

Administrative procedure: overview of the main innovations of the APPC

June 10, 2021

The Administrative Procedure and Process-Related Code of the Republic of Kazakhstan (APPC) provides for two independent stages in the movement of administrative cases: the administrative procedure (including the procedure for pre-trial appeal) and administrative proceedings. This article will consider the procedure for the implementation of administrative procedures. The issues related to legal proceedings are outside the scope of this article.

With the adoption of the APPC, inter alia, the Law of the Republic of Kazakhstan of November 27, 2000 "On Administrative Procedures" and the Law of the Republic of Kazakhstan of January 12, 2007 "On the Procedure for Considering Applications of Individuals and Legal Entities" cease to be in force. The APPC will also introduce a number of relevant amendments to the Law of the Republic of Kazakhstan of April 6, 2016 "On Legal Acts". Accordingly, as of July 1, 2021, administrative procedures will be regulated, first of all, by Section 3 of the APPC, which consists of 7 chapters and 40 articles.

The initiation of an administrative procedure may be carried out either on the basis of an appeal (written, electronic or oral), or on the basis of the initiative of an administrative body or official.

An important innovation is the possibility of participants in the administrative procedure (in accordance with paragraph 1 of Article 73 of the APPC) to express their position on the preliminary decision on the administrative case. The participants in the administrative procedure are notified of the decision in advance, but not later than three working days before the adoption of the administrative act.

At the same time, according to sub-paragraph 4 of paragraph 1 of Article 20 of the APPC, a participant in the administrative procedure must be notified of the place and time of the hearing in advance. However, although they are entitled to advanced notification, given that participants will learn about the preliminary decision on the administrative case only three working days before the adoption of the administrative act, it is possible that they will not have sufficient time to prepare for the hearing.

According to paragraph 1 of Article 76 of the APPC, unless otherwise provided by the laws of the Republic of Kazakhstan, a single term for the administrative procedure is established - 15 working days from the date of the receipt of the appeal. According to Article 77 of the APPC, after considering an administrative case, a decision must be made in writing either on the adoption of an administrative act, or on the termination of the administrative procedure.

By virtue of paragraph 1 of Article 79, an administrative act must be legal and justified. The requirement for the compliance of the administrative procedures with the legislation of the Republic of Kazakhstan is reflected in the principle of legality, but the requirements for the reasonableness of administrative procedures are left without due attention.

According to paragraph 1 of Article 84 of the APPC, violation of the legislation of the Republic of Kazakhstan on

administrative procedures will be the basis for recognizing an administrative act as illegal, if such violation has led or could have led to the adoption of an incorrect administrative act. This means that an essentially correct administrative act may not be recognized as illegal upon formal grounds only.

This approach of the APPC may lead to limited opportunities for both pre-trial and judicial appeal of administrative acts. However, we note that according to paragraph 3 of Article 100 of the APPC, the grounds for revising an administrative act or administrative action (inaction) include:

- The incorrect determination and clarification of the range of circumstances that are important for the correct consideration of the administrative case
- Inconsistency of the content of the administrative act or administrative action (inaction) with the materials of the administrative case
- Violation or misapplication of the legislation of the Republic of Kazakhstan.

In addition, Article 83 of the APPC indicates that an administrative act enters into force from the moment of its adoption, unless a later date is specified. At the same time, an administrative act comes into effect from the moment it is brought to the attention of the participant in the administrative procedure in the manner prescribed by Article 81 of the APPC. The concepts “entry into force” and “coming into effect” are very similar, and therefore it is possible that controversy could arise with regard to establishing the date and calculating the time limits stipulated by the APPC.

Paragraph 3 of Article 86 of the APPC sets out a fairly short period of 5 days for the performance of an administrative act, unless otherwise provided by the laws of the Republic of Kazakhstan or by the administrative act itself. When determining the deadline for the execution of an administrative act, including when hearing the opinions of the participants in an administrative procedure, the principle of proportionality, including the criteria of suitability, necessity and proportionality, should be taken into account.

Guided by paragraph 4 of Article 91 of the APPC, in case of disagreement with an administrative act or an administrative action (inaction), a participant in an administrative procedure has the right to appeal to a higher administrative body or to an official. The complaint should be submitted through the administrative body or the official, whose administrative act or administrative action (inaction) is being appealed.

According to paragraph 1 of Article 92 of the APPC, a complaint must be filed no later than three months from the day when the participant in the administrative procedure became aware of the adoption of an administrative act or the commission of an administrative action (inaction). According to Article 99 of the APPC, the period for consideration of a complaint is 20 working days.

The general rule for the suspension of a legal act of individual application, provided for in paragraph 4 of Article 65 of the RK Law On Legal Acts has been moved to Article 96 of the APPC (as of July 1, 2021). This rule also states that the filing of a complaint suspends the execution of an administrative act or an administrative action.

This rule is an effective tool in protection against illegal administrative acts or actions of individual application. However, with the entry into force of the APPC, the exceptions to this rule additionally include: "the need to protect the rights of individuals and legal entities, public or state interests" and "other cases provided for by the laws of the Republic of Kazakhstan."

Since almost any administrative act or administrative action can be motivated by the need to protect the rights of individuals and legal entities, public or state interests, this norm gives rise to ambiguity in the scope of this exception.

In addition, there are questions about whether Article 96 of the APPC applies when an administrative claim is filed with the court or under judicial consideration. However, as mentioned above, issues related to administrative

proceedings are outside the scope of this article and will not be discussed here.

Paragraph 5 of Article 91 of the APPC formalizes the general rule of mandatory pre-trial appeal of an administrative act. At the same time, according to clause 6 of Article 100 of the APPC, in case of disagreement with the decision of the body considering the complaint, a participant in the administrative procedure has the right to file an application with the court or a complaint with another competent body. The time limits for filing a claim are provided for in Article 136 of the APPC and are rather short (one month for most disputes).

According to paragraph 2 of Article 91 of the APPC, if an administrative body or official does not adopt an administrative act or perform an administrative action within the time limits established by the Code, as of the date of expiration of the time period, it will be considered that the administrative body has refused to do so. The same approach applies in the absence of a decision on a complaint in accordance with paragraph 5 of Article 100 of the APPC.

Thus, a participant in administrative procedures should pay special attention to the calculation of the time limits at all stages of the administrative procedures, be actively involved in the consideration of the administrative case, take into account the procedure for pre-trial appeal of administrative acts and/or administrative action (inaction), and be prepared for the need to go to court.

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