of defending the honor of the regiment and the idea of one's own significance are much higher than the interests of restoring the due course of law. Plus some struggle against corruption, which has lost all rational bases, when an official seeing obvious violations of the law is afraid to correct them because of questions from, for example, the prosecutor's office. Therefore, the simple introduction of the institute of compulsory preliminary appeal will not become a filter for illegal acts and a tool for unloading the judicial system, but will only delay the process of considering public-legal disputes. An option of a possible and compromise solution is the creation of quasi-judicial structures in the bodies of public administration with the inclusion of representatives of the expert community, scientists and civil society.

[10] Isabayeva A. Within the Framework of the New Legislation. Juridical Gazette. 2015, March 12.

[11] Yenshina I. Eliminate Procedural Volations. Juridical Gazette. 2015, 3 April.

5. The issues of legal awareness and legal culture, in particular, when it comes to officials.

Officials are still focused on the interests of the state and the instructions of a superior head, rather than on the interests of citizens and laws (despite very good declarative regulations, in particular, on the principles of public service, the principles of establishing administrative procedures). In practice, this leads to the fact that in problem situations, in case of a dilemma of helping a citizen to get a requested act or to perform in strict accordance with the procedure and refuse the citizen, the refusal will take place.

6. Administrative procedures and integration formations.

In connection with the creation of the Eurasian Economic Union, there will most likely be grounds for talking about the administrative procedures for the activities of the bodies of this integration formation, which will also influence the internal administrative procedures of the states participating in the EAEU. Of course, this is an issue of the future, but now it makes sense to think about the general parameters, the principles of administrative procedures, possible conflicts of external and internal procedures.

The EAEU is often compared with the European Union. In this regard, it can be noted that researchers in administrative law in many European countries talk about the impact of European administrative law (administrative law of the EU) on national administrative and legal institutes. Moreover, some scholars speak of administrative law in Europe as a kind of legal formation and include in it:

- national administrative law – a mixture of laws, judgments and doctrine applied by public authorities in a particular European country;

- administrative law created by the Council of Europe, which is for the most part contained in numerous recommendations of the Council of Ministers, as well as in the practice of the European Court of Human Rights;

- public law of the European peoples (IusPublicumEuropeaum) – the works of administrative scientists gained from constitutional history and comparative studies of blurred content and in an uncertain framework, yet of high conceptual value.

- the administrative law of the European Union – the law created by the integration bodies of this union in order to guarantee an effective application of legal norms in the EU space.

- international administrative law, the source of which is international treaties of a public law nature[12].

We may expect that the development of integration processes in the post-Soviet space will raise many questions about the correlation of internal and "integration" administrative law.

7. Intellectual assets.

For the sake of justice, it must be said there is no so many people in Kazakhstan who can think about the issues of administrative procedures. The very global problem of the lack of administrative scientists and the consequences of reforms in legal education have an effect. With some envy we look at the number of dissertations on administrative procedures defended in Russia. In Kazakhstan, there was only one defended Ph.D. thesis on administrative procedures[13] (while dozens of works were devoted to the status of the President or the Government).

Bringing of foreign experience and institutional, intellectual and financial resources seems very important in the process of modern, norm-setting and law enforcement activity in Kazakhstan.

If we slightly disregard administrative procedures we may detect that in recent years the Kazakh legal system has experienced a growing foreign influence, and in different forms.

So, in accordance with the Law of the Republic of Kazakhstan On Public Service[14] from November 23, 2015, state bodies, by the decision of an authorized commission, may hire foreign employees in accordance with the Labor Legislation of the Republic of Kazakhstan. At that, the foreign employees cannot occupy public posts and be public officials.

In accordance with the Constitutional Law of the Republic of Kazakhstan On the International Financial Centre Astana[15] from December 7, 2015, the established law of the Centre is based on the Constitution of the Republic of Kazakhstan, and consists of, among other sources, the Centre's acts that do not contradict the present Constitutional Law, which could be based on *the principles, norms and the case law of England and Wales and (or) the standards of the world's leading financial centers* and which are taken by the Centre bodies within the powers that are provided by the present Constitutional Law.

[12] Administrative Law in Europe: Between Common Principals and National Traditions / Ed. Matthias Ruffert. - European Administrative Law Series (7), 2013. p.3.

[13] Shishimbayeva S. S. Administrative Procedures (theoretical and legal aspects). The dissertation author's abstract for a scientific degree of the candidate of legal sciences. Almaty, 2009.

[14] Gazette of the Parliament of the Republic of Kazakhstan, 2015, article 153.

[15] Kazahstanskaja Pravda, December 9, 2015.

One may think about this foreign influence in different ways. Sometimes the borrowings from abroad deserve criticism because are brought without taking into account either the features of a country of origin or a recipient country.

But disuse of foreign experience is also wrong. And the Administrative Procedures Legislation is a very striking example of the need for such a use. Today, many solutions to the issues of the Kazakhstan managerial precedents can be found in a foreign legislation. It is significant that there is an experience of the former Soviet countries which are similar to us in the legal culture and traditions concerning the matters of legal regulation of administrative procedures. And indeed, the very acts on administrative procedures are the invention of the continental system, but not the law of England and Wales.

The content of the modern acts on administrative procedures, in particular, adopted in the post-Soviet countries obviously shows significant use of provisions of the legislation of the countries that adopted the procedural laws in the last century (maybe it is not so noticeable in the case of the Republic of Belarus). There are a few of own inventions and mostly they relate to the technologization of administrative functions. That is why, principles of administrative procedures, types of administrative acts, the power of discretion and many other classic procedural issues are transmitted from existing acts or with a high degree of certainty might be transmitted in the case of preparation of such acts in the countries where they do not exist.

Within the framework of this publication we draw attention to some problematic issues that arise during the Kazakhstani law enforcement practice and are accompanied by constant disputes and which can be resolved with the assistance of foreign experience. All this once again proves the value of foreign borrowing in this case.

1. Kinds of administrative acts. Contemporary Kazakhstan legislation presumes that acts can only be written. In accordance with paragraph 19 of article 1 of the Law on Legal Acts, a legal act is an official document in written form that contains legal rules or individual legal instructions adopted at the national referendum or by authorized bodies. Normative legal acts and non-normative legal acts (among which we also include administrative acts) are in the same manner defined in the law as written official documents.

Besides, the Supreme Court of the Republic of Kazakhstan in one of its regulatory resolution defined that a demand of a public individual or a public official, which is not in a form of decision, in particular, in a form of an oral demand, should be considered as an action[16].

The foreign legislation specifically highlights various forms of acts (written, oral, tacit ones). Apart the acts, the laws on administrative procedures specifically describe actions and inactions. There is a similar situation with insignificant acts. There are special articles describing an insignificant act and the consequences of its adoption[17]. In Kazakhstan, such acts still have been being referred and discussed only in textbooks.

2. Ground for an inaction.

Very often, in the Kazakhstan practice, the ground for inaction, bureaucracy, unwillingness of a public body or official to make a decision is a reference to the fact that the issue is unsettled by law or other normative legal act, lack of the mechanism for application, unpublished by-law, etc. Despite the existing legal possibilities, natural or legal persons may not get permission, license or resolve other issues for years because of such reference.

The foreign legislation contains the rules which state that the lack of proper regulation by law, the lack of a mechanism and other similar circumstances are not the grounds for non-application of law norms.

So, for example, paragraph 10 of article 15 of the Administrative Procedure Law of Latvia from October 25, 2001 stipulates that an institution and court do not have the right to refuse settlement of an issue on the basis that this issue is not regulated by law or another external regulatory enactment. They do not have the right to waive application of a law norm on the grounds that the law norm does not provide for an application mechanism, is imperfect or that other regulations which regulate the law norm in more accurate way have not been issued. This does not apply only to the case when an institution that has to apply the law norm or in any other way participate in its application is not created and does not operate[18]. The Latvian law calls this approach "Prohibition of legal obstruction of institutions and courts".

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[16] Regulatory resolution of the Supreme Court of the Republic of Kazakhstan from December 24, 2010 On some Issues of Application by Courts the Norms of Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan || Newsletter of the Supreme Court of the Republic of Kazakhstan, no. 1, 2011.

[17] Articles 62 and 63 of the Law of the Republic of Armenia On the Principles of Administration and Administrative Court Proceedings from February 18, 2004 || Collection of Legislation on Administrative Procedures. – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 107.

[18] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 257.

3. The status of decisions of higher bodies concerning a complaint against an administrative act.

There is no single opinion, what is the status of the decision on a complaint against an administrative act, especially if the complaint is not met, in the Kazakhstan judicial practice. Relatively recently, it has become clear that both an initial decision and the decision of a higher body can be challenged in the court: in accordance with paragraph 15 of the above-mentioned regulatory resolution of the Supreme Court, at the applicant's disagreement with the decision of a higher state body, local self-government body or a higher office holder either the decision of the higher state body, the local self-government body, the higher office holder or the decision of a lower state body, local self-government body, actions (inaction) of the office holder or public official shall be subject to appeal to court.

However, in practice, there are frequent situations where state bodies or courts do not consider the decision of a higher body as an independent act.

Foreign laws on administrative procedures indicate quite clearly that a higher body's decision is also an administrative act. So, in accordance with article 202 of the General Administrative Code of Georgia from June 25, 1999, a decision on considering of a complaint taken by an administrative body is an individual administrative-legal act and shall meet the requirements to individual legal act that are established by the Code[19].

4. The right to acquaintance with an administrative procedure process

In the present conditions, when the taking of acts is being typified and technologized, the issue gets particular relevance. An addressee of an administrative act rarely has an opportunity to check the status of the issue or affect the decision by providing additional documents or explanations. After a set period of time, he receives a positive or negative response.

In our opinion, foreign acts contain very important articles or even sections on the rights of a participant of administrative proceedings to familiarize with the case materials.

Moreover, the legislations of other states contain provisions on that prior to the issuance of an administrative act the applicant must be heard. For example, in accordance with paragraph 1 of article 40 of the Law of the Republic of Estonia from June 26, 2011 On Administra-

[19] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 248.

tive Procedures of the Republic of Estonia, prior to the issuance of an administrative act the administrative body shall provide the process's participant the possibility of submission opinions and objections on the case in written, oral or other convenient form[20].

Paragraph 1 of article 8 of the Law of the Republic of Finland from June 10, 2003 On Administrative Procedures provides that an administrative authority, within its competence, shall provide to the interested party necessary advice in relation to decisions of administrative cases, as well as answer questions and queries regarding services[21].

5. Status and consequences of an examination.

There is a problem in Kazakhstan's practice. It is when the decisions of a state body are based on examination results. If the examination is negative, the state body states that it cannot do anything. In its turn it is impossible to appeal expert opinions because their status is not defined, as well as the status of experts or expert institutions.

For example, in accordance with paragraph 1 of the Law of the Republic of Kazakhstan from October 11, 2011 On Religious Activity and Religious Associations[22], the denial of state registration of a religious association is made in cases when the association, that is being founded, is not recognized as a religious association on the basis of religious examination results. When challenging the acts of refusal, the justice agency states that at the negative result of religious expertise it has no choice and is bound to the result of this examination. Then it offers to appeal the results. Moreover, in accordance with the appropriate Standard of public services, in cases of disagreement with the results of provided public service, the service taker has the right to go to court[23]. The courts also refuse to hear cases on challenging the results of religious examination upon the pretext that disputes connected to expert opinions are not public-legal and they do not have the right to evaluate an expert opinion for the legality or unlawfulness.

[20] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 430.
[21] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 367.
[22] Gazette of the Parliament of the Republic of Kazakhstan, 2011, no. 17, article 135.
[23] Standard of the state service "Carrying Out of a Religious Expertise", approved by the Order from the Minister of Culture and Sport from April 23, 2014. ||Informational-legal system of normative legal acts of the Republic of Kazakhstan "Ədilet".

Foreign legislation has made an approach which consists in the fact that examination results are not binding for an administrative authority in an administrative and procedural proceedings. For example, article 25 of the General Administrative Code of Georgia states that except as expressly recognized herein, the conclusion of a public expert is not mandatory for an administrative body. Failure to take into account the conclusion must be justified[24]. The administrative body shall assess the expert opinion along with the other evidences collected in the course of proceedings and eventually the act, in connection with the publication of which there was the examination, is contested.

6. Contestation of executive acts.

In Kazakhstan there is a contradictory situation with respect to contesting performed acts. In practice, performed acts are contested in courts. However, according to paragraph 11 of Regulatory Resolution of the Supreme Court from December 24, 2010 On some Issues of Application by Courts the Norms of Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan", a decision of a state body, local self-government body in the form of an individual legal act can be appealed, if such an act does not cease to have effect due to the execution of instructions (claims) contained in it.

In the situations where this issue is touched, foreign laws say that an administrative act may be also contested in the case if it has already been performed or otherwise lost its effect. So, in accordance with paragraph 1 article 82 of the Administrative Procedural Law of Latvia from October 25, 2001, an administrative act that has been performed or lost its effect may be contested in the following cases:

- Decision on the legitimacy of an administrative act is needed for protection of a person's rights;

- for demand of compensation;

- for prevention of the recurrence of similar cases[25].

In addition to the problems in the field of administrative procedures, of course, there are many other. And it is hard to find the solutions in the foreign legislation. For example, when it

[24] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, p. 204.

[25] Collection of Legislation on Administrative Procedures – Almaty, Representation of the German Society for International Cooperation (GIZ) in Kazakhstan, 2013, pp. 276-277.

comes to administrative acts issued by the so-called advisory bodies in circumvention of the current state bodies or by quasi-public agencies (unless you use a broad approach, as, for example, in the Act of the Federal Republic of Germany from May 25, 1976 On Administrative Procedures of the Federal Republic of Germany, where an administrative authority is seen as any institution carrying out public administration tasks[26] or in the General Administrative Code of Georgia, where an administrative authority means any person who, under the legislation, performs public functions[27]).

The laws on administrative procedures contain a lot of other provisions that are interesting and unusual for our legal reality. For example, all the laws have a requirement to substantiate an administrative act. But the Latvian law also states that *in the justification of an administrative act an institution may use the arguments given in judicial decisions and legal literature as well as in other specific literature*. The value of works of legal scholars in this approach increases[28].

Of course, certain provisions of the Acts on Administrative Procedures, despite all their progressiveness, make you think about the way they will work in our legal environment.

For example, paragraph 13-2 of article 13 of the Law of Azerbaijan Republic from October 21, 2005 On Administrative Proceedings indicates that an administrative authority must act in accordance with the established administrative practice[29]. In our view, it is a very controversial provision, given that such practice may not always be based on the law.

Summing up, we can say that, probably, there is a positive thing that Kazakhstan and Russia have not adopted still the Laws on administrative procedures. There is an opportunity to look at the experience of other countries, including those close to us in spirit, mentality, legal traditions and culture. The main thing is that we should not drag out this contemplation.

Summarizing the above, I would like to note that Kazakhstan is awaiting a difficult path of creation a modern legal institute of administrative procedures, which will include obstacles identified above and assistants, including progressive technologies, foreign experience, the works of legal scholars of various countries. Paradoxically, but the fact that Kazakhstan still

[26] Ibid. p. 152.
[27] Ibid. p. 198.
[28] Ibid. p. 272.
[29] Ibid. p. 55.

does not have a modern Law on Administrative Procedures has a positive moment. There is an opportunity to look at the experience of other countries, including those close to us in spirit, mentality, legal traditions and culture. The main thing is that this contemplation would not have lasted long.