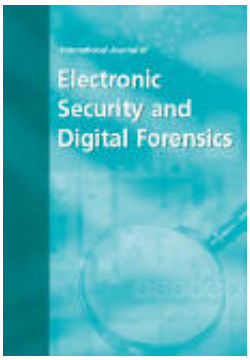
INDERSCIENCE PUBLISHERS
Linking academia, business and industry through research



International Journal of Electronic Security and Digital Forensics

ISSN online: 1751-9128 - ISSN print: 1751-911X
https://www.inderscience.com/ijesdf

Adoption of the administrative procedural code as the implementation of Kazakhstan's legal policy concept

Nurlan Z. Apakhayev, Ainur S. Ramazanova, Dina B. Bugybay, Kultay A. Adilova, Duman Z. Kopbayev

DOI: 10.1504/IJESDF.2023.10054061

Article History:

Received:	10 May 2022
Last revised:	18 July 2022
Accepted:	05 October 2022
Published online:	01 September 2023

Adoption of the administrative procedural code as the implementation of Kazakhstan's legal policy concept

Nurlan Z. Apakhayev*

Department of Legal Disciplines,
Kainar Academy,
Almaty, Kazakhstan
Email: apakhayev7630-3@toronto-uni.com
*Corresponding author

Ainur S. Ramazanova

Department of Law,
Sarsen Amanzholov East Kazakhstan University,
Ust-Kamenogorsk, Kazakhstan
Email: ramazanova@lund-univer.eu

Dina B. Bugybay

Department of Law,
Caspian State University of Technology and Engineering
named after Sh. Yessenov,
Aktau, Kazakhstan
Email: bugybay@u-tokio.eu

Kultay A. Adilova

International University of Tourism and Hospitality,
Turkistan, Kazakhstan
Email: k.adilova@nanyang-uni.com

Duman Z. Kopbayev

Department of Legal Disciplines,
Kainar Academy,
Almaty, Kazakhstan
Email: kopbayev@singapore-uni.com

Abstract: The purpose of this study is to investigate the features and innovations of the Administrative Procedural Code of the Republic of Kazakhstan (APCRK) within the framework of Concept adopted by the Kazakh government. To achieve this purpose, the following methods were employed: analysis, synthesis, comparison, and induction. In particular, the study employed the method of comparative analysis of approaches to the study of administrative justice of European states. The main conclusion of the study is that at present, the APCRK constitutes a combination of laws that contained

disconnected norms for the regulation of relations between citizens and public authorities. The applied value of this study lies in offering recommendations for improving the introduced innovations in the APCRK.

Keywords: administrative justice; administrative procedures; public law relations; public authority; administrative courts; Kazakhstan.

Reference to this paper should be made as follows: Apakhayev, N.Z., Ramazanova, A.S., Bugybay, D.B., Adilova, K.A. and Kopbayev, D.Z. (2023) 'Adoption of the administrative procedural code as the implementation of Kazakhstan's legal policy concept', *Int. J. Electronic Security and Digital Forensics*, Vol. 15, No. 5, pp.468–481.

Biographical notes: Nurlan Z. Apakhayev received his PhD in Law and an Associate Professor at the Department of Legal Disciplines, Kainar Academy. His research interests include advocacy, procedural norms of administrative law, concept of legal development and improvement of this sector of public administration.

Ainur S. Ramazanova received her PhD in Law and an Associate Professor at the Department of Law, Sarsen Amanzholov East Kazakhstan University. Her research interests are judicial branch, law enforcement agencies, organisation of law enforcement activities, and advocacy.

Dina B. Bugybay received her PhD in Law and an Associate Professor at the Department of Law, Caspian State University of Technology and Engineering named after Sh. Yessenov. Her research areas are public and private law, activities of state bodies, public law disputes, administrative procedure, and principle of priority of rights.

Kultay A. Adilova received her PhD in Law and an Associate Professor at the International University of Tourism and Hospitality. Her research interests are constitutional law, international public, private law, administrative judicial system, state administrative courts, implementation of legislation and managerial duties.

Duman Z. Kopbayev received his PhD in Law and an Associate Professor at the Department of Legal Disciplines, Kainar Academy. His academic directions are criminalistics, economic crime investigations, efficiency of public administration, administrative procedural mechanism of interaction between citizens and public authorities.

1 Introduction

In present-day realities, the adoption of a new codified regulation for the Republic of Kazakhstan is a step towards legislative regulation of a vast layer of issues relating to the fair resolution of conflict situations arising between citizens and public authorities. The study was carried out to investigate the features of the introduction of new institutions, norms, and definitions into the legislative system based on the studies of Russian, German, French, and other researchers.

Within the framework of the implementation of the Concept of the Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, the process of creating

administrative justice is underway, which is important for the development of a rule of law state, which is directly related to issues of public administration and the protection of citizens and organisations from illegal actions of state bodies (Sarpekov, 2019a). In 2018, it was decided to prepare the Administrative Procedural Code of the Republic of Kazakhstan (APCRK). Its main developers were the Ministry of Justice and the Supreme Court (Podoprigora, 2021). The adoption of a new codified act in the Republic of Kazakhstan took many years. Also, the code includes a vast number of procedural rules. Therewith, time is needed to develop practices and improve new institutions. It is necessary to refer to the experience of other countries for comparative analysis.

For example, an US researcher indicates in his study that in each country, administrative law restricts and directs the behaviour of officials in many government bodies that are responsible for the implementation of legislation and the performance of managerial duties (Coglianese, 2015). In Chinese administrative law, it is stated that the management of violations of the law by administrative authorities is one of the tools for ensuring compliance with laws in China; another way is judicial procedure (Lin and Long, 2021). For example, academic studies have examined the impact of the judicial practice of the administrative judicial system on the claim for cancellation to emphasise the greater burden on the administrative judicial system compared to criminal and civil courts (Alshawabkeh and Almajali, 2021; Alhendi, 2021; Vilks and Kipane, 2018). This study is of great importance for understanding the claim for cancellation in the new Code of the Republic of Kazakhstan.

One of the innovations of the APCRK was the introduction of the principle of the active role of the court, originally derived from German legislation (Müller, 2021). This principle allows the judge to independently and on their personal initiative extract the missing evidence to deliver a fair, objective, and lawful decision (Administrative Procedural Code, 2021). Notably, the new Code establishes specialised administrative courts. Administrative courts in the Code of Administrative Justice of France can be considered an analogy of these courts. Apart from judicial powers, administrative courts, and administrative appeals courts exercise advisory functions (Code of Administrative Justice, 2013; Seidman, 2021). The development of the legal science of state administrative courts is necessary for the development of state administrative law (Putrijanti, 2021; Forys and Blaszke, 2021).

The above studies make a practical contribution to the understanding of administrative justice by judges of the Republic of Kazakhstan. The subject of the study includes public-legal relations arising within the framework of administrative regulation between public authorities and citizens. The relevance of this study is conditioned upon the fact that the APCRK constitutes a new codified act requiring the study of norms derived from German and French legislation and applied within a particular state with the specific features of the legal understanding of citizens and the structure of the state apparatus. The originality of this paper lies in the comprehensive study of the theoretical approaches of various authors to this institution, as well as the empirical experience of using the latter. The main elements of scientific innovation are the development of proposals and recommendations for the improvement of this regulation. The purpose of this study is to investigate the features and innovations of the APCRK within the framework of Concept adopted by Kazakh government.

2 Materials and methods

This study employed methods of comparative analysis of the institution of administrative justice developed in the Republic of Kazakhstan and other countries such as the Federal Republic of Germany (FRG), France, the USA, the Russian Federation, etc. The authors of the present paper applied a comprehensive approach to the study of the material. The logic of the construction of this study is to consider the APCRK within the framework of the Concept of Legal Development and improvement of this sector of public administration. The first stage of the study allows understanding the prospects for the introduction of the APCRK. At the first stage of the study, the following conclusions were made.

The necessity of a new act that would combine procedural norms of administrative law has been maturing in legal science since the 2000s, and managed to embody these norms in the code. Secondly, the introduction of this institution was conditioned upon the creation of effective mechanisms for protecting the rights of individuals when considering public law disputes, as well as ensuring transparency of the activities of state bodies. At the first stage, the main method of research was the historical and systematic method based on the works of Russian and Kazakh lawyers: Podoprigora (2012), Dosanova and Ermekbayev (2019). At the second stage of the study, the specific features of consolidating administrative procedures in the APCRK were investigated. Proceeding from the analysis of the second stage, the following main conclusions were highlighted: firstly, the definition of the concept of administrative procedure emerged legislatively, as well as its internal and external forms of manifestation; secondly, new principles were consolidated in chapter 2 of the APCRK, including the principle of priority of rights, the principle of protecting the right to trust, the principle of prohibiting abuse of formal requirements; thirdly, the new code legally establishes the definition of an administrative body that can be not only state, but this term includes a state legal entity, as well as other organisations authorised to adopt administrative acts, perform administrative action (inaction).

Notably, the code establishes the procedural right of the subject to be heard. At the second stage, the main method of research was the analysis of administrative and procedural norms consolidated in the APCRK. At the third stage, innovations in the administrative procedure in the APCRK were covered. The main method at this stage was the method of induction and comparison. Based on the data, the following conclusions were drawn: firstly, one of the main innovations was the creation of a system of administrative courts that will consider exclusively public law disputes; secondly, a new principle of the active role of the court has been consolidated in the code to distinguish civil and administrative procedures. This principle is expressed in the fact that the court will clarify the circumstances of the case regardless of the petitions of the parties. If the evidence presented by the participants in the administrative procedure is insufficient, the court collects them on its own initiative; thirdly, four types of claims have been consolidated in the procedural rules, which include a claim for challenging, a claim for coercion, a claim for committing an action, a claim for recognition. These rules will allow plaintiffs to protect their rights to a greater extent.

3 Results

3.1 Prospects for the introduction of the Administrative Procedural Code of the Republic of Kazakhstan

To better understand the new instrument of state influence on administrative relations within the framework of the Concept of Development of the Republic of Kazakhstan, it is necessary to understand the primary reasons for the emergence of the administrative procedural mechanism of interaction between citizens and public authorities. On the legislative plane, the necessity of developing this regulation emerged as early as the beginning of the 20th century. However, the state apparatus was not ready to create a meaningful codified act that would meet the high legal technology and extensive legal practices (Vilks and Kipāne, 2020).

Therefore, instead of a full-fledged code, legislative acts governing various spheres of the administrative segment of society were adopted. Thus, in 2000, the Law 'On Administrative Procedures' was adopted, which governed the procedure for ruling and enforcing decisions upon the exercise of state functions and official powers by state bodies and officials (Bulletin of the Parliament of the Republic of Kazakhstan, 2000). This regulation contained only a few highly specialised articles that could not affect all areas of administration. Furthermore, the wide application of this law is hindered by the limits of its operation stipulated in it. The administrative procedures provided for by the law are applied in the part that is not governed by legislative acts. When a legal gap emerges in the legislative regulation of the activities of individual state bodies, according to researchers, this entails a disunity of legal regulation (Dosanova and Ermekbayev, 2021). Therefore, in 2015, a new draft law on administrative procedures was developed, which included the issues of administrative procedures in its subject matter.

In 2018, it was decided to prepare the APCRK. Its main developers were the Ministry of Justice and the Supreme Court (Podoprigora, 2021). Thus, the APCRK is a combination of the laws of the Republic of Kazakhstan 'On the Procedure for Considering Appeals of Individuals and Legal Entities' and 'On Administrative Procedures'. As a result, the APCRK is a specific codified act, since it combines both administrative procedures and judicial proceedings. This is explained by the fact that the code has been developed based on German practices of legal regulation.

This regulation was adopted to establish a communication channel between citizens and the state according to the following objectives:

1 Introduction and functioning of effective mechanisms for protecting the rights of individuals in the consideration of public law disputes.

2 Consolidation of legal guarantees that enable citizens to take an active part in the decision-making process by the authorities.

3 Ensuring transparency of the activities of state bodies and the exclusion of administrative arbitrariness.

4 Improving the efficiency of public administration and the level of public confidence in the state.

5 Introduction of administrative control criteria.

Proceeding from the above facts, it is clear that the Republic of Kazakhstan required the development and introduction of a new legislative act that would harmoniously combine administrative procedural functions.

3.2 Features of consolidating administrative procedures in the new code of the Republic of Kazakhstan

When considering administrative procedures, it is impossible not to note the innovations in legislation that this code offers. For example, the introduction of new principles on which administrative justice is based. These principles are consolidated in Chapter 2 of the APCRK. Below, the paper considers some of these principles. The principle of priority of rights stipulated in Article 12 of the APCRK assumes that all doubts, contradictions, and ambiguities of the legislation of the Republic of Kazakhstan on administrative procedures shall be interpreted in favour of the participant in the administrative procedure. This means that this principle helps a citizen protect their rights in controversial situations. For example, if the document governing the procedure for rendering public services to citizens defines a period of 3 days, but fails to specify the days in which this period should be measured (calendar or business days), then such period shall be calculated in calendar days, according to this principle. Since this will protect the rights of a citizen to a greater extent. The principle of protecting the right to trust, stipulated in Article 13 of the APCRK, will allow a citizen to keep the decision on the case in force, even considering the violation of the procedural order. This is demonstrated by Clause 3 of this Article: 'An unlawful administrative act adopted through the fault of an administrative body, an official, as well as an unlawful administrative action (inaction) committed through the fault of an administrative body, an official, cannot entail burdensome consequences for a participant in an administrative procedure' (Administrative Procedural Code of the Republic of Kazakhstan, 2021). The principle of prohibition of abuse of formal requirements, stipulated in Article 14 of the APCRK, assumes that an administrative body, an official is prohibited from refusing to implement, restrict, terminate the right of a participant in an administrative procedure, as well as impose a duty on them to comply with requirements not legislatively established by the Republic of Kazakhstan (Administrative Procedural Code of the Republic of Kazakhstan, 2021).

These principles were first legislated in the APCRK and constitute a unique tool for achieving a fair trial for subjects of administrative justice. In addition, the new code legally consolidates the definition of the administrative body. Proceeding from Article 4 of the APCRK, this body can be not only a state body, a local self-government body, but also a state legal entity, as well as other organisations authorised to adopt an administrative act, commit an administrative action (inaction) (Administrative Procedural Code of the Republic of Kazakhstan, 2021).

Thus, even a non-governmental organisation can be recognised as an administrative body if vested with certain state powers. The Code also divided administrative acts into the following types: favourable acts, cumbersome acts. These acts are necessary to protect the rights of citizens and to comply with the duties assigned to it by the state body.

Notably, the code stipulates the procedural right of the subject to be heard, which is expressed in the possibility of the participant in the administrative procedure to express their opinion to the preliminary decision on the administrative case. Despite the

considerable number of innovations expanding the rights of citizens, it is necessary to note the shortcomings of consolidating administrative procedures. For example, Article 1 of the APCRK states that the specific features of the implementation of administrative procedures are established by the laws of the Republic of Kazakhstan. There are really many specific features, since there are as many procedures in various laws. But the code further states that the APCRK regulates relations connected with the implementation of administrative procedures in the part not regulated by laws. Proceeding from this thesis, it can be concluded that many procedures cannot be governed by the APCRK, and many human rights norms will be implemented on a residual basis.

The code also includes provisions on the execution of an administrative act, regulation of issues that are not directly related to procedures and ambiguous wording. It is difficult to predict how the new institution of administrative discretion will act when the administrative body will be able to choose one of the possible solutions. But the main problem still seems to be the scope of the procedural part of the APCRK, considering the information technology development in public administration, which actively penetrates procedural activities (Starilov, 2018). Notably, there is no article on the language of administrative procedures in the general provisions. In this regard, it is advisable to include an article that would consolidate the fact that administrative procedures and administrative proceedings in the Republic of Kazakhstan shall be conducted in the Kazakh language. Along with Kazakh, Russian may officially be used in legal proceedings, and, if necessary, other languages. And then it is rather appropriate to apply the description of the provision on the language of administrative proceedings, for example, as in the Criminal Procedural Code of the Republic of Kazakhstan.

3.3 Innovations of the administrative procedure in the Administrative Procedural Code of the Republic of Kazakhstan

The administrative procedure in Kazakhstan was based on a massive segment of German legislative acts, which resulted in many similar institutions in the code under study. For example, one of the main innovations was the creation of a system of administrative courts that would consider exclusively public law disputes. With the introduction of this Code, lawyers faced the problem of distinguishing civil proceedings from administrative proceedings. For this purpose, a new principle of the active role of the court was consolidated in the code. This principle is expressed in the fact that the court will clarify the circumstances of the case regardless of the petitions of the parties. If the evidence presented by the participants in the administrative procedure is insufficient, the court collects it on its own initiative. In addition, the burden of proof lies with the administrative body that adopted the administrative act.

The new code also legislates four types of claims:

1 A claim for challenging the requirement to cancel the administrative act in full or in any part thereof.

2 A claim for coercion, where the plaintiff may demand to adopt a favourable administrative act, the adoption of which had been refused or not accepted due to the inaction of an administrative body, an official.

3 A claim for the commission of an action, where the plaintiff may demand to perform certain actions or refrain from such actions, that are not aimed at the adoption of an administrative act.

4 A claim for recognition, where the plaintiff may demand to recognise the presence or absence of any legal relations if they cannot file a claim pursuant to Articles 132, 133, and 134 of the APCRK (Administrative Procedural Code of the Republic of Kazakhstan, 2021).

Furthermore, this Code establishes a new institution – the institution of judicial control over the enforcement of judicial acts, which makes provision for the possibility of repeated use of monetary penalties by courts as a type of procedural coercion to ensure timely performance of their requirements (Podoprigora, 2021). Despite numerous innovations aimed at equality of rights and duties of subjects of administrative law, the new APCRK also has shortcomings in terms of procedural norms. Below, the paper considers some of these innovations. Firstly, Part 3, Article 1 of the APCRK states that the provisions of the Civil Procedural Code of the Republic of Kazakhstan (CPCRK) are applied in administrative proceedings, unless otherwise stipulated by the APCRK (Administrative Procedural Code of the Republic of Kazakhstan, 2021).

This definition suggests that even though the Code includes norms of procedural law, the judge still needs to apply the norms of the CPCRK. From the standpoint of legal technology, this is incorrect, since there is a separate codified act in the legislation since 2021 to regulate public-legal relations. Secondly, the new APCRK contains no norms governing such proceedings as proceedings on challenging a regulation; proceedings on the referral of minors to an educational organisation with a special regime of detention; proceedings on the extradition of a foreigner, etc. After all, such proceedings are of a public-legal nature, and it would be logical to include them in a code specially created for such proceedings. In legal science in this matter, it is considered that disputes initiated by citizens are considered in the administrative procedure, and the proceedings mentioned above are considered at the request of state authorities. Proceeding from the analysis of the procedural norms of the new APCRK, many institutions are an innovation for the legislative system of Kazakhstan and still have shortcomings. Nevertheless, these norms aim at implementing and protecting the legitimate rights and interests of citizens, which correspond to the national policy.

4 Discussion

Within the framework of the implementation of the legal policy of the Republic of Kazakhstan for the 2010–2020, the process of creating administrative justice is underway, which is important for the development of a rule of law state, directly related to issues of public administration and the protection of citizens and organisations from unlawful actions of state bodies (Sarpekov, 2019b).

Within the framework of these reforms, qualified lawyers of not only the Republic of Kazakhstan, but also other states of the Romano-German legal family, such as the FRG, the Russian Federation, etc., have been involved in the development of the APCRK. Even though these countries took an active part in the creation of administrative justice on the territory of the state, this institution has its specific features in the Republic of Kazakhstan. For instance, in the states of Western Europe, the term ‘administrative

justice', which played a positive role in the development of legislative protection of citizens from the actions and decisions of public administration and its bodies, became widespread in the 19th century, when judicial control became an independent institution of law (Kolesnikova et al., 2020; Komarov and Tsuvina, 2021).

In the Republic of Kazakhstan, this term had no legal consolidation, and was considered within the framework of civil proceedings before the introduction of the APCRK. In legal science, it is customary to consider this term in a broad and narrow sense. In a broad sense, administrative justice is understood as a system of special judicial and administrative bodies, the main activity of which is to monitor compliance with the rule of law in the field of public administration (Strukhmanchuk, 2009). In a narrow sense, this institution is associated with the consideration of disputes between citizens, organisations, and public authorities within the framework of the administrative procedure to protect their legitimate rights and interests. In accordance with these ideas about administrative justice, there are approaches to the organisation of the institution under study in the world community. Firstly, the doctrine of unified justice presupposes the attribution of public law issues to the competence of general courts. Such countries as England, the USA, and Switzerland adhere to this doctrine. Secondly, the doctrine of special administrative courts, which includes the Republic of Kazakhstan, Germany, and Portugal. This theory lies in attributing the issue of public law to the competence of specialised administrative bodies.

The APCRK borrows many norms from the judicial system of the FRG. This is explained by the attribution of states to a single legal family and many norms derived from various legal codes of Germany. Thus, there are specialised administrative courts in Germany, which include three instances:

1 Administrative Court of the Land (court of first instance).

2 The Supreme Administrative Court of the Land (the appellate instance).

3 Federal Administrative Court (cassation instance).

Administrative proceedings are based on the principle of the so-called intelligence procedure, that is, the court must, without the help of others and on its own initiative, extract the missing, according to its conviction, confirmations to deliver an honest, impartial, and lawful decision. This principle was also an innovation in the APCRK and called the principle of the active role of the court. For example, administrative courts are formed from among municipal employees, a judge does not have the right to initiate a case without the help of others, but must make decisions on all the requirements set out in the appeal, and only within the limits of these conditions a judge can investigate the issues put before them. Thus, today, there are two independent systems of courts in France, which comprise courts of general jurisdiction and administrative courts. The system of administrative courts is headed by the State Council, which is the first, appellate, and cassation instance in various categories of cases and exercises judicial control (Code of Administrative Justice, 2013).

Administrative courts have jurisdiction over all administrative disputes, except those assigned to the jurisdiction of another court by regulations. Decisions are usually made collectively or, in the case of substantial cases, in plenary session (Code of Administrative Justice, 2013). Administrative courts and appellate administrative courts also perform advisory functions. Among the specialised courts, it is necessary to single out the financial ones, which include the Accounts Chamber, regional and territorial

accounting chambers, the Court of Budgetary and Financial Discipline (Soloviev, 2017). The competence of the Accounts Chamber includes the appeal review of decisions of lower chambers, as well as the audit of financial statements of state bodies. Regional accounting chambers are authorised to review the accounting statements of state bodies in the corresponding territory, territorial accounting chambers have a similar competence (Paton et al., 2005; Soloviev, 2017).

The Court of Budgetary and Financial Discipline, in turn, considers cases on bringing officials to justice. Furthermore, French legal proceedings are divided into several types depending on the type of the contested act and the nature of the victim's claims: general legal proceedings where administrative acts are contested; repressive legal proceedings used in disputes relating to state property, serious administrative offences, and disciplinary penalties; proceedings on interpretation or assessment of legality, applied at the request of courts of general jurisdiction; annulment proceedings where the court is authorised to cancel an administrative act in whole or in part (Beshe-Golovko and Talapina, 2019).

Pursuant to the Code of Administrative Justice of France regarding the capabilities of the administrative court, apart from judicial capabilities, administrative courts and appellate administrative courts perform advisory functions. They also make decisions concerning the control of taxpayers over the work of certain local communities and their public bodies, subject to the criteria established by the General Code of Local Communities (Code of Administrative Justice, 2013). The organisation of administrative courts and appellate administrative courts makes provision for their formation by the chairman and members of the corps of administrative courts and appellate administrative courts. The latter may also include other persons seconded under the conditions defined by applicable laws and regulations (Beshe-Golovko and Talapina, 2019).

The administrative law of China states that the management of violations of the law by administrative authorities constitutes one of the tools for ensuring compliance with laws in China, another way is judicial procedure (Lin and Long, 2021). In the UK and the USA, administrative disputes between citizens and management are considered by courts of general jurisdiction along with civil cases (Coglianese, 2015). However, along with the general courts in the UK, there are bodies that perform judicial functions, but are of secondary importance regarding the courts (Karamanukyan, 2012). These bodies are called tribunals and are traditionally divided into two groups: tribunals in the field of economic management (tax, land, transport, forestry); tribunals in the field of social management (medical, pension).

Above the administrative tribunals is a supervisory body – the National Council of Administrative Tribunals, an advisory body to the Government, which has the right to control and supervise subordinate tribunals (Sarpekov, 2019). In the USA, administrative justice is represented by quasi-judicial bodies. Its system includes heads of executive authorities who consider disputes in subordinate bodies; specialised commissions as structural divisions of executive authorities that resolve various disputes; specialised administrative justice bodies created within the structure of executive power; judicial bodies that perform the functions of administrative justice (Coglianese, 2015).

Within the framework of the analysis of the administrative justice of different states, it is necessary to pay attention to the states of the former Soviet Union. For example, in Ukraine, the fundamental act in the area under study is the Administrative Procedural Code of Ukraine (APCU), which defines the jurisdiction and capabilities of administrative courts, and establishes the procedure for the implementation of legal

proceedings (Slepchenko, 2020). The APCU stipulates that the task of administrative proceedings constitutes a fair, impartial, and timely resolution of disputes by the court in the field of public relations to effectively protect the rights, freedoms, and interests of individuals, as well as rights and interests of legal entities from violations by subjects of authority (Administrative Procedural Code of Ukraine, 2005).

The main bodies that consider cases between government structures and citizens are administrative courts, which are specialised and constituting a part of the system of general jurisdiction, comprising local administrative courts, appellate administrative courts, and the Supreme Court. The features of the procedure include the active role of the court and the presumption of guilt of the administrative body. Science also points to the need to adopt laws on administrative procedure. Furthermore, the Verkhovna Rada of Ukraine considered a draft law on administrative procedures, but it was withdrawn from consideration (Klochko et al., 2019).

Today, in the Russian Federation, administrative proceedings are governed by a special codified act – the Code of Administrative Proceedings of the Russian Federation (CAPRF). However, administrative justice in Russia has its specific features. For example, administrative proceedings in the state are carried out not by specialised courts, as in Germany, the Republic of Kazakhstan, but by arbitration courts, whose subject of regulation is governed by the Arbitration Procedural Code. The adoption of the CAPRF has generated quite countless discussions on the expediency of its existence, its identity in the Civil Procedural Code of the Russian Federation and much more (Slepchenko, 2020). The existence of a certain act devoted to administrative proceedings is necessary due to the specificity of the relations governed by it. The CAPRF was not created earlier, primarily for historical reasons. This is explained by the fact that the USSR ideology did not recognise the possibility of any complaints against state bodies, and as a result, administrative justice practically did not develop in the 20th century (Slepchenko, 2020).

In 1964, the Civil Procedural Code of the Russian Soviet Federative Socialist Republic was adopted, governing, in particular, the proceedings in cases arising from administrative relations. The present-day legislator has adopted such a model of regulation, incorporating proceedings on cases arising from public relations in the Civil Procedural Code of the Russian Federation (Slepchenko, 2020). However, evidently, the foreign practices of the countries of the Romano-German legal family demonstrate the existence of a separate act covering administrative proceedings, which the authors of the present study assess positively. Considering the specific features of administrative cases, their consideration should take place within the framework of an administrative procedural form, and not civil norms. Therefore, the adoption of the CAPRF is a step forward in the development of Russian administrative justice (Starilov, 2001). The approach of the application of arbitration courts and courts of general jurisdiction to legal relations arising from the administrative sphere of legal regulation is criticised in the legal literature and is incorrect from the standpoint of the special subject and method of legal regulation of these relations.

Within the framework of the administrative law reform, lawyers made efforts to create an organic and structured system of administrative courts, but there were not enough qualified personnel, legislative equipment, or legal awareness of citizens to implement this project. As well as in the Republic of Kazakhstan, the Russian Federation planned to borrow the system of administrative courts from German law. Based on foreign practices, it was concluded that such a model of individual courts would work most effectively within the framework of the specific features of state regulation.

Thus, proceeding from foreign practices, the adoption of the APCRK was a natural process of development of public, administrative relations, which had to fall under public regulatory norms expressed in a codified regulatory act. Even though the norms of administrative procedures have been largely borrowed from German legislation, this study managed to identify features and new institutions that operate only in Kazakhstan. It takes time and law enforcement practice to draw unambiguous conclusions regarding the performance of the new institution within the legislative framework.

5 Conclusions

Analysis of public relations in administrative law suggests that the prospects for the adoption of the APCRK have long been percolating in the legislation of the state. This was also facilitated by the disunity of regulatory norms, which were in various acts and could not clearly govern the administrative procedures, as well as the procedure for resolving disputes arising between citizens and public administration bodies. As the research of the scientific literature covering administrative justice demonstrates, the codified regulation constitutes a complex array of procedural norms based on a practical basis. Thanks to the close cooperation of German and Kazakh researchers, it became possible to develop an administrative procedural code on the territory of the Republic of Kazakhstan.

Within the framework of this study, the following conclusions were made: to introduce effective mechanisms for the protection of citizens' rights in the consideration of public law disputes, to consolidate legal guarantees, and to improve the efficiency of public authorities, the APCRK was put into effect; such legislative innovations have been introduced as the principle of priority of rights, protection of the right to trust, prohibition of abuse of formal requirements. These principles are aimed at protecting the rights of citizens from abuse of the powers of the authorities. The new code divides administrative acts into favourable and cumbersome acts. A new institution of judicial control has appeared and the principle of the active role of the court in the consideration of the case has been introduced, which is largely a borrowing of the norms of the German code. This paper analysed the foreign practices of codification of administrative norms based on the codes of Germany, France, the provisions of English and US legislation.

Based on theoretical and practical material, it is necessary to make the following proposals for improving legislation. To unify legislative norms, it is necessary to amend the general provisions of the code to include an article on the language of administrative procedures. The reasoning for this is that the administrative procedures and administrative proceedings in the Republic of Kazakhstan are conducted in the Kazakh language. Along with Kazakh, Russian may officially be used in legal proceedings, and if necessary, other languages. It is necessary to supplement the norms of the APCRK with the proceedings stipulated in the CPCRK, such as proceedings on challenging a regulation, proceedings on the referral of minors to an educational organisation with a special regime of detention, on the extradition of a foreigner, etc. These innovations are necessary to eliminate gaps in the legislative regulation of public relations arising between citizens and government bodies.

References

Administrative Procedural Code of the Republic of Kazakhstan (2021) [online] https://online.zakon.kz/Document/?doc_id=35132264#pos=170;-56 (accessed 3 March 2022).

Administrative Procedural Code of Ukraine (2005) [online] https://zakon.rada.gov.ua/laws/show/2747-15#Text (accessed 3 March 2022).

Alhendi, N.I. (2021) 'Stopping implementation of administrative decisions in Saudi regulation', *Heliyon*, Vol. 7, No. 7, Article number e07638.

Alshawabkeh, F. and Almajali, M.H. (2021) 'The influence of the jurisprudence administrative on the Cancellation Case. Analytical study', *Heliyon*, Vol. 7, No. 3, Article number e0647.

Beshe-Golovko, K. and Talapina, E.V. (2019) 'The French code of administrative justice (Code De Justice Administrative)', *Journal of Administrative Proceedings*, Vol. 3, No. 1, pp.37–41.

Bulletin of the Parliament of the Republic of Kazakhstan (2000) [online] https://zanorda.kz/ru/is/100000000011?page=7 (accessed 3 March 2022).

Code of Administrative Court Procedure (2010) [online] https://germanlawarchive.iuscomp.org/?p=292 (accessed 3 March 2022).

Code of Administrative Justice (2013) [online] https://www.fondation-droitcontinental.org/fr/wp-content/uploads/2014/06/51739-CJA-partie-l%C3%A9gislative-Copie.pdf (accessed 3 March 2022).

Coglianese, C. (2015) 'Administrative Law: The United States and Beyond', *International Encyclopedia of the Social and Behavioral Sciences (Second Edition)*, pp.109–114 [online] https://www.sciencedirect.com/science/article/pii/B9780080970868860018# (accessed 6 March 2022).

Dosanova, F.P. and Ermekbayev, B.B. (2019) 'On the prospect of introducing administrative justice in the framework of discussing some provisions of the draft Administrative Procedural Code of the Republic of Kazakhstan', *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, Vol. 4, No. 58, pp.176–184.

Forys, I. and Blaszke, M. (2021) 'The role of administrative courts in shaping the content of local spatial development plans in Poland', *European Research Studies Journal*, Vol. 24, No. 3, pp.220–232.

Karamanukyan, D.T. (2012) 'Features of the development of administrative justice in the United States of America', *Bulletin of Chelyabinsk State University*, Vol. 1, No. 255, pp.51–53.

Klochko, A., Kaznacheyeva, D., Muzychuk, O. and Kiselova, E. (2019) 'Legal responsibility of police officers in conducting pre-trial investigations of crimes', *Asia Life Sciences*, Vol. 1, No. 2, pp.165–175.

Kolesnikova, M., Kiselyova, E., Vasylchenko, O., Svyrydova, L., Kharkiv, B. and Kibets, D. (2020) 'Judicial practice as a pre-condition for preventing contradictory judicial decisions', *Journal of Legal, Ethical and Regulatory Issues*, Vol. 23, No. 5, pp.1–7.

Komarov, V.V. and Tsuvina, T.A. (2021) 'International standard of access to justice and subject of civil procedural law', *Journal of the National Academy of Legal Sciences of Ukraine*, Vol. 28, No. 3, pp.197–208.

Lin, H. and Long, C.X. (2021) 'Do discretion criteria for patent administrative law enforcement encourage innovation among firms?', *China Economic Quarterly International*, Vol. 1, No. 2, pp.160–175.

Müller, K. (2021) 'Busy bankruptcy courts and the cost of credit', *Journal of Financial Economics*, Vol. 143, No. 2, pp.824–845.

Paton, B.E., Chernets, A.V., Marinsky, G.S., Korzhik, V.N. and Petrov, V.S. (2005) 'Prospects of using plasma technologies for disposal and recycling of medical and other hazardous waste Part 1', *Problemy Spetsial'noj Electrometallugii*, Vol. 1, No. 3, pp.49–57.

Podoprigora, R.A. (2021) 'Development of Administrative Legislation in the Republic of Kazakhstan: The New Code', *Bulletin of the Voronezh State University*, Series: Law, Vol. 1, No. 44, pp.137–146.

Putrijanti, A. (2021) 'Jurisprudence of State Administrative Courts in the Development of State Administrative Law', *Jurnal Penelitian Hukum De Jure*, Vol. 21, No. 2, pp.161–174.

Sarpekov, R.K. (2019a) 'Comparative legal analysis of the legal status of the court in the administrative proceedings of some European countries', *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, Vol. 4, No. 58, pp.15–25.

Sarpekov, R.K. (2019b) 'Prospects for the development of administrative justice of the Republic of Kazakhstan taking into account foreign experience', *Journal of Foreign Legislation and Comparative Jurisprudence*, Vol. 1, No. 1, pp.17–21.

Seidman, G.I. (2021) 'A hard look at common law administrative tribunals', *Oñati Socio-Legal Series*, Vol. 11, No. 2, pp.410–445.

Slepchenko, V.A. (2020) 'Some aspects of administrative Justice in Foreign countries and in Russia', *Issues of Russian Justice*, Vol. 5, No. 1, pp.250–261.

Soloviev, A.A. (2017) *Administrative Justice in Foreign Countries: Features of the Functioning of Individual Institutions of Administrative Proceedings*, Monograph, Moscow State Law University named after O.E. Kutafin (Moscow State Law University), Moscow.

Starilov, Y.N. (2001) 'Administrative justice', *Theory, History, Prospects*, NORMA, Moscow.

Starilov, Yu.N. (2018) 'Systemic interaction of administrative proceedings and administrative procedures as the most important factor of modernization of Russian administrative law', in *Modernization of Administrative Legislation (Goals, Objectives, Principles and Current directions)*, Infra-M, Moscow.

Strukhmanchuk, I.V. (2009) 'The significance of the Institute of Administrative Justice in the conditions of modern Russia', *Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia*, Vol. 9, No. 1, pp.170–174.

Vilks, A. and Kipane, A. (2018) 'Economic crime as a category of criminal research', *Journal of Advanced Research in Law and Economics*, Vol. 9, No. 8, pp.2860–2867.

Vilks, A. and Kipāne, A. (2020) 'Sustainable development of society in the context of the transformation of the legal framework', *European Journal of Sustainable Development*, Vol. 9, No. 4, pp.181–190.