

Strengthening constitutional rights through administrative and constitutional justice: The case of the Republic of Kazakhstan

Reforzar los derechos constitucionales a través de la justicia administrativa y constitucional: el caso de la República de Kazajstán

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Abstract: The article is aimed at studying the current stage of development of constitutional and administrative justice in the Republic of Kazakhstan on the basis of the practice of specialized administrative courts and the Constitutional Council of the Republic of Kazakhstan. The results of the study are of theoretical importance, as the result of this study is a generalization of the legal practice of administrative and constitutional justice, therefore demonstrating the unified orientation of the legal policy in the sphere of ensuring the constitutional rights of citizens.

Keywords: Administrative law, constitutional law, specialized inter-district administrative courts, Constitutional Council of the Republic of Kazakhstan, legal policy.

Resumen: El objetivo del artículo es estudiar la etapa actual de desarrollo de la justicia constitucional y administrativa en la República de Kazajstán sobre la base de la práctica de los tribunales administrativos especializados y del Consejo Constitucional de la República de Kazajstán. Los resultados del estudio tienen importancia teórica, ya que el resultado de este estudio es una generalización

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de la práctica jurídica de la justicia administrativa y constitucional, demostrando así la orientación unificada de la política jurídica en el ámbito de la garantía de los derechos constitucionales de los ciudadanos.

Palabras clave: Derecho administrativo, derecho constitucional, tribunales administrativos inter-districtales especializados, Consejo Constitucional de la República de Kazajstán, política jurídica.

1. Introduction

In the process of developing the rule of law State of the Republic of Kazakhstan (RK) and improving the judicial authorities to ensure the constitutional rights of citizens, the institutions of administrative and constitutional justice play a particular role. With the adoption of the updated Concept of Legal Policy of the Republic of Kazakhstan until 2030, the issues of norm-making and law enforcement in the spirit of building a human-centric state are of paramount importance for the study and improvement. The Concept of Legal Policy of the Republic of Kazakhstan is based on the principles of Law Enforcement. The legal policy of such a state is based on the individual (citizen) as the highest social value. The mechanism for building a society based on the rule of law is the proper implementation of the right of citizens in the vital spheres: education, social protection, employment, and health care, through state administration and the judicial system, including constitutional and administrative justice⁶. Undoubtedly, the basic mechanisms for ensuring such rights are laid down in the institutions of constitutional and administrative justice⁷.

The data mentioned above were obtained through the use of several research methods and materials. Theoretical methods such as analysis, synthesis, and generalization were employed to examine judicial practices within specialized inter-district administrative courts and the Constitutional Council. This involved breaking down complex legal concepts, court rulings, and legislative documents to understand how they align with administrative law practices and constitutional protections. An in-depth legal analysis was conducted on constitutional guarantees of human rights, focusing on the transformation of the Constitutional Council into the Constitutional Court and the development of administrative justice. Comparative analysis was used to explore the legal systems of other countries, particularly regarding the implementation of constitutional complaints, providing context for Kazakhstan's legal evolution.

Empirical data were drawn from court rulings, particularly in public-administrative disputes, as well as statistical records of appeals in administrative courts. The study also examined normative

⁶ Dosanova, Ermekbaev (2019), pp. 176-184.

⁷ Czachor (2024), pp. 187-205.

decisions and the legal positions of the Constitutional Council, along with the Concept of Legal Policy of the Republic of Kazakhstan until 2030. Case studies were applied to assess specific legal disputes, offering concrete examples of challenges in defining administrative court jurisdiction. Finally, generalization methods were applied to identify trends and patterns, allowing broader conclusions to be drawn regarding the functioning of constitutional and administrative justice in Kazakhstan.

An important element of Kazakhstan's legal system is the institutions of constitutional and administrative justice, which play a crucial role in ensuring the rule of law and protecting citizens' rights⁸. The Constitutional Court, which replaced the Constitutional Council, has become the main body of constitutional control in the country, expanding the opportunities for both citizens and government bodies to file constitutional complaints⁹. This allows citizens to challenge the legality of normative legal acts applied to them in specific cases, thereby providing more reliable protection of their constitutional rights. As for administrative justice, specialized inter-district administrative courts in Kazakhstan play a key role in protecting citizens' rights and freedoms, particularly in resolving disputes related to the activities of executive authorities¹⁰. At the same time, one of the main tasks for the further development of administrative justice is the clear definition of criteria for delineating the jurisdiction of administrative courts, which will improve citizens' access to justice.

In the scientific sector, not much work is devoted to the study of constitutional and administrative justice. As noted by O. Densmaa and S. Baasankhuu in the scientific society problematic issues of development of administrative and constitutional justice are insufficiently studied, which in turn affects the legislative process, which is characterized by a lack of expert judgment and a disregard for legal principles¹¹. However, some scholars emphasize the historical need for the development of specialized courts in the Republic of Kazakhstan. Thus, Zh. Shukenova et al. emphasizes that the establishment of administrative courts is the first step towards the formation of a system of specialized courts and affirms the principle of specialization in the Republic of Kazakhstan based on historical aspects¹². Administrative courts at the present stage of development of the legal system are one of the essential elements of the socio-economic modernization of the Republic of Kazakhstan.

A group of scholars has concluded that there is a direct connection between the judiciary and the state and local authorities in the area of the rule of law at all stages of the development of public law relationships. Judicial review is thus the primary source for the development of public law relations in the spirit of the rule of law, which is reflected in the establishment of harmonious

8 Abdrasulov *et al.* (2015), pp. 93-102.

9 Abdrasulov *et al.* (2024), article number hmae026.

10 Onlanbekova, Abdrasulov (2015), pp. 105-112.

11 Densmaa, Baasankhuu (2023), pp. 1-12.

12 Shukenova *et al.* (2021), pp. 26-36.

interaction between civil society and the authorities and their officials¹³. The administrative court influences the development of lawful conduct in such legal relations. The same position is kept by B. K. Nurgazinov and A. S. Tulepbaeva, point to the importance of the influence of administrative courts on the level of transparency and efficiency in the activities of public authorities, consequently, increasing the confidence of civil society in public administration¹⁴.

In turn, it is logical to consider the institution of administrative justice in conjunction with constitutional justice, which lays down the basic principles of law and the development of legal policy. A similar idea is expressed by R. K. Sarpekov, who states that administrative justice, as an autonomous institution for the protection of human rights, is based on constitutional recognition of natural rights^{15,16}. Also, author notes that with the development of the system of administrative courts, the number of appeals with public-legal disputes will increase, which will help to strengthen the rule of law in public administration by introducing a specific and understandable procedure for handling administrative cases and creating a narrow specialization among judges.

Therefore, the study of the current stage of development of constitutional and administrative justice in the Republic of Kazakhstan on the foundation of the practice of specialized inter-district administrative courts and the Constitutional Council of the Republic of Kazakhstan is relevant for the formation of generalized scientific opinion on the level of realization of constitutional rights of citizens in the law enforcement in accordance with the criteria, which are inherent in the right state and declared in the Concepts of Legal Policy of the Republic of Kazakhstan and conclusions of the Venice Commission¹⁷. In turn, recommendations to improve the mechanisms of administrative and constitutional justice, based on the analysis of current jurisprudence, will stimulate academic discussion in this field, which will strengthen the availability of scientific expertise during the further process of norm-making in the Republic of Kazakhstan.

The purpose of the article is to examine the current stage of development of constitutional and administrative justice in the Republic of Kazakhstan, focusing on the practices of specialized administrative courts and the Constitutional Council.

The hypothesis of this study suggests that the introduction of new administrative tribunals and the establishment of the Constitutional Court represent a significant step in strengthening the protection of human rights in Kazakhstan. These institutions not only expand citizens' opportunities for

13 Spyska (2023a), pp. 259-274.

14 Nurgazinov *et al.* (2019), pp. 31-39.

15 Mazur, Korolchuk (2024), pp. 27-41.

16 Sarpekov (2019), pp. 65-74.

17 Opinion of the Venice Commission No. 1023/2021 "On the concept paper for improving the legal framework of the constitutional council" (2021).

legal protection but also contribute to ensuring the rule of law by providing effective mechanisms for overseeing the constitutional and administrative compliance of government decisions. This development is crucial for guaranteeing the proper realization of citizens' constitutional rights and reinforcing the foundation of a legal state.

2. Materials and Methods

In the course of the study, the theoretical method (analysis, synthesis, generalization) was used to study the judicial practice of specialized inter-district administrative courts and the Constitutional Council of the Republic of Kazakhstan. The analysis method breaks down complex legal concepts, court decisions, and legislative documents into smaller components to understand their elements and how they relate to administrative law practices. Conducted an in-depth legal analysis of constitutional guarantees of human rights and freedoms; the transformation of the Constitutional Council into the Constitutional Court and the development of administrative justice. The researchers compared Kazakhstan's legal system with experiences from other countries, particularly in implementing constitutional complaints with the help of comparative analysis. The researchers considered the historical context and development of specialized courts in Kazakhstan. Using the Case Study Approach, the study examined specific cases and scenarios to illustrate challenges in the current system, particularly regarding jurisdictional issues in administrative courts. After analysis, researchers combined the separate elements to form a coherent understanding of how various aspects of administrative law work together in the Kazakhstani legal system. The generalization method was used to identify patterns and draw broader conclusions from specific cases or legal provisions, helping to understand trends in administrative law practice.

The empirical basis of the study was the jurisprudence of specialized inter-district administrative courts; the Administrative Procedure Code of the Republic of Kazakhstan; statistical data on cases considered in public-administrative disputes; Normative decisions and legal positions of the Constitutional Council of the Republic of Kazakhstan; Concept of legal policy of the Republic of Kazakhstan until 2030.

The study was conducted in four stages. The first stage involved the analysis of the current legal and regulatory acts of the Republic of Kazakhstan in the sphere of guaranteeing human rights and freedoms at the constitutional level. The results of the improvement of the Kazakh legal system were analyzed directly, among which one can emphasize the modernization of the model of public administration, which is aimed at increasing the level of well-being of the population, economic growth, and the resolution of local issues in the life-supporting spheres: education, health, social protection, and employment. The question of citizens' access to the Constitutional Council has

been studied, as well as the mechanisms for such access in other states. New directions for modernization within the framework of the Concept of Legal Policy of the Republic of Kazakhstan until 2030 have also been studied, namely: state policy on the protection of human rights in the context of constitutional justice, rethinking of state regulation (application of “soft” law where permitted), review of certain types of administrative sanctions as a consequence of the adoption of the Administrative Procedure Code, proposal to transfer certain categories of public jurisdictional disputes, which have been under the jurisdiction of courts of general judicature, in the jurisdiction of specialized administrative courts¹⁸.

In the second stage, the decisions and legal positions of the Constitutional Council of the Republic of Kazakhstan were analyzed. The research examined their legal nature, the vector of interpretation of the rules of law, and compliance with general legal principles in decision-making. The article also considers the existence of unity in the interpretation of legal norms by the Constitutional Council and precedents of continuity of positions of the Constitutional Council in other specialized courts.

In the third stage, administrative justice was considered as a new mechanism to ensure the effective protection of constitutional human rights through the analysis of jurisprudence in the field of the settlement of public law disputes. The article explores the level of unity of decisions of administrative courts and positions of the Constitutional Council: the existence of continuity and observance of general principles of law in decisions of courts as a tool for ensuring the rights of citizens stipulated by the Constitution. The Administrative Procedure Code has been analyzed in the context of the presence of the procedural aspects of guarantees for the protection of human rights (citizens), which primarily ensure the right to a fair trial. Statistics on appeals to administrative courts have been studied. The categories of disputes, which have the prospect of their being excluded from the jurisdiction of courts of general judicature and transfer to the jurisdiction of administrative courts, have been considered.

In the fourth stage, the research work was completed and a summary of the findings of the analysis of the court case-work of the specialized administrative courts and the positions of the Constitutional Council was made. A list of proposals has been drawn up for the further improvement of mechanisms for ensuring civil rights and freedoms in public and legal disputes within the framework of the Concept of Legal Policy of the Republic of Kazakhstan until 2030.

18 Administrative Procedural Code of the Republic of Kazakhstan (2020).

3. Results and Discussion

3.1 CONSTITUTIONAL GUARANTEES OF HUMAN RIGHTS AND FREEDOMS IN THE REPUBLIC OF KAZAKHSTAN

A necessary role in the development of constitutional justice has been played in the Republic of Kazakhstan by a systematic approach to the transformation of the political and legal system through the planning and working on development strategies for several years, which are customarily reflected in legal policy concepts. Such a document reflects the strategic vision of the development of the state only by the President, but despite the absence of a system of restraint and balance, this approach has a positive impact on the process of modernization of the legal system. As part of the implementation of the Concept of Legal Policy for the period from 2010 to 2020, measures have been taken to improve the Kazakh legal system, which has made it possible to modernize the model of public administration, which is aimed at increasing the level of well-being of the population, economic growth and the resolution of local issues in the life-supporting spheres: education, health, social protection, and employment¹⁹. At the time of writing this research work, the Law of the Republic of Kazakhstan “On the introduction of amendments and additions to the Constitution of the Republic of Kazakhstan” made significant changes to the Constitution of the Republic of Kazakhstan in the context of which progress in improving constitutional rights and guarantees should be considered. It is worth noting that some of these changes take effect from the date of publication of the Law, and some – from 2023^{20,21}.

First of all, it should be noted that the Constitutional Council of the Republic of Kazakhstan is being transformed into the Constitutional Court, due to the fact that the Constitutional Court is becoming a new institution with significantly expanded powers²². Prior to the adoption of the Law with the amendments, the Constitutional Council of the Republic of Kazakhstan acted as the preliminary and subsequent control of laws for their constitutionality, which is stipulated by articles 72 and 78 of the Constitution of the Republic of Kazakhstan. The following review is carried out on the basis of appeals from the general courts, but statistics show that up to two cases a year are inspected. Such data indicate a weak initiative by the general courts and a lack of direct access by citizens to the body exercising constitutional control. Such a mechanism was not effective in en-

19 Czachor (2022), pp. 45-63.

20 Law of the Republic of Kazakhstan, “On the introduction of amendments and additions to the Constitution of the Republic of Kazakhstan” (2022).

21 Constitution of the Republic of Kazakhstan (1995).

22 Law of the Republic of Kazakhstan, “On the introduction of amendments and additions to the Constitution of the Republic of Kazakhstan” (2022).

forcing the law, as the courts, using their procedural superiority, refused to grant such requests by the parties to the proceedings. At the legislative level, the process for submitting and considering such applications has not been clearly established²³.

A significant step in Kazakhstan's constitutional reform has been the expansion of the list of entities who can appeal to the Constitutional Court. Previously, only high-ranking officials such as the President, Chairmen of the Senate and Majilis, a significant number of parliamentary deputies, and the Prime Minister had this right. However, recent amendments have extended this right to the Commissioner for Human Rights, the Prosecutor General, and, most importantly, to the citizens of Kazakhstan. This change greatly enhances citizens' opportunities to safeguard their constitutional guarantees, providing them direct access to norm-making and the formation of constitutionalism. If a citizen believes that a normative legal act violates their constitutional rights and freedoms, they now have the right to appeal to the Constitutional Court to review the legality of that act²⁴.

The Opinion of the Venice commission No. 1023/2021 "On the concept paper for improving the legal framework of the constitutional council" played a significant role in the development of this issue, in which attention was drawn to the narrow group of those who can appeal to the Constitutional Council²⁵. The Venice Commission in turn proposed changes to some legal acts: Criminal Procedure Code of the Republic of Kazakhstan²⁶, Civil Procedure Code of the Republic of Kazakhstan²⁷, Code of the Republic of Kazakhstan on Administrative Offenses²⁸ and Administrative Procedural Code of the Republic of Kazakhstan²⁹, and also Constitutional Law of the Republic of Kazakhstan No. 2737 "On the Constitutional Council of the Republic of Kazakhstan"³⁰. The legislative authorities, in the process of constitutional reform, based on the recommendations of the Venice Commission, have drawn on the experience of other States that have already implemented, at the legislative level, the procedure for individuals to apply to the constitutional control body³¹. Therefore, most states give their preference to the institution of a constitutional complaint. In recent decades, this form of treatment has been implemented in Turkey, Hungary, Ukraine, Lithuania, and other countries. In most states, a constitutional complaint becomes a foundation for revision by the constitutional review body of those laws and regulations that were applicable in a particular

23 Constitution of the Republic of Kazakhstan (1995).

24 The concept of the draft Constitutional Law of the Republic of Kazakhstan "On the Constitutional Court of the Republic of Kazakhstan" (2022).

25 Opinion of the Venice Commission No. 1023/2021 "On the concept paper for improving the legal framework of the constitutional council" (2021).

26 Criminal Procedure Code of the Republic of Kazakhstan (2014).

27 Civil Procedure Code of the Republic of Kazakhstan (2015).

28 Code of the Republic of Kazakhstan on Administrative Offenses (2014).

29 Administrative Procedural Code of the Republic of Kazakhstan (2020).

30 The concept of the draft Constitutional Law of the Republic of Kazakhstan "On the Constitutional Court of the Republic of Kazakhstan" (2022).

31 Opinion of the Venice Commission No. 1023/2021 "On the concept paper for improving the legal framework of the constitutional council" (2021).

case where the party is the subject of the complaint, and if all other mechanisms at the domestic level have been exhausted.

The procedure of appeal to the Constitutional Court will be provided by the Law of the Republic of Kazakhstan “On the Constitutional Court of the Republic of Kazakhstan”, which at the time of writing is just a project³². It would be appropriate, from the perspective of rulemaking, to take into account the experience of other states and to grant the right of recourse in the context of those legal acts which have been judicially applied to a person, otherwise, in a different form, such a right may have negative consequences in the form of a change of the purpose of the Constitutional Court from a body of constitutional control to a body dealing with the processing of public requests, which should be the responsibility of public authorities. The introduction of an individual as a subject of an appeal to the Constitutional Court demonstrates the fundamental thrust of the development of the legal system towards the establishment of the rule of law and the openness of the judiciary to civil society. The functioning of the new Constitutional Court, in the opinion of the scientific legal society, will contribute to the enhancement of the level of constitutional and legal culture and to the establishment of greater trust of citizens in the judiciary and the state authority, as well as improving citizens’ access to constitutional control. Having studied the Decree of the President of the Republic of Kazakhstan No. 674 “On Approval of the Concept of Legal Policy of the Republic of Kazakhstan until 2030”, it can be seen that the common thread running through it is the thesis that in order to build a humancentric state, transformations must take place in the sphere of public activity, it is in the Institute of Administrative Justice since the citizen is a direct “consumer” of administrative and other services³³.

The development of the legal system of the Republic of Kazakhstan is characterized by the consistent strengthening of mechanisms for the protection of human rights, especially of representatives of socially vulnerable groups. Court decisions are of particular importance, as they not only resolve specific disputes but also set legal precedents that influence law enforcement practice³⁴. That is why every court case related to the protection of labor, social and constitutional rights is considered through the prism of not only legal technique, but also social justice. The case of protection of labor rights of a disabled employee is illustrative of the complexity and multifaceted nature of judicial protection of human rights in modern Kazakhstan³⁵. The essence of the case was the unlawful dismissal of a disabled employee, where the employer tried to formally comply with the procedure, concealing discriminatory intentions. The trial revealed systemic violations of the labor rights of a person with a disability that went beyond formal procedural issues.

32 The concept of the draft Constitutional Law of the Republic of Kazakhstan “On the Constitutional Court of the Republic of Kazakhstan” (2022).

33 Decree of the President of the Republic of Kazakhstan (2021).

34 Spytska (2023b), pp. 407-422.

35 Law of the Republic of Kazakhstan No. 129-VII (2022).

The analysis of the court decision showed that the court was guided not only by the letter of the law but also by the spirit of social justice. It was found that the employee was dismissed without proper justification, in clear violation of the principle of equal labor rights. The court thoroughly investigated all the circumstances of the case, including the background of the employment relationship, the employee's professional qualities and the employer's motives. The key result of the case was not just the reinstatement of the employee, but a comprehensive decision that included compensation for moral and material damage. The court ordered compensation for the forced absence, which actually became an additional mechanism for protecting the violated rights. The significance of this court decision goes beyond the specific case. It sets an important precedent for the protection of the labor rights of persons with disabilities, demonstrates the inadmissibility of any form of discrimination in the workplace and confirms the social orientation of the judicial system of Kazakhstan³⁶.

This concept suggests applying "soft law" wherever possible. The concept of "soft law" is widely used in the practice of the European Union and operates alongside "hard law". Application of "soft law" in the legal system of the Republic of Kazakhstan can be realized in the form of a reduction of the state regulation of business and its digitalization: simplification of the process of registration and closure, obtaining licenses, tax reporting, and payment of taxes, etc. Also, state regulation of business activities should be limited and carried out only with the aim of eliminating risks to national security, human life, health, ecology, law and order, and morality^{37,38}. This position is supported by the representative of the scientific society A. J. Edwards, scientist note that with the development of the system of administrative courts, the number of appeals to public legal disputes will increase, which will help to strengthen the rule of law in public administration by introducing a specific and understandable procedure for handling administrative cases and creating a narrow specialization among judges³⁹.

An important element in administrative justice will be legislative approval of the notion of "administrative offense", which will make it possible to distinguish between legal liability and determine the subject of the dispute, to place such a dispute under the jurisdiction of the administrative or general courts. Taking into account the above, it can be concluded that the legal system of the Republic of Kazakhstan in 2010 and 2020 has undergone significant institutional transformations, at the moment Kazakhstan is already undergoing local changes in forms, mechanisms, and processes of state and judicial bodies.

36 Zhetpisbayev *et al.* (2017), pp. 2302-2307.

37 Mendez (2023), pp. 199-216.

38 Hvozdiuk, Morhun (2024), pp. 57-66.

39 Edwards (2023), pp. 123.

3.2 CONSTITUTIONAL JUSTICE

The level of development of the rule of law state can be defined in the context of the work of the body of constitutional control, as it is he who sets the vector in the rule-making and law enforcement, determines the content of legislative and judicial power⁴⁰. Pending the entry into force of the amendments, such a body in the Republic of Kazakhstan is the Constitutional Council, the decisions of which show a basic tendency to interpret fundamental issues of the realization and protection of individual rights. The analysis of constitutional justice in this work is based on two documents: the Message of the Constitutional Council of the Republic of Kazakhstan “On the state of constitutional legality in the Republic of Kazakhstan”⁴¹ and the Message of the Constitutional Council of the Republic of Kazakhstan “On the state of constitutional legality in the Republic of Kazakhstan”⁴². Therefore, in its decisions, the Constitutional Council refers to the imperative role of the provisions of the Constitution and the establishment of a “humanistic” model in public administration, recognizing the supreme values of the individual, his rights, and his freedoms. The Constitutional Council discusses the range of the concept of “absolute rights”, stating that the rights and freedoms provided for in the Constitution apply to everyone who is subject to the legislation of the Republic of Kazakhstan. This position of the Constitutional Council declares the equality of citizens, foreigners, and stateless persons in the territory of the Republic of Kazakhstan.

The analysis of current jurisprudence related to administrative and constitutional justice shows that Kazakhstan is undergoing significant reforms in these areas. One of the key changes is the establishment of the Constitutional Court, which replaced the Constitutional Council. This greatly expands citizens’ opportunities to file constitutional complaints, granting them direct access to constitutional review. Before this change, citizens could not directly appeal to the Constitutional Council, as only certain government bodies and officials had that right⁴³. This system proved ineffective, as only 1-2 cases were reviewed annually. Now, citizens can directly appeal to the Constitutional Court if they believe that their rights have been violated by normative legal acts. One of the key documents that influenced these changes is the Venice Commission’s Opinion No. 1023/2021, which recommended expanding the list of subjects eligible to appeal to the constitutional review body⁴⁴. Additionally, by analyzing the experiences of other countries, such as Turkey, Hungary, Ukraine, and Lithuania, Kazakhstan is introducing the institution of constitutional complaint, which allows citizens to challenge the legality of legislative acts applied in their cases after all other

40 Burenko (2021), pp. 45-67.

41 Message of the Constitutional Council of the Republic of Kazakhstan (2021).

42 Message of the Constitutional Council of the Republic of Kazakhstan (2022).

43 Meduševskij (2023), pp. 33-68.

44 Opinion of the Venice Commission No. 1023/2021 “On the concept paper for improving the legal framework of the constitutional council” (2021).

domestic legal mechanisms have been exhausted.

Administrative jurisprudence is also in the process of formation and development. Since 2015, specialized inter-district administrative courts have been established to handle public law disputes between citizens and government bodies⁴⁵. However, there is currently an issue of clearly delineating the jurisdiction of administrative courts and courts of general jurisdiction. There are cases where the same dispute is being considered by multiple courts simultaneously, leading to delays in the process and undermining public confidence in the judiciary. To address these problems, it is necessary to clearly define the criteria for assigning cases to the jurisdiction of administrative courts, which will enhance the efficiency of judicial proceedings and improve citizens' access to justice.

The Constitutional Council of Kazakhstan emphasizes the inalienability of constitutional rights and freedoms, which can only be restricted as per the Constitution. Legislators must consider the permissible framework for restrictions in a democratic state, allowing flexibility in areas not crucial to social, economic, and national importance. The introduction of a market economy, recognizing equality between public and private property, was a significant step in activating civil society and developing entrepreneurship. This increased investment attractiveness and foreign investment. The Constitutional Council's principles have shaped civil legislation, and compulsory acquisition or nationalization of private property is allowed only in exceptional cases with compensation for its value⁴⁶. The Constitution protects motherhood, childhood, marriage, and the family. The Constitutional Council clarifies that enshrining these values as protected by law is the beginning of a comprehensive system for the protection of children, which provides the basis for more focused regulation of the rights of children and parents in sectoral legislation. To summarize the overhead, it is possible to conclude that the Constitutional Council of the Republic of Kazakhstan treats appeals in one key and in disputed points in the legal implementation more often chooses the interest of a person or a citizen, protecting his or her rights and freedoms, provided for in the Constitution or international legal instruments. The Constitutional Council occupies an undeniably important place in the process of modernization of the legal system of Kazakhstan. Strengthening the position of constitutional legality in public administration depends on the level of implementation of the final decisions of the Constitutional Council. In a 2021 conclusion, the Venice Commission of the Council of Europe noted that the enforcement of decisions of a constitutional justice body is an important requirement for the establishment of the rule of law⁴⁷. In addition, interpretations of the Constitutional Council can be considered as recommendations for improving legislation⁴⁸.

The Constitution of Kazakhstan guarantees everyone the right to a legal remedy and access to

45 Civil Procedure Code of the Republic of Kazakhstan (2015).

46 Mendez, Alden (2021), pp. 838-860.

47 Dinaj (2024), pp. 18-26.

48 Opinion of the Venice commission (2021).

justice, with the Criminal Procedure Code requiring timely completion of investigations. However, there is no compensation mechanism for delays. The Constitutional Council emphasizes the need for proportionality between state force and the restriction of constitutional rights, urging legislators to justify restrictions based on the degree of danger to society, the nature and extent of damage, and the offender's characteristics⁴⁹. Clear criteria for distinguishing between criminal and administrative offenses should be developed.

Digitalization has opened new challenges for constitutionalists in Kazakhstan, particularly in protecting personal data and ensuring constitutional rights in the digital world. Digital security is crucial for state sovereignty and requires rethinking traditional legal institutions, as rights violations can now occur through information technology. Extraterritorial legal acts on personal data protection already exist. To strengthen constitutional legality, Kazakhstan should focus on increasing citizen well-being, simplifying access to justice, enhancing the effectiveness of public and judicial authorities, ensuring the rule of law, and fostering civil society engagement^{50,51}.

The case law of Kazakhstan reflects a profound evolution of constitutional justice, characterized by a consistent movement towards the establishment of the rule of law with the priority of human rights and freedoms. A key transformation was the transformation of the Constitutional Council into the Constitutional Court, which radically changed the mechanisms for protecting citizens' rights⁵². The introduction of the institution of constitutional complaint provided citizens with a direct opportunity to appeal against regulations that violate their constitutional rights. The court practice is consistently focused on the humanistic paradigm of protection of individual rights⁵³. Court decisions consistently confirm the principles of absolute equality of rights of citizens, foreigners and stateless persons, proportionality of state intervention and inadmissibility of unreasonable restrictions on rights and freedoms⁵⁴. An important area of development has been the protection of economic rights through the recognition of the equality of private and state property, which has contributed to the intensification of business activities and the attraction of foreign investment.

The current stage of development of case law is characterized by the adaptation of legal mechanisms to the digital environment, the empowerment of civil society and the creation of effective tools for access to justice. At the same time, the justice system needs further improvement, in particular through a clear delineation of court jurisdictions, unification of criteria for qualifying offenses, and ensuring a balance between state coercion and individual rights. The case law of Kazakhstan

49 Galikhanov *et al.* (2024), pp. 257-265.

50 Zhanuzakova (2019), pp. 21-27.

51 Muhamedžanov (2023), pp. 9-16.

52 The concept of the draft Constitutional Law of the Republic of Kazakhstan "On the Constitutional Court of the Republic of Kazakhstan" (2022).

53 Kilybayeva, Nurshanov (2020), pp. 046-057.

54 Bazelon, Green (2020), pp. 293-334.

demonstrates a steady trend towards building a state governed by the rule of law with developed mechanisms for the protection of human rights and freedoms. This process is characterized by the continuous improvement of judicial mechanisms in accordance with modern challenges and international standards, a consistent focus on the protection of individual rights and the creation of an effective system of constitutional justice. Transformations in the judicial system are aimed at increasing access to justice, ensuring real guarantees of constitutional rights and forming a legal culture focused on the priority of human rights.

3.3 ADMINISTRATIVE JUSTICE AS A NEW MECHANISM FOR THE EFFECTIVE PROTECTION OF CONSTITUTIONAL HUMAN RIGHTS

Some scholars emphasize the historical need for the development of specialized courts in the Republic of Kazakhstan. Thus, Zh. Shukenova *et al.* emphasizes that the establishment of administrative courts is the first step towards the formation of a system of specialized courts and affirms the principle of specialization in the Republic of Kazakhstan based on historical aspects⁵⁵. Administrative courts at the present stage of development of the legal system are one of the key elements of the socio-economic modernization of the Republic of Kazakhstan. According to the Decree of the President of the Republic of Kazakhstan No. 500 “On Specialized Administrative Courts” formed a new type of specialized vessels⁵⁶. The court was established as part of the introduction of administrative justice in the Republic of Kazakhstan to consider public-legal debates between state, natural, and legal persons. The Administrative Procedure Code is unique in that it regulates administrative procedures as well as administrative proceedings^{57,58}.

Since the functioning of specialized inter-district administrative courts, the issue of delimitation of jurisdiction between courts of general and special jurisdiction has become topical, as in practice there are cases where the same case may have been tried by more than one court (general and special jurisdiction). This problem in the implementation of the law arises as a consequence of the fact that jurisdiction overlaps in several normative legal acts: civil procedural and administrative codes. For example, it is possible to challenge the decision, or action (inaction) of a state body both in a specialized inter-district court and in the court of Astana, which is stipulated by the Civil Procedure Code of the Republic of Kazakhstan⁵⁹. Moreover, it is a common case that at the time of filing a claim with an administrative court it becomes known that the case is already

55 Shukenova *et al.* (2021), pp. 26-36.

56 Decree of the President of the Republic of Kazakhstan (2021).

57 Administrative Procedural Code of the Republic of Kazakhstan (2020).

58 Shishimbaeva (2014), pp. 22-25.

59 Civil Procedure Code of the Republic of Kazakhstan (2015).

being examined by a court of civil jurisdiction. As a result of this double duplication in the law, administrative proceedings are suspended⁶⁰.

Another common problem in judicial proceedings in Kazakhstan is the lack of a clear distinction in the jurisdiction in public law disputes between the district and economic courts. If the applicant is a physical person, he or she will bring an action before the District Court and, if the legal entity is, to the Economic Court, although the legal relationship may by nature relate to administrative proceedings. Such examples demonstrate that the institution of administrative justice works, but requires certain adjustments in the regulatory framework, as such negative practices ultimately affect the credibility of justice itself. The very existence of a well-developed system of specialized courts does not enhance the effectiveness of justice itself and the simplicity of decisions, because of the complexity of the determination of jurisdiction (the court), is a significant obstacle to citizens' enjoyment of their right to a fair trial and access to the court⁶¹. Thus, the first priority in the development of administrative justice should be the improvement of the categorical apparatus and the formation of a clear criterion for determining the jurisdiction of the dispute. The introduction of a restriction on simultaneous public-law disputes in different courts, especially in courts with different jurisdictions, would have a positive effect since the absence of such a provision would lead to a systemic violation of the principles of unity of jurisprudence⁶².

According to the Concept of Legal Policy of the Republic of Kazakhstan until 2030, it is supposed to review cases that will pass from general jurisdiction to administrative⁶³. R. Older *et al.* has identified several categories of cases that propose to fall under the jurisdiction of administrative courts:

- debates arising in the relations between the authorities and the citizen, as well as the legal entity;
- complaints against actions and decisions of bodies conducting criminal proceedings (investigation, inquiry, and prosecution);
- cases of contesting decisions and actions (inaction) of state authorities, local self-government bodies, public associations, and officials;
- disputes relating to the application of electoral legislation;
- cases of contesting the legality of normative legal acts;

⁶⁰ Tskhay (2021).

⁶¹ Amelin *et al.* (2023), pp. 33-48.

⁶² Dalmatov *et al.* (2024), pp. 63-90.

⁶³ Decree of the President of the Republic of Kazakhstan (2021).

- cases arising from the administrative and governmental powers of state and local authorities;
- cases of suspension or termination of the activities of public associations;
- reviewing issues relating to the enforcement of sentences and the exercise of judicial control over the legality of the arrest warrant;
- all cases in which citizens have challenged acts and decisions of administrative authorities⁶⁴.

Confrontational are categories of cases that arise from legal relations with the prosecuting authorities, since any offenses committed by such subjects in the course of the proceedings may be regarded as improper execution of the rules of the procedural criminal legislation, and not as an administrative one⁶⁵. Therefore, on the foundation of the proposed model, the Administrative Procedure Code should regulate specifically the scope of jurisdiction of administrative courts on such criteria:

- at least one side shall implement public administration functions, and the dispute has arisen in connection with the performance or nonperformance of such functions by such side;
- at least one side provides administrative services and a dispute has arisen over the wretched provision or failure of such a side to provide such services;
- at least one side is the subject of the electoral or referendum process and the dispute arose out of the violation of its rights in such process by the subject of power or another person.

Subject to the introduction by the legislator of clear criteria for determining the jurisdiction of the administrative court, the administrative justice system will be fully functional and will strengthen the right of citizens to access justice, in the end, administrative proceedings will be timely in settling disputes in the sphere of public-legal relations by the court.

4. Conclusions

As a result of the analysis of the level of development of constitutional and administrative justice in the Republic of Kazakhstan, it has been established that the formation of a state based on the

⁶⁴ Older *et al.* (2021), p. 1.

⁶⁵ Amelin *et al.* (2024), pp. 191-207.

rule of law is carried out systematically on the basis of the adoption of concepts of legal policy. In constitutional justice, the Republic of Kazakhstan is taking a substantial step by replacing the Constitutional Council with the Constitutional Court, which is due to the expansion of subjects that have the right to appeal to the constitutional control body. The procedure for such appeals was still being developed, but based on the background of neighboring states, the constitutional complaint mechanism was considered to be the most effective. It is important to mention that such a mechanism works only if an individual can appeal to the Constitutional Court only regarding the legality of the normative legal act that was applied to him in a particular case. In the decisions of the Constitutional Council, the supremacy of the human being, his life, rights, and freedoms as the highest value of humanity prevails. However, some positions point to gaps in legislation, in most cases in procedural regulations regarding the provision of constitutional guarantees and the incorporation of specific mechanisms into sectoral legislation.

An analysis of the level of development of administrative justice shows that Kazakhstan is at the stage of its formation as an effective instrument for ensuring constitutional rights and freedoms. The main gap is the lack of an exact criterion for determining the jurisdiction of administrative disputes. The establishment and regulation of such a criterion will make the institution of administrative justice fully operational and improve the algorithm of citizens' exercise of their right to access to justice. Based on the experience of neighboring States, such criteria could be based on the following: at least one side applies public-power management functions, and the dispute has arisen in connection with the performance or nonperformance of such functions by that side; at least one side provides administrative services and a dispute has arisen in connection with the poor quality of the provision or lack thereof of provision of these services; at least one side is a subject of the electoral or referendum process and the disagreement arose in connection with the violation of its rights in such process by the subject of power or another person.

The materials of this article can be used by representatives of the scientific legal community for the development of the discussion regarding local tools for the development of constitutional and administrative justice, as well as by legal practitioners to make recommendations to the legislator in the context of improving the categorical apparatus of administrative law and regulating the criteria for delimiting the jurisdiction of administrative courts with others. New questions have arisen in the research process that needs to be handled. It is necessary to continue the study of the institution of constitutional complaint and the results of its introduction into the legislation of the Republic of Kazakhstan, as well as to conduct a second analysis of the demand for consideration by the public legal disputes in administrative proceedings following the introduction of criteria in the Administrative Procedure Code to determine the jurisdiction of the administrative court.

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