

Administrative legal proceedings: key features of Kazakhstan's APPC

June 10, 2021

With the entry into force of the Administrative Procedure and Process-Related Code of the Republic of Kazakhstan (the "**APPC**"), public law disputes will be considered in a new form of legal proceedings – administrative proceedings. Accordingly, chapters 27, 28 and 29 of the Civil Procedure Code of the Republic of Kazakhstan (the "**CPC**") will become invalid.

However, according to paragraph 7 of Article 3 of the APPC, the following are not subject to consideration in administrative proceedings:

- Legal acts regulated by of the Constitutional Council of the Republic of Kazakhstan;
- Cases regulated by the criminal procedural, civil procedural legislation of the Republic of Kazakhstan and the legislation on administrative offenses.

It is important to note that according to sub-paragraph 2 of paragraph 3 of Article 1 of the APPC, the provisions of CPC are applied in administrative proceedings, unless a different procedure is provided for by the APPC itself. At the same time, the APPC demonstrates a significantly new approach to the consideration of public law disputes, including new principles, active participation of the court in the consideration of an administrative case, special rules for proving the circumstances of the case, normative consolidation of the types of claims, new time limits and procedure for reviewing court decisions.

The existing specialized inter-district administrative courts will continue to consider cases of administrative offenses, but they will change their name. With the entry into force of the APPC, administrative proceedings will be carried out by new specialized district and other administrative courts equivalent to them.

One of the significant innovations in administrative proceedings is established in paragraph 1 of Article 116 of the APPC: "In determining the subject of the claim, the court shall not be bound by the wording of the claim, the text of the claim and/or the documents attached to it or presented later. The court shall have the right to assist a party in formulating and/or changing claims with a preliminary explanation of the legal consequences. The court shall not be bound by the stated basis of the claim, but it shall have no right to go beyond the scope of the stated claims."

Also, Article 120 of the APPC provides for the possibility of the parties, on the basis of mutual concessions, to terminate the administrative case in whole or in part by concluding an agreement on conciliation or mediation. Likewise, they are permitted to settle the dispute in a participatory procedure at all stages of the administrative process before the court retires to consider the judgement, in case the respondent (administrative body or official) has administrative discretion.

By virtue of Article 128 of the APPC, parties must provide proof according to the rules of the CPC, with the exception of certain circumstances, provided for by the APPC. First of all, Article 129 of the APPC clarifies the rules for the

distribution of the burden of proof, and also prohibits the respondent (administrative body, official) to refer to new justifications that are not specified in the administrative act. In addition, the consequences of failure to prove certain circumstances of significance to the case are envisaged.

According to Article 130 of the APPC, the court is obliged to assist the parties in proving the circumstances of the case. It also has the right to collect evidence independently to fully determine and objectively assess the circumstances of an administrative case, at all stages of the process. At the same time, the court may shift the burden of proof to the party that obstructs the obtaining of evidence.

Also, by virtue of paragraph 2 of Article 16 of the APPC, the active role of the court lies in the fact that the judge has the right to express his/her preliminary legal opinion on the legal grounds related to the factual and/or legal aspects of the administrative case.

According to paragraph 1 of Article 131 of the APPC, four types of administrative claims are provided for, including the claim for challenging, claim for compulsion, claim for performing an action, and claim for recognition. There may be cases when questions may arise related to the choice of the "correct" type of claim for a particular situation.

For example, in the case that a burdensome administrative act violates the rights, freedoms and legitimate interests of the claimant, the claimant has the right to file a claim for challenging, with the requirement to cancel the administrative act in full or in part. If it is necessary to issue a favorable administrative act, the issue of which was refuted or which was not issued due to the inaction of an administrative body or an official, the claimant should file a claim for compulsion.

In a claim for performing an action, the claimant may demand the administrative body perform certain actions or refrain from actions that are not aimed at the issue of an administrative act. Finally, a claim for recognition should be used if it is impossible to bring one of the above three claims, in particular, to declare invalid a burdensome administrative act that has expired.

Moreover, the APPC provides possible options for the court to consider each of the above listed claims in accordance with Articles 155-160. For example, according to sub-paragraph 2 of paragraph 1 of Article 157 of the APPC, in a claim for compulsion, the court has the right to impose on the respondent the obligation not to issue a burdensome administrative act.

The time limits for filing an administrative claim in court are determined by Article 136 of the APPC. In particular, according to paragraph 1 of this article, claims for challenging and for compulsion must be filed with the court within one month of the date of the delivery of the decision of the body that considered the complaint. If the law does not provide for a pre-trial procedure or there is no body to consider the complaint, the claim must be filed within one month of the date of the delivery of the administrative act or of the date of notification in the manner prescribed by the APPC and the legislation of the Republic of Kazakhstan.

By virtue of paragraph 2 of Article 136 of the APPC, a claim for performing an action must be filed with the court within one month of the day when the person became aware of the performance of the action, or within one month of the day when the period established by the legislation of the Republic of Kazakhstan for the performance of the action expired. Moreover, according to paragraph 3 of Article 136 of the APPC, claims for recognition may be filed within five years from the moment the relevant legal relationship arose.

The requirement to recognize a burdensome administrative act, that no longer has legal force, as illegal may be filed within three months of the day when the person became aware of the violation by that act of his/her rights, freedoms and legitimate interests. The deadlines for appealing the actions (inaction) of the enforcement agent on the execution of enforcement documents have been preserved.

According to sub-paragraph 1 of paragraph 4 of Article 138 of the APPC, in order to prepare an administrative case

for a preliminary hearing, the judge may point out to the claimant any eliminable shortcomings of the claim and set a time limit for correcting them. As a general rule, this time limit will not exceed 10 working days from the date of the delivery of such requirement, and it must be explained to the claimant what are the procedural consequences of failure to comply with the requirements of the court. In this regard, it is necessary to take into account the limited timeframe for eliminating the shortcomings indicated by the court.

Guided by Article 140 of the APPC, the respondent has the right to apply with a reasoned request for immediate enactment of the challenged administrative act at any stage of the administrative process on the grounds provided for in Article 96 the APPC (e.g. the need to protect the rights of individuals, legal entities, or public or state interests).

This norm of the APPC reduces the importance of appealing an administrative act in court, since, when appealing against an administrative act, the applicant often seeks to suspend its effect. Enforcing the challenged act without waiting for the decision of the court contradicts the above-stated suspension approach.

According to sub-paragraph 2 of paragraph 1 of Article 142 of the APPC “the claimant shall have the right to change the cause and subject of the claim, increase or decrease the amount of the claim by filing a written application before the court retires to make a decision. The running of the time limit for consideration of an administrative case shall be calculated from the date of the filing of the initial claim”.

According to paragraph 2 of Article 169 of the CPC, a simultaneous change in the cause and subject of the claim means filing a new claim. This poses the risk that preserving the time limit for considering a "new" claim may complicate the consideration of the new claim in a short time, which may negatively affect the quality of such consideration and restrict access to justice.

According to paragraph 2 of Article 143 of the APPC, in the preliminary hearing, full disclosure of the evidence without examination must be ensured. At the same time, this rule does not disclose which of the parties to the administrative case must ensure full disclosure of factual data and what the consequences of failure to fulfill such an obligation will be. We believe that in this case, the rules for the distribution of the burden of proof, as well as the restrictions of paragraph 3 of Article 129 of the APPC, may apply.

According to Article 144 of the APPC, placing documents and materials of an administrative case on the electronic servers of the court is equivalent to sending documents to the participants in an administrative case. In this regard, when filing an administrative claim, parties are recommended to check the electronic court servers regularly for materials related to their case.

According to paragraph 1 of Article 146 of the APPC, an administrative case must be considered and resolved within a reasonable timeframe not exceeding three months from the date of the claim. In administrative cases of particular complexity, this period may be extended for a reasonable period, but by not more than three months. At the same time, the decision of the court of first instance and the order of the court of appeal enter into force after the expiration of the period for their appeal, respectively, through the appeal and the cassation procedures.

According to paragraph 2 of Article 168 of the APPC, participants in an administrative process may appeal court decisions that have not entered into force, within two months from the date of the decision in the final form. According to paragraph 2 of Article 169 of the APPC, participants in an administrative proceeding may appeal in cassation decisions and rulings of the court that have not entered into force by filing a cassation appeal within one month from the date of the delivery of the final form of the court order of the appellate instance.

Therefore, as of July 2021, judicial appeal of an administrative act or action (inaction) will be carried out according to the APPC. In the unregulated part, the appeal will be carried out according to the CPC. Consideration and resolution of public law disputes according to the APPC will be carried out with the active participation of the court with special rules for the distribution of the burden of proof. In addition, the law will recognize specific types of claims and the

consequences of their satisfaction, and new deadlines for filing a claim and reviewing court decisions will apply.

Your Key Contacts



Aigoul Kenjebayeva
Kazakhstan and Central Asia
Managing Partner, Almaty
D +7 727 258 2380
aigoul.kenjebayeva@dentons.com



Daniyar Toigonbaev
Partner, Almaty
D +7 727 258 2380
daniyar.toigonbaev@dentons.com



Artur Utarbayev
Counsel, Almaty
D +7 727 258 2380
artur.utarbayev@dentons.com