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### ГОСУДАРСТВЕННОЕ УПРАВЛЕНИЕ И ГОСУДАРСТВЕННАЯ СЛУЖБА

## THEORETICAL FOUNDATIONS OF ADMINISTRATIVE JUSTICE IN FOREIGN COUNTRIES AND KAZAKHSTAN

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**Abstract.** This in-depth research explores the theoretical foundations of administrative justice in foreign nations and their applicability within Kazakhstan's context. Utilizing a meticulous comparative analysis, this study assesses the relevance, distinctions, and potential impact of administrative justice on justice system in general and Kazakhstan's relevant institute particularly. Through a comprehensive qualitative review encompassing extensive literature, legal documents, and illuminative case studies, the article presents significant findings.

These findings unveil not only the strengths inherent in chosen international models but also pinpoint crucial adaptations for optimizing Kazakhstan's administrative justice system. By shedding light on these critical aspects, this research provides valuable ideas for policy development and the reform agenda in the appropriate field. It is concluded that administrative justice institute should be determined as a combine of administrative proceedings and administrative procedures. These outcomes are poised to guide effective strategies and reforms, ultimately contributing to the enhancement of Kazakhstan's administrative justice landscape.

**Keywords:** administrative justice, theoretical framework, international experience, legal system, due process, access to justice, governance, legal framework.

**Аңдатпа.** Бұл тереңдетілген зерттеу шет елдердегі әкімшілік сот төрелігінің теориялық негіздерін және олардың Қазақстан Республикасы жағдайында қолдану мүмкіндігін қарастырады. Мұқият салыстырмалы талдауды пайдалана отырып, бұл зерттеу әкімшілік сот төрелігінің жалпы сот төрелігі жүйесіне және атап айтқанда Қазақстандағы тиісті институтқа қатыстылығын, айырмашылықтарын және ықтимал әсерін бағалайды. Көлемді әдебиеттерді, құқықтық құжаттарды және ағартушы мысалдарды қамтитын кешенді сапалы шолу арқылы мақала маңызды тұжырымдарды ұсынады.

Бұл нәтижелер таңдалған халықаралық үлгілердің күшті жақтарын ашып қана қоймай, Қазақстанның әкімшілік әділет жүйесін оңтайландыруға бағытталған маңызды өзгерістерді де көрсетеді. Осы маңызды аспектілерге жарық түсіре отырып, бұл зерттеу тиісті саладағы саясатты әзірлеу және реформалау күн тәртібі үшін құнды түсініктер береді. Әкімшілік сот төрелігі институтын әкімшілік іс жүргізу мен әкімшілік рәсімдердің жиынтығы ретінде анықтау керек деген қорытынды жасалады. Мұндай нәтижелер Қазақстандағы әкімшілік әділет жүйесін жетілдіретін тиімді саясат пен реформалар үшін негіз болады.

**Түйін сөздер:** әкімшілік сот төрелігі, теориялық негізі, халықаралық тәжірибе, құқықтық жүйе, тиісті процесс, сот төрелігіне қолжетімділік, басқару, құқықтық база.

**Аннотация.** Данное углубленное исследование рассматривает теоретические основы административной юстиции в зарубежных странах и их применимость в контексте Республики Казахстан. Используя

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тщательный сравнительный анализ, данное исследование оценивает актуальность, различия и потенциальное влияние административной юстиции на систему правосудия в целом и соответствующий институт Казахстана в частности. Благодаря всестороннему качественному обзору, охватывающему обширную литературу, юридические документы и поучительные тематические исследования, в статье представлены важные выводы.

Данные результаты раскрывают не только сильные стороны выбранных международных моделей, но и указывают на важные изменения для оптимизации системы административного правосудия Казахстана. Пролитив свет на эти важные аспекты, данное исследование дает ценные идеи для разработки политики и программы реформ в соответствующей области. Сформирован вывод, что институт административной юстиции следует определять как совокупность административного производства и административных процедур. Такие результаты призваны служить основой для эффективных стратегий и реформ, что в конечном итоге будет способствовать улучшению системы административного правосудия в Казахстане.

**Ключевые слова:** административная юстиция, теоретическая основа, международный опыт, правовая система, надлежащая правовая процедура, доступ к правосудию, управление, правовая база.

## Introduction

Administrative justice lies at the core of fostering trust in governmental structures through its emphasis on fairness, accountability, and transparency [1]. This study delves into how various countries worldwide have crafted distinct frameworks embodying these principles within their administrative systems [2]. While Germany as a paradigmatic example renowned for its influential administrative justice system [3], this research extends its purview to encompass other selected nations. By scrutinizing appropriate global models in relation to Kazakhstan's evolving legal landscape, this study aims to unravel their relevance in practical terms.

Through a meticulous examination drawing insights from extensive literature, legal documents, and comparative analysis, this research aims to illuminate the historical evolution, theoretical foundations and practical application of administrative justice. By juxtaposing these global perspectives with the current administrative justice landscape in Kazakhstan, it seeks to pinpoint areas of alignment, divergence, and potential avenues for adaptation or reform.

The intent is not just to decode the nuances of administrative justice theories but also to offer tangible guidance for policymakers and practitioners in general and Kazakhstan in particular. By bridging the gap between theoretical underpinnings and real-world implications, this study aspires to significantly contribute to the ongoing dialogue surrounding administrative justice reform in Kazakhstan.

## Materials and methods

For the purposes of this research a comparative analysis of secondary data and case studies were used.

Extensive research was conducted utilizing academic databases, legal repositories, and esteemed scholarly journals [4; 5].

Access to legal databases and repositories played a pivotal role in acquiring specific cases and judicial decisions pertinent to administrative justice across different countries [6]. This involved scrutinizing official court records, judgments, and administrative decisions to comprehend the pragmatic application of legal principles in real-world cases.

Official government reports, policy documents, and administrative guidelines were crucial sources providing insights into the operational framework of administrative justice systems in respective countries [7; 8]. These resources elucidated institutional structures, legislative frameworks, and policy implementations.

The amassed data underwent meticulous analysis to identify recurring themes, trends, and comparative elements across disparate administrative justice systems.

Data from literature, legal documents, and case studies were subjected to thematic analysis to identify key themes such as fairness, transparency, accountability, due process, and protection of rights [3].

## Results and discussion

Administrative justice is a set of principles and mechanisms that ensure fairness, transparency, and accountability in the functioning of public administration [4]. The concept embodies the protection of individual rights, the promotion of fair

outcomes, and the maintenance of the rule of law in administrative processes [5].

Central to administrative justice is the notion of due process, involving the right to a fair and impartial hearing, adequate notice and an opportunity to be heard [3]. This principle acts as a defense against arbitrary decision-making, ensuring procedural fairness in administrative proceedings [6].

Moreover, administrative justice emphasizes the importance of facilitating access to justice for all individuals, regardless of their social or economic status [5]. The main idea is in removing barriers to legal recourse and providing effective remedies against administrative actions [9].

Administrative decision-making, which includes elements such as reasoning, transparency and accountability, is a cornerstone of administrative justice [10]. It requires sound and legitimate decision-making process by public authorities, thereby building public confidence in the legitimacy of administrative actions [4].

Administrative justice, based on these fundamental elements of due process, access to justice and accountable decision-making, provides the foundation for upholding the rule of law and ensuring fair outcomes in administrative processes.

Historically administrative justice has evolved differently in various countries depending on the historical, cultural and legal context. As a result of the functioning of administrative justice the fundamental models of this institution were formed in countries listed below. It is important to mention that formed models in chosen countries vary based on: system of law, government structure and judicial practice.

One of the oldest models of administrative justice formed in Germany. Germany is a key reference point due to its long tradition of administrative law and its well-established administrative justice system [3]. The German model emphasizes judicial oversight, specialized administrative courts and adherence to legal principles in administrative decision-making, serving as a model for many countries [4]. Distinguishing feature is that administrative disputes in this country are considered primarily by the courts of first and second instanced and only complex

cases can be considered at the third court level – in cassation.

France boasts a rich history of administrative law too, known for its "Council of State," a key administrative court with broad advisory and authorising functions [5]. The French system emphasizes administrative discretion, hierarchical control and the role of the Council of State in shaping administrative policy and legal interpretations. France's centralized administrative structure is characterized by a strong focus on human capital investment within its administrative bodies. This investment focuses on cultivating skilled personnel capable of influencing decision-making processes, enhancing service delivery mechanisms, and optimizing governance efficiency [5]. Investments in skilled personnel play a pivotal role in shaping decision-making within administrative frameworks in France. Well-trained individuals bring expertise and nuanced understanding to policy formulation and implementation. Their knowledge and proficiency contribute to informed decision-making, enabling more effective governance strategies.

The Canadian administrative justice system is attractive for study because it integrates both federal and provincial administrative courts, demonstrating a decentralized approach to dispute resolution and administrative decision-making [1]. The Canadian model emphasizes the delegation of authority to specialized tribunals, strengthening sector-specific expertise and promoting access to justice.

Canada's federal-provincial administrative divisions are significant within its governance framework. Focusing specifically on human capital development strategies in administrative tribunals, these divisions emphasize the importance of skilled personnel in optimizing dispute resolution efficiency [1]. Human capital development strategies within these tribunals prioritize the recruitment, training, and ongoing professional development of tribunal members and staff.

In contrast to these countries the UK has a distinctive common law tradition that has historically relied on the judiciary to control administrative action [7]. However, recent developments highlight the need for specialised tribunals and administrative

review mechanisms to deal with complaints arising from administrative decisions [4].

The historical evolution of the United Kingdom's administrative system reveals a significant impact of human investment strategies on bureaucratic practices, policy implementation, and public service delivery [7].

Legal frameworks from studied countries, such as the administrative laws of Germany, Canada, and the United Kingdom, underscore the pivotal role of tribunals in ensuring fairness and legality within administrative justice systems [1; 7; 11]. These laws outline the specific functions, powers, and responsibilities of tribunals, highlighting their significance in balancing administrative discretion with the need for judicial oversight [12] provide a comparative analysis of judicial activism globally, emphasizing the interplay between national laws and international judicial frameworks, enriching the understanding of tribunal roles within diverse legal contexts.

Moreover Bovens, Goodin, and Schillemans' comprehensive analysis in "The Oxford Handbook of Public Accountability" [13] integrates legal perspectives, elucidating the inherent connection between administrative justice and public accountability within various legal structures. French administrative law, notably centered around the Council of State, exemplifies the emphasis on administrative discretion and hierarchical control [5]. The legal principles established in these systems offer valuable insights into the intersection of administrative law and the broader spectrum of public accountability.

In its turn administrative justice is a

new institute for Kazakhstan which has begun the implementation of political reform to restore citizens' rights. Today Kazakhstan's administrative justice system is a vital component of its legal framework, overseeing disputes between private individuals and government agencies [14]. However, challenges remain in ensuring transparency, independence and efficiency within administrative procedures [7].

The Kazakh administrative justice system includes only administrative courts which responsible for reviewing administrative decisions [14]. Challenges within this structure include delays in proceedings, limited public awareness and inequalities in access to justice [12].

It is important to note that Kazakhstan's administrative justice system draws on the legal tradition of continental Europe, in particular adopting elements of German administrative law [15]. The German model serves as an important source of inspiration, especially with regard to the establishment of specialised administrative courts and the principles of judicial review [8].

The need to form a system of administrative justice in Kazakhstan is the strengthening of the rule of law in the field of public administration. Studying issues related to administrative justice, it is necessary to study the classical model of this institution: French and German.

The main representatives of the French model are France, the United Kingdom and Canada.

In turn, adherents of the German model include Germany, Finland and Sweden.

**Table 1 – Classical models of the Institute**

Country	Limitation of action	Types of disputes	Source	Authorizing body
The United Kingdom	3 months	(1) it exceeded the lawful power of the body, used its power for an improper purpose, or acted unreasonably; (2) it violated a legitimate expectation; (3) failed to exercise relevant and independent judgement; (4) exhibited bias or a conflict of interest, or	Judicial review [18]	Tribunals and administrative courts

		failed to give a fair hearing and (5) violated a human right		
France	3 months	claims of private individuals against the arbitrary and illegal conduct of the administrative authorities	Code of Administrative Justice, generated 11 November 2013 [19]	Tribunals and administrative courts
Canada	2 years	disputes over the interpretation and application of laws and regulations, such as entitlement to employment insurance or disability benefits, refugee claims, and human rights	Constitution Act, 1867 Judicial review [20]	Administrative tribunals
Germany	Depends on type of claim, in general is 1 month	disputes between private individuals and public agencies or authorities	Administrative Procedure Act, generated 25 May 1976 [21]	Federal administrative court
Finland	3 years	disputes over the interpretation and application of laws and regulations, such as entitlement to employment insurance or disability benefits, refugee claims, and human rights	Administrative Judicial Procedure Act, generated 26 July 1996 [22]	Administrative courts
Sweden	1 year	tax cases, social insurance cases, etc	Administrative Procedure Act, 2017 [23]	Administrative courts

*Source: compiled by the author*

Kazakhstan chose the German model taking into account the historical and legislative framework.

Thus, Kazakhstan has embarked on initiatives to modernize its administrative justice system in line with international best practices and principles [14]. Efforts include strengthening the independence of the judiciary, enhancing procedural fairness

and streamlining administrative procedures to ensure greater efficiency.

Below is a table on how we might structure a table of recommendations for improving Kazakhstan's administrative justice system taking into account the theoretical foundations of global appropriate models.

**Table 2. Recommendations for improving the administrative justice system in Kazakhstan**

Reform Area	Suggested Changes	Anticipated Benefits
Judicial Independence	Establish mechanisms to enhance judicial independence, such as tenure protections for judges and insulation from political influence.	Greater impartiality, increased public trust in the judiciary.
Procedural Efficiency	Implement measures to expedite administrative proceedings, including electronic filing systems and standardized timelines for case resolution.	Reduced case backlog, enhanced access to timely justice.
Transparency	Enhance transparency in administrative decisions by requiring reasoned justifications for	Improved accountability, clearer understanding of legal standards.



	rulings and publishing case precedents.	
Access to Legal Aid	Expand access to legal aid services for vulnerable groups, ensuring equitable representation and support.	Increased access to justice for marginalized populations.
Public Awareness Programs	Launch educational campaigns to raise awareness about administrative justice processes and citizens' rights to access the system.	Empowered citizens, improved understanding of legal remedies.

Source:[24]

In the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020 for the first time specifically noted the need to develop administrative procedural law, the pinnacle of which would be the adoption of the Administrative Procedural Code. At the same time in the context of the development of administrative procedural law it is indicated that the issue of administrative justice should be considered, resolving disputes about the law arising from public legal relations between the state and the citizen (organization). Thus, administrative proceedings should become a full-fledged form of administration of justice, along with criminal and civil proceedings [16].

Previously such disputes were considered by specialized economic and district courts in accordance with chapters 27-29 of the Civil Procedural Code of the Republic of Kazakhstan (CPC).

A new milestone in the development of administrative justice began on June 29, 2020 when the President of the country signed the Administrative procedural and process-related code (APPC), which came into force on July 1, 2021.

With the introduction of the APPC the laws of the Republic of Kazakhstan "On administrative procedures" as well as "On order of consideration of references of individuals and legal entities" and the above-mentioned chapters of the CPC were abolished.

As part of the implementation of the APPC new specialized inter-district administrative courts have been created that consider tax, customs, antimonopoly, environmental, investment, land, housing disputes, as well as other claims against actions (inactions), decisions (administrative acts) of government bodies.

Despite the fact that the APPC has been in effect for only a few years, an

analysis of existing judicial practice in administrative cases shows that claims of citizens and organizations against the state apparatus are satisfied in more than 60% of cases [25].

Generally, recommendations for Kazakhstan to more closely align its administrative justice system with international standards, including initiatives to strengthen judicial independence, improve procedural efficiency, and increase public awareness and accessibility.

Suggestions for reforms or adaptations based on lessons learned from successful elements of international models, such as introducing specialized administrative courts, streamlining administrative procedures and making decision-making processes more transparent.

The comparative analysis reveals both common principles and differences between the administrative justice systems of mentioned above countries and Kazakhstan. Highlighting the challenges faced by the Kazakhstan system provides an opportunity for improvement through the introduction of best practices and reforms in line with international administrative justice experience.

The comparative analysis of administrative justice frameworks across multiple countries has illuminated several crucial insights into the diverse nature of legal systems and their application of fundamental principles. The examination of various jurisdictions, including Germany, France, Canada, the United Kingdom provided a comprehensive understanding of administrative justice mechanisms and their implications for Kazakhstan's evolving legal landscape.

The analysis of theoretical foundations of administrative justice in different countries highlighted the universal importance of basic principles such as

fairness, transparency, accountability, and due process [4; 5]. While these principles are inherent across administrative justice systems, their interpretation and application varied significantly among the studied countries. For instance, France's emphasis on centralized administrative structures [5] showcased a unique approach to ensuring transparency and accountability through hierarchical control, distinct from Canada's federal-provincial administrative divisions [1], which emphasized decentralization for efficient dispute resolution.

An intriguing revelation emerged regarding the correlation between human capital investment and administrative efficiency. Countries with the United Kingdom's appropriate model demonstrate how investments in administrative procedures impact on local governance and decision-making [17].

The analysis of key administrative cases across the studied countries unveiled pivotal legal precedents that significantly influenced administrative justice principles [9]. For instance, France's Council of State played a pivotal role in shaping administrative policies and legal interpretations through its historical cases, whereas Canada's decentralized administrative approach led to varied legal interpretations based on provincial tribunals' decisions.

Drawing parallels between these diverse models and Kazakhstan's administrative justice system revealed both converging and diverging elements. While the German model stood out for its robust administrative justice system, other countries presented alternative approaches and principles [8]. Kazakhstan's adoption of elements from various models signifies its attempt to adapt to international administrative justice standards while considering its unique legal context.

The discussion also highlighted challenges faced by Kazakhstan's administrative justice system, including procedural delays, limited public awareness, and inequalities in access to justice [14]. Recommendations to address these challenges involve enhancing judicial independence, promoting public awareness campaigns, and streamlining administrative procedures to ensure greater efficiency and fairness.

However, it is essential to acknowledge certain limitations in this comparative analysis. The reliance on publicly available data, language barriers, and the scope of the study limited the depth of analysis for some countries. Future research could focus on conducting primary surveys or interviews with stakeholders within the administrative justice systems of these countries to obtain a more comprehensive understanding. Additionally, exploring emerging trends in administrative justice, such as the influence of technology and digitalization, would provide valuable insights for further research and policy formulation.

There are highlighted differences in implementation and practice, such as different levels of judicial independence, procedural efficiency and access to justice in different systems [5].

Identifying problems with the functioning of administrative justice in Kazakhstan it is important to identify areas for improvement and adaptation of administrative justice.

From above it follows the necessity to align its administrative justice system with international standards, including initiatives to strengthen judicial independence, improve procedural efficiency, and increase public awareness and accessibility to protect human rights.

Suggestions for reforms or adaptations based on lessons learned from successful elements of international models, such as introducing specialized administrative courts, streamlining administrative procedures and making decision-making processes more transparent.

Highlighting the challenges faced by Kazakhstan's administrative justice system provides an opportunity for improvement through the introduction of best practices and reforms in line with international administrative justice experience.

## Conclusion

In conclusion, this comparative analysis has provided valuable insights into the diverse administrative justice systems across multiple countries and their relevance to Kazakhstan's evolving legal landscape. The examination revealed significant variations and similarities among

the administrative justice mechanisms prevalent in Germany, France, Canada, the United Kingdom, and their potential implications for Kazakhstan.

Each country showcased distinct models aimed at ensuring fairness, accountability, and transparency, from Germany's emphasis on judicial oversight to Canada's decentralized dispute resolution mechanisms. Institutional factors, such as centralized versus decentralized administrative structures, significantly influence the efficacy of administrative justice systems, as demonstrated by the contrast between France and Sweden.

Key administrative cases in each country have played a crucial role in shaping policies and legal interpretations, guiding administrative decisions and policy formulations. Drawing parallels between these international models and Kazakhstan's administrative justice system has provided insights into potential

adaptations and reforms, acknowledging the need to integrate diverse principles to suit Kazakhstan's unique legal framework.

The implications of this comparative analysis extend beyond theoretical understanding, offering pragmatic recommendations for Kazakhstan's administrative justice system, including strengthening judicial independence, implementing public awareness campaigns, and streamlining administrative procedures.

In essence, this study serves as a foundational exploration into the global spectrum of administrative justice, providing a lens through which Kazakhstan can align its evolving legal framework. Future research could delve deeper into specific aspects identified in this study, explore emerging trends, and conduct comparative case studies to further enrich the discourse on administrative justice reform.

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#### **ШЕТЕЛ ЕЛДЕРДЕ ЖӘНЕ ҚАЗАҚСТАНДАҒЫ ӘКІМШІЛІК ӘДІЛЕТТІҢ ТЕОРИЯЛЫҚ НЕГІЗДЕРІ**

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#### **ТЕОРЕТИЧЕСКИЕ ОСНОВЫ АДМИНИСТРАТИВНОЙ ЮСТИЦИИ В ЗАРУБЕЖНЫХ СТРАНАХ И КАЗАХСТАНЕ**

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