

THE TRANSFORMATION OF THE JUDICIAL SYSTEM IN KYRGYZSTAN AFTER 1991. ASPECTS OF THE DEVELOPMENT OF ADMINISTRATIVE JUSTICE



Drawing 1. Flag of the Kyrgyz Republic



Drawing 2. Coat of Arms of the Kyrgyz Republic

This article examines the transformation of the judiciary in the Republic of Kyrgyzstan after 1991, as well as aspects of the development of administrative justice in this state. The article presents the main stages of the development of the judicial system of the Kyrgyz Republic: 1993–2002, 2003–2009, 2010–2020. The device of the judicial system of the republic is described, the system of courts of general jurisdiction, inter-district economic courts, the judicial bids of the Supreme Court of Kyrgyzstan, as well as the courts of the second instance, and in addition to the elimination of the system of arbitration courts in the Republic and Military Courts (2003), disbanding the Constitutional Court of the Republic of Kyrgyzstan (2010), the creation of the Constitutional Chamber in the Supreme Court of the Republic. The article provides aspects of the development of administrative justice.

Keywords: Kyrgyzstan, reform and structure of the judicial system, courts of general jurisdiction, inter-district economic courts, the Supreme Court, the Constitutional Court, the Constitutional Chamber, administrative courts, administrative proceedings.

Problem setting. The study of the problems of the transformation of the judicial system of Kyrgyzstan after 1991 in various periods of the formation of the judicial system in this state: 1993–2002, 2002–2009, 2010–2020. The problem of disbanding the Constitutional Court in the Republic. Analysis of the activity of the system of courts of general jurisdiction, as well as inter-district economic courts. Analysis of the problem of the functioning of administrative justice in Kyrgyzstan.

Target of research is to comparative analysis of the transformation of the judicial system in Kyrgyzstan after 1991 in various periods of the formation of the judicial system in this state: 1993–2002, 2002–2009, 2010–2020. Analysis of the problem of the development of administrative justice in the republic.

Analysis of recent researches and publications. In the states of the former Union of Soviet Socialist

Republics, many authors paid special attention to the development of the judicial system: Alekseev S., Banewa A., Bibiło W., Biketowa E., Sylczanka M. (Belarus), Petrosayn R., Tumanyanc E. (Armenia), Mamedow F. (Azerbaijan), Dwornikow D., Christowa K., Kowaczowa D., Sucharev A., Ustiužaninowa E. (Georgia), Bachrach D., Ibragimov S., Mami K., Podoprighora R., Sabitova A., Sarataev S., Sarylow J., Shamshynurova S., Nazarkulova L., Zelencow A. (Kazakhstan), Beknazarow A., Myrzalimov R., Osmonow K., Tiperow A. (Kyrgyzstan), Khodzhaeva N., Cholikov K., Dzhuraev S., Grebennikov W., Murodzoda A., Zaitsev I. (Tajikistan), Awakian S., Kleandrov M., Krutikov J., Meszczeryakova M., Winnicki A. (Turkmenistan), Aripow T., Anichkin E., Ryachowska T., Eszonov B., Chakimova S., Kliszas A., Kudryavtsev I., Sotyboldyev Zh. (Uzbekistan).

However, despite numerous scientific studies concerning the development of the judicial system in the states of the former Union of Soviet Socialist Republics, the problems of the functioning and development of administrative justice in the states of the former Soviet Union after 1991 remain insufficiently investigated, and the issues of the development of the procedure for appealing administrative acts of state administration bodies to the court are also insufficiently investigated, the problems of the absence of administrative courts or the problems of incompleteness of the competence of the administrative court in judicial control over administrative acts of state administration bodies, as well as the participation of the prosecutor in the consideration of administrative complaints by the court. In addition, the problems of the development and liquidation of military courts have not been sufficiently studied. This problem is the **purpose** of the work.

Article's main body. On December 15, 1990, the Supreme Soviet of the Kyrgyz Soviet Socialist Republic adopted the *Declaration of Independence of the Kyrgyz Soviet Socialist Republic* [1].

August 31, 1991 by the Supreme Council (Jogorku Kenesh) The Kyrgyz Republic adopted a *resolution on the state sovereignty of the Kyrgyz Republic* [2].

After Kyrgyzstan gained independence in 1991, socio-economic and political transformations, the development of state institutions, as well as the reform of legislation and the judicial system began in the republic.

The judicial system of the Kyrgyz Soviet Socialist Republic was formed during the Soviet period of the state and was determined according to the administrative-territorial division of the republic, which functioned as a three-stage model:

- 1) courts of first instance – city and district courts, military courts of garrisons,
- 2) courts of second instance – regional courts, Bishkek City Court, military courts of garrisons,
- 3) The Supreme Court of the Kyrgyz Soviet Socialist Republic.

On May 5, 1993, the Supreme Council of the XII convocation adopted the first *Constitution of the Kyrgyz Republic* [3].

According to article 82 of part 3 of the Constitution of the Kyrgyz Republic of 1993, the judicial system of Kyrgyzstan consisted of 3 parts:

- 1) The Constitutional Court of the Kyrgyz Republic,
- 2) The Supreme Court of the Kyrgyz Republic and courts of general jurisdiction (regional courts, city and district courts, Bishkek City Court, military courts),
- 3) The Supreme Arbitration Court of the Kyrgyz Republic and arbitration courts (regional courts and

Bishkek City Court), – article 4 of the *Law of the Kyrgyz Republic of 01.12.1997 “On the system of Arbitration Courts in the Kyrgyz Republic”* [4].

At the same time, according to article 82 of part 3 of paragraph 2 of the Constitution of the Kyrgyz Republic (1993), the creation of emergency courts in the republic, the institution of official judges, as well as emergency forms of judicial power was prohibited. This norm prohibited the administration of justice by any non-judicial authorities, which also followed from the provision of article 82 of Part 1 of the Constitution of the Kyrgyz Republic (1993), which states that justice in Kyrgyzstan is carried out only by the court [5].

The structure of the judicial system of the Kyrgyz Republic was formed by the relevant legislative acts, namely:

– *The Law of the Kyrgyz Republic of 18.12.1993 “On the Constitutional Court of the Kyrgyz Republic”* [6],

– *The Law of the Kyrgyz Republic of 18.12.1993 “On constitutional legal proceedings in the Kyrgyz Republic”* [7],

– *The Law of the Kyrgyz Republic of 24.04.1999 “On the Supreme Court of the Kyrgyz Republic and courts of general jurisdiction”* [8],

– *The Constitutional Law of the Kyrgyz Republic of 30.03.2001 “On the status of judges in the Kyrgyz Republic”* [9],

– *The Law of the Kyrgyz Republic of 01.12.1997 “On the system of arbitration courts in the Kyrgyz Republic”* [4].

Section VII of the Constitution of the Kyrgyz Republic (1993) refers to the place and significance of the highest-level courts, as well as all other courts. The status of the Constitutional Court of the Republic was also determined: the tasks and goals of this judicial body, which is called to exercise constitutional control of rights and legislative acts, were formulated. However, the Constitutional Court of the Kyrgyz Republic was not directly subordinate to the courts of the Republic, but the acts of the Constitutional Court were of significant importance for all courts of Kyrgyzstan, and thus influenced judicial practice [10].

An example is the 2008 Constitutional complaint of a citizen of Kyrgyzstan, Viktor Vinnik, about the recognition of article 41, paragraph 1.4, of the *Law of the Kyrgyz Republic of 24.04.1999 as unconstitutional by a legal act “About the Supreme Court of the Kyrgyz Republic and courts of general jurisdiction”* [8]. This provision of the law allowed the Supreme Court of the Republic not to re-initiate supervisory proceedings if the supervisory complaint had already been considered by the Supreme Court earlier.

However, on April 29, 2008, the Constitutional Court of the Republic recognized that this provision of

the law violates the constitutional norm specified in Article 15 of Part 4 of the Constitution of the Kyrgyz Republic (1993), under which every citizen is guaranteed the right to judicial protection of his rights and freedoms, as well as Article 18 of Part 1 of the Constitution of the Kyrgyz Republic (1993), which establishes a ban in the legislation of the country on the elimination of the rights and freedoms of a citizen [11]. After the decision of the Constitutional Court was adopted, Kyrgyz citizens could re-submit supervisory complaints to the Supreme Court.

According to *Article 33 of the Law of the Kyrgyz Republic of 24.04.1999 "The Supreme Court of the Kyrgyz Republic and courts of general jurisdiction"* states that the Supreme Court of the Kyrgyz Republic, as well as local courts (district courts, city courts, military courts of garrisons, regional courts, Military Court of the Kyrgyz Republic, Bishkek City Court) administer justice in civil, criminal and administrative cases and constitute a system of courts of general jurisdiction. The competence of military courts was defined in article 47 of the above-mentioned Law, from which it follows that the Military Court of the Kyrgyz Republic acts as a regional-level court, and the military courts of garrisons-as district or city courts.

The system of arbitration courts in accordance with *Article 3 of the Law of the Kyrgyz Republic of 01.12.1997 "On the system of arbitration courts in the Kyrgyz Republic"* [4] was made up of: The Supreme Arbitration Court of the Kyrgyz Republic, Regional Arbitration Courts, as well as the Bishkek Arbitration Court.

The Constitutional Court of the Kyrgyz Republic occupied a special place in the system of the judicial system of the republic. The model of the constitutional justice system based on the Constitution of Kyrgyzstan in 1993 corresponded to the classical continental form of constitutional control. From this position, the Constitutional Court of Kyrgyzstan should be considered as the highest body of judicial protection of the Constitution, which exercised judicial control independently and independently of other authorities.

Summing up the results of the development of the judicial system of the republic in 1993–2002, it can be noted that this was the first stage of reforming the judicial system of the country. Many judges and legal scholars believed that the existing judicial system of Kyrgyzstan was quite simple, since it was not based on the principle of the unity of the judicial system, since the various branches of the judicial system did not have a single highest judicial body (meaning that for the system of courts of general jurisdiction, the highest judicial body was the Supreme Court, and for arbitration courts-the Supreme Arbitration Court) [12].

On July 18, 2003, Kyrgyzstan adopted the *Law of the Kyrgyz Republic "On the Supreme Court of the Kyrgyz Republic and Local Courts"* [13]. This Law has radically changed the existing judicial system of the republic. Thus, article 3 of Part 1 of the Law states that the Supreme Court and local courts constitute a single judicial system of the republic and administer justice in civil, criminal, administrative, economic cases, as well as in other categories of cases provided for by law.

According to article 13 of Part 2 of the Law, the following judicial boards were established in the Supreme Court of Kyrgyzstan:

- judicial board for criminal cases and cases of misconduct,
- judicial board for civil cases and economic cases,
- judicial board for administrative cases.

However, according to article 27 of part 1 of the above-mentioned Law, judicial boards were created in a slightly different form in the courts of the second instance (or regional), as well as in the Bishkek City Court:

- judicial boards for criminal cases and cases of misconduct,
- judicial boards for civil cases,
- judicial boards for administrative and economic cases.

At the same time, the Supreme Arbitration Court of the Kyrgyz Republic and regional arbitration courts were liquidated, and their functions were transferred to courts of general jurisdiction, and in the courts of the second instance (or regional) and the Bishkek City Court – to judicial boards for administrative and economic cases, and in the Supreme Court of the Republic – to the judicial board for civil and economic cases (Article 40 Law). An inter-district economic court appeared in the structure of the courts of first instance, whose competence included the functions of considering administrative cases (Article 1, part 3 and Article 25, part 1, paragraph 1 of the Law).

In addition, military courts in Kyrgyzstan were liquidated: regional garrison courts and the Military Court of the Kyrgyz Republic, and their functions were transferred to courts of general jurisdiction (Article 1, Part 3 and Article 25, Part 1 of the Law). It should be noted that the inclusion of the Supreme Arbitration Court of the Kyrgyz Republic in the system of the Supreme Court of the Republic, as well as the integration of regional arbitration courts and the Arbitration Court of Bishkek into the system of courts of general jurisdiction has had a positive impact on the development of the judicial system in the country, since disputes about the competence of a particular court in various categories of cases have ceased to appear.

According to the former President of the Supreme Court of the Kyrgyz Republic K. Osmonov with the

integration of arbitration courts in the system of courts of General jurisdiction were able to solve at least three problems:

first, was resolved the problem of dissonance (divergence) of the court practice, as the Supreme Arbitration court and the Supreme court in its activities it created a separate jurisprudence,

second, managed to resolve the issue of jurisdiction of cases,

thirdly, it was possible to solve the problem of access to justice, since earlier access to arbitration courts began at the level of the second instance (regional arbitration courts), and after the integration of the system of arbitration courts into the system of courts of general jurisdiction, economic cases began to be considered at the level of courts of the first instance (that is, in inter-district economic courts) [14].

It should be noted that the judicial reform did not go smoothly, since the delegation of the function of considering economic and administrative cases from arbitration courts to courts of general jurisdiction, as well as the creation of inter – district economic courts in the system of courts of general jurisdiction, gave rise to many disputes in the competence of considering a particular category of cases, namely: which cases should be considered by a district (city) court, and which by an inter-district economic court.

Despite the fact that in the disposition of *articles 23–33 of the Civil Procedure Code of the Kyrgyz Republic of 1999 (CPC of the Kyrgyz Republic)* [15] the jurisdiction of a particular category of cases was clearly defined. However, the Supreme Court of the Republic needed to issue additional explanations to the judges about the jurisdiction of a particular category of cases.

In 2010, a new Constitution of the Kyrgyz Republic was adopted in Kyrgyzstan [16], which changed the existing judicial system in the state. Thus, according to article 93 of Part 3 of the Constitution of the Kyrgyz Republic (2010), the judicial system of the republic consisted of the Supreme Court and local courts. The Constitutional Chamber was established as part of the Supreme Court.

It is important to note that the Constitution of Kyrgyzstan in 2010 allowed for the creation of specialized courts in the country, and the creation of emergency courts was prohibited. This constitutional norm was also enshrined in the new *Constitutional Law of the Kyrgyz Republic of 09.07.2008 “On the status of Judges in the Kyrgyz Republic”* [17], where article 1 of the Law states that the judicial system in Kyrgyzstan belongs exclusively to courts that administer justice through judges in the Supreme Court of the Kyrgyz Republic, the Constitutional Chamber of the Supreme Court, local courts and specialized courts.

In practice, the creation of a separate branch of specialized courts may face a number of objective problems: financial, logistical, as well as the lack of judges of appropriate specialization, and others. In this regard, the creation of specialized courts in the republic should be carried out within the existing courts of general jurisdiction, and in the process of their functioning, an appropriate legislative framework should be prepared, after which we can talk about the creation of a separate branch of the judicial system – for example, specialized administrative courts or others: financial, juvenile.

Since 2010, a new stage of judicial reform has begun in Kyrgyzstan. Thus, on April 12, 2010, according to the Decree of the Provisional Government of Kyrgyzstan [18], the Constitutional Court of the Kyrgyz Republic was liquidated. The preamble of this decree stated that the activities of the Constitutional Court led to the strengthening and usurpation of presidential power in the republic.

Back in 1998, a group of parliamentarians of the country filed an application to the Constitutional Court about the violation of Article 43 of Part 2 of the Constitution of the Kyrgyz Republic (1993) and about the impossibility of participation of the President of the Kyrgyz Republic A. Akayev in the next presidential elections in 2000, since President A. Akayev was twice elected to this position: in 1991 and in 1995.

However, on July 13, 1998, the Constitutional Court of the Kyrgyz Republic made a decision according to which it allows President Akayev A. to participate in the presidential elections in the country in 2000, arguing that the Constitution of the Kyrgyz Republic was adopted on May 5, 1993, which means that President Akayev A. was elected only once - in 1995 [19]. Moreover, the Decree of the Provisional Government of the Kyrgyz Republic dated 12.04.2010 drew attention to the fact that the subsequent President of the Kyrgyz Republic Bakiyev K. He repeatedly amended the Constitution of the Kyrgyz Republic in 1993, namely: in 2007 and in 2009 with the aim of strengthening and usurping presidential power in the country, in connection with which these actions led to mass riots on April 6-7, 2010 and the deprivation of presidential powers of Bakiyev K.

Instead of the Constitutional Court, a Constitutional Chamber was established under the Supreme Court of the Kyrgyz Republic. Article 93 of Part 3 of the Constitution of the Kyrgyz Republic of 2010 states that the Constitutional Chamber acts as part of the Supreme Court.

At the same time, the Supreme Court of the Republic itself is the highest judicial body in civil, criminal, economic, administrative and other categories of cases (*Article 12 of the Law of the Kyrgyz Republic of*

18.07.2003 “About the Supreme Court of the Kyrgyz Republic and local courts” [13]).

It should be noted that the judges of the Constitutional Chamber were not part of the Plenum of the Supreme Court of the Kyrgyz Republic.

On July 13, 2011, the *Constitutional Law of the Kyrgyz Republic “On the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic”* was adopted [20]. This law defined the powers, composition and procedure for the formation of the Constitutional Chamber, as well as the procedure for conducting constitutional legal proceedings, and in addition, the election and dismissal of the Chairman and Deputy Chairmen of the Constitutional Chamber. According to article 1 of the above-mentioned Law, the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic is the highest judicial body that independently exercises constitutional control in the republic through constitutional judicial proceedings. The Constitutional Chamber consists of 11 judges.

According to article 15 of Parts 1 and 2 of the *Constitutional Law of the Kyrgyz Republic of 09.07.2008 “On the Status of Judges in the Kyrgyz Republic”* [17], judges of the Supreme Court of the Kyrgyz Republic and the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic are elected by the Parliament (Jogorku Kenesh) on the proposal of the President of the Kyrgyz Republic, based on the recommendation of the Council for the Election of Judges, including gender representation of no more than 70% of the same sex. At the same time, judges of the Supreme Court are elected for a term of up to 70 years of life, and judges of the Constitutional Chamber of the Supreme Court who are elected for the first time to this position - for a term of office of 7 years, and in case of subsequent election - for a term of up to 70 years of life.

According to Article 94 of Part 8 of the Constitution of the Kyrgyz Republic (2010), judges of local courts are appointed by the President of the Kyrgyz Republic on the recommendation of the Council for the Election of Judges for the first time for a 5-year term of office, and at subsequent election – up to a maximum of 65 years of life. It should be noted that in 2010-2012, the established procedure for electing judges of the Supreme Court of the Kyrgyz Republic, including the Constitutional Chamber, paralyzed the constitutional judicial process in the country. In this period, the Constitutional Chamber did not start working at all, and the reason for this was the lack of judges of appropriate qualifications, as well as the fact that no candidate for the post of judge of the Constitutional Chamber was approved by the Presidential Administration of the Kyrgyz Republic. All this once again confirms the fact that there was no appropriate

balance between the different branches of government.

A very important step in judicial reform in Kyrgyzstan was the issuance of Presidential Decree No. 142 of September 25, 2012 “On the establishment of the Judicial Reform Council under the President of the Republic of Kyrgyzstan” [21].

The Judicial Reform Council consisted of 23 members: the Chairman of the Council – the President of the Kyrgyz Republic, the Secretary of the Council – the head of the Judicial system and Law Enforcement Reform Department of the Office of the President of the Kyrgyz Republic, the Deputy Prime Minister of the Kyrgyz Republic, the head of the Legal support Department and the legal expertise Department of the Office of the President of the Kyrgyz Republic, the Minister of Finance of the Kyrgyz Republic, the Minister of Justice of the Kyrgyz Republic, representatives of the legislative branch – Deputy Chairman of the Parliament (Jogorku Kenesh), Chairman of the Committee on Constitutional Legislation, State Structure and Judicial and Legal Activities of the Jogorku Kenesh, five deputies of the Jogorku Kenesh, representatives of the judicial branch of power – the Chairman of the Supreme Court of the Kyrgyz Republic, the Chairman of the Judicial Council of the Kyrgyz Republic, the Chairman of the Council for the Election of Judges, as well as representatives of the public – the Chairman of the Council of Lawyers, the university community, independent experts and others. The functions of the Council for Judicial Reform under the President of the Kyrgyz Republic included issues of reform of the judicial system in the country, the development of proposals in the most priority areas of judicial reform carried out in the republic, as well as issues of development and adoption by state bodies of appropriate regulatory legal acts aimed at organizing and organizing the activities of courts, law enforcement agencies and on the status of judges.

As noted by A. Tiperov, the judicial reform in the republic completely depended on the activities of the Judicial Reform Council. The implementation of judicial reform in sovereign Kyrgyzstan was conditioned by social and economic transformations in the country, which had an impact on the development of the state, including the judicial system [22].

The first Constitution of Kyrgyzstan in 1993 provided an opportunity for the formation of a specialized form of courts in the republic, which follows from the provision of article 83 of Part 3 of the Constitution of the Kyrgyz Republic (1993). Moreover, the possibility of establishing specialized courts in the republic was also provided by the Constitution of Kyrgyzstan of 2010, which follows from the provision of article 93 of part 3

of paragraph 3 of the Constitution of the Kyrgyz Republic (2010).

It follows from the provision of article 93 of part 2 of the Constitution of Kyrgyzstan of 2010 that administrative justice is one of the forms of the judicial system of the state. This constitutional norm was also enshrined in the *Constitutional Law of the Kyrgyz Republic of 09.07.2008 "On the status of judges in the Republic of Kyrgyzstan"* [17], which states that the judiciary administers justice through judges of specialized courts (Article 1, Part 4 of the Law).

In addition, the *Law of the Kyrgyz Republic of 18.07.2003 "On the Supreme Court of the Republic of Kyrgyzstan and local courts"* [13] states that the judicial system of the republic consists of the Supreme Court of the Kyrgyz Republic and local courts, which form a single judicial system in the state and administer justice in civil, criminal, administrative, economic and other categories of cases (Article 3, Part 1 of the Law). Moreover, judicial boards for administrative and economic cases were established in the courts of the second instance (Article 27, Part 1 of the Law), and a judicial board for administrative cases was established in the Supreme Court of the Kyrgyz Republic (Article 13, Part 2 of the Law).

Initially, cases arising from administrative and public legal relations were included in the Civil Procedure Code of the Republic of Kyrgyzstan (sections 25-28 and 36-38) [15], namely:

1) on the protection of the electoral rights of citizens and other participants in the electoral process (section 25 of the CPC of the Kyrgyz Republic),

2) on appealing decisions of administrative bodies and officials (section 26 of the CPC of the Kyrgyz Republic),

3) on appealing actions (omissions) of administrative bodies and officials (section 27 of the CPC of the Kyrgyz Republic),

4) about the appeal of the citizens, legal persons and the Prosecutor of regulatory legal acts of the administrative authorities (section 28 of the CPC of the Kyrgyz Republic),

5) for involuntary admission of citizens to psychiatric hospital (section 36 of the CPC of the Kyrgyz Republic),

6) the establishment of the inaccuracies or errors in the records of acts of civil status (section 37 of the CPC of the Kyrgyz Republic),

7) about the appeal of notarial acts or refusal to the Commission (section 38 of the CPC of the Kyrgyz Republic).

It should be noted that cases on appealing decisions, actions or inaction of administrative bodies were considered with the mandatory participation of the

prosecutor (Article 45 Part 4 of the CPC of the Kyrgyz Republic). However, the prosecutor's non-participation in the court session, which was duly notified, was not an obstacle in the consideration of the case.

The scientific and practical commentary to the Civil Procedure Code of the Republic of Kyrgyzstan states that the consideration of cases arising from administrative and public relations is carried out within the framework of civil procedure, taking into account the specifics of consideration for a specific category of cases provided for in sections 25-28 and 36-28 of the CPC of the Kyrgyz Republic [23]. This category of cases is considered in inter-district courts at the location of the administrative body (Article 261 Part 1 of the CPC of the Kyrgyz Republic).

A complaint (or an administrative claim) against decisions, actions or inaction of an administrative body is sent within 3 months from the date of issuing a decision, committing an action or inaction of a state body (Article 263 Part 3 of the CPC of the Kyrgyz Republic). It is the administrative body that is responsible for proving the correctness of the decision taken, the action committed or inaction (Article 267 part 4 of the CPC of the Kyrgyz Republic).

On January 17, 2012, a commission was established in Kyrgyzstan to develop coordinated proposals for further reform of the judicial system of the Kyrgyz Republic [24]. The Commission has done a great job thanks to the inclusion of a wide range of public representatives, independent experts and international organizations in its composition, and also provided recommendations on the most pressing problems of the structure of the judicial system, which included analysis and specific proposals on a number of priority areas of the judicial system of the republic.

The Commission recommended:

– at the first stage: to introduce the specialization of judges and judicial boards for the consideration of cases arising from administrative and public relations, and in the long term-to create specialized administrative courts,

– to develop a concept for the development of administrative justice and judicial administrative law,

– to develop and put into effect the Code on Administrative Proceedings, while excluding from the Civil Procedure Code of the Kyrgyz Republic the category of cases arising from administrative and public relations,

– exclude from the jurisdiction of administrative courts the category of cases on appeal against decisions of state bodies on the application of various types of penalties for administrative offenses committed, transferring this category of cases to the jurisdiction of courts of general jurisdiction,

– to develop legislation on administrative procedures that would define common approaches in the activities of administrative bodies and would unify administrative procedures.

It should be noted that all the above recommendations of the Commission on the development of agreed proposals for further reform of the judicial system of the Kyrgyz Republic have been fully implemented.

On July 31, 2015, Kyrgyzstan adopted the *Law of the Kyrgyz Republic "On the basics of administrative activities and administrative procedures"* [25]. This law established the basis for the activities of administrative bodies, as well as regulated the relationship between administrative bodies and individuals (legal entities) in the implementation of administrative procedures (Articles 1, Parts 1 and 2 of the Law). In addition, the Law defined the procedure for appealing decisions, actions or inaction of administrative bodies, execution of regulatory legal acts of administrative bodies, payment of administrative expenses or administrative procedure, compensation for compensation from the implementation of administrative procedure.

The law established the maximum period for the implementation of the administrative procedure – 30 days from the date of registration of the application with the administrative body (Article 42 of the Law). Decisions, actions or omissions of an administrative body may be appealed to a higher administrative body, and in the absence of such, directly to the court (Articles 62, parts 2 and 3 of the Law). At the same time, an administrative complaint must be sent within 30 days from the date of receipt of the decision or action of the administrative body, and in case of inaction of the body within 30 days from the date of expiration of the deadline for making a decision or performing an action by the administrative body (Article 63 of the Law).

On January 25, 2017, the Code on Administrative Proceedings (CAS of the Kyrgyz Republic) was adopted in Kyrgyzstan [26].

According to Article 15 of Part 1 of the CAS of the Kyrgyz Republic, the following categories of cases are considered in the framework of administrative proceedings:

- 1) on the invalidation of an administrative act or action of an administrative body in full or in part,
- 2) on the obligation of the administrative body not to adopt an administrative act burdening the plaintiff, or not to perform another action,
- 3) on the obligation of an administrative body to adopt an administrative act or perform certain actions,
- 4) on the invalidation of a subordinate regulatory legal act of an administrative body or a representative body of local self-government,

5) on the recognition of an administrative act of an administrative body that has become invalid.

In addition, in addition to the list of cases listed in Article 15 of the CAS of the Kyrgyz Republic, the following category of cases are also considered in the order of administrative proceedings:

6) appeal against decisions and (or) actions (inaction) that violate the electoral rights of participants in the electoral process (section 20, Article 201-203 of the CAS of the Kyrgyz Republic),

7) appeal against the decision of the Disciplinary Commission under the Council of Judges on the early release of a judge from his post (section 21, Article 204-205 of the CAS of the Kyrgyz Republic),

8) establishing the inaccuracy of civil status records (section 22, Article 206-208 of the CAS of the Kyrgyz Republic),

9) consideration of applications for notarial actions or refusal to perform them (section 23, Article 209-211 of the CAS of the Kyrgyz Republic).

However, according to article 15 of Part 2 of the CAS of the Kyrgyz Republic, the following cases are not considered in administrative proceedings:

- 1) on invalidation in full or in part of the resolutions of state bodies and officials authorized to consider cases of administrative offenses (misdemeanors);
- 2) on the actions (inaction) of law enforcement agencies arising from legal relations in the field of criminal procedure;
- 3) on decisions, actions (inaction) of bailiffs in the execution of enforcement documents.

An administrative complaint can be sent to the court within 3 months from the date of making a decision, committing an action or inaction of an administrative body (Article 110 of the CAS of the Kyrgyz Republic).

Despite the introduction of the Code on Administrative Proceedings in Kyrgyzstan in 2017, which listed the category of causes related to the jurisdiction of administrative courts (Article 15 Part 1, 109, 201-203, 204-205, 206-208, 209-211 CAS of the Kyrgyz Republic), - some cases arising from administrative and public relations, still remained in the disposition of the *Civil Procedure Code of the Kyrgyz Republic of 25.01.2017* [27]:

- 1) on the collection of mandatory payments, fees, fines and other financial sanctions from legal entities and individual entrepreneurs by state bodies, local self-government bodies, and other bodies performing control functions (Article 256, part 2, paragraph 14 of the CPC of the Kyrgyz Republic).
- 2) on the return from the budget of funds written off or withdrawn by the bodies performing control functions

(Article 256, part 2, paragraph 14 of the CPC of the Kyrgyz Republic).

The listed category of cases is subordinate to specialized inter-district economic courts and the consideration of this category of cases is carried out according to the rules of the civil procedural legislation of Kyrgyzstan. At the same time, the term of consideration of the case in the court of the first instance is up to 2 months (Article 157, part 2, paragraph 3 of the CPC of the Kyrgyz Republic).

In addition, cases arising from administrative and public relations can include cases of forced hospitalization of citizens in a psychiatric institution, which are referred to the jurisdiction of courts of general jurisdiction (Article 262 part 1 of paragraph 10 and Article 314-318 of the Civil Procedure Code of the Kyrgyz Republic). At the same time, the term of consideration of the case in court is no later than 5 days from the date of acceptance of the case for production (Article 157 part 2, paragraph 2 of the CPC of the Kyrgyz Republic).

According to *articles 121-122 of the Law of the Kyrgyz Republic of 28.01.2017 "On the status of the bailiff and enforcement proceedings"* [28] complaints about the decisions, actions or inaction of the bailiff can be sent within 10 days to a higher authority (the head of the regional enforcement authority) or to the court.

However, the jurisdiction of the administrative court in the consideration of this category of cases was excluded (Article 15, Part 2 of the CAS of the Kyrgyz Republic). This means that complaints about the decisions, actions or omissions of the bailiff are considered in the courts of general jurisdiction.

On April 11, 2020, Kyrgyzstan adopted the *Law of the Kyrgyz Republic "On Amendments to Certain Legislative Acts of the Kyrgyz Republic"* [29], according to which inter-district economic courts were transformed into administrative courts, and economic cases were assigned to the jurisdiction of courts of general jurisdiction (Article 3 of the Law). Thus, administrative courts were established in all the regional centers of Kyrgyzstan – in Chuisk, Jalal-Abad, Issyk-Kul, Talas, Osh, Naryn, Batken and in the capital – Bishkek.

Conclusions and prospects for the development:

1) I believe that in order to further develop administrative justice in Kyrgyzstan, it is necessary to exclude from the Civil Procedure Code of the Kyrgyz Republic (2017) the category of cases arising from administrative-public relations and include this category of cases in the Code on Administrative Proceedings of the Kyrgyz Republic (2017) with the assignment to the jurisdiction of administrative courts, namely:

– on collecting mandatory payments, fees, fines and other financial sanctions from legal entities and individual

entrepreneurs by state bodies, local self-government bodies, and other bodies performing control functions (Article 256, part 2, paragraph 13 of the Civil Procedure Code of the Kyrgyz Republic) [28].

– on the return from the budget of funds written off or withdrawn by bodies performing control functions (Article 256, part 2, paragraph 14 of the Civil Procedure Code of the Kyrgyz Republic) [28].

– on the forced hospitalization of citizens in a psychiatric institution (Articles 314-318 of the Civil Procedure Code of the Kyrgyz Republic) [28], including:

– complaints about the decisions, actions or inaction of the bailiff (Article 121-126 of the Law of the Kyrgyz Republic of 28.01.2017 "On the status of the bailiff and enforcement proceedings") [27].

In my opinion, when implementing judicial reform in the republic, the above category of cases should be attributed to the jurisdiction of administrative courts, since one of the participants in the dispute is an administrative body in one way or another.

2) It should be noted that according to the provision of Article 42 of part 3 of the CAS of the Kyrgyz Republic [26], a prosecutor can take part in the consideration of cases arising from administrative and public relations, and at each stage of the proceedings, if his participation is necessary to protect the rights and legitimate interests of a citizen and the state. In this case, the prosecutor gives an opinion on the administrative case. The non-participation of the prosecutor in the case, duly notified of the time and place of consideration of the case, is not an obstacle to the consideration of the case.

In my opinion, the need for the prosecutor's participation in administrative proceedings should be strictly regulated, since citizens are opposed in such a process not only by an administrative body, but also by the prosecutor himself, who protects the interests of the state.

In this regard, I believe that the participation of the prosecutor by the administrative body should be prohibited at the legislative level, leaving only the possibility of participation in administrative proceedings directly by the administrative body itself or directly by the prosecutor himself. Moreover, the participation of the prosecutor should be mandatory to protect the rights and legitimate interests of persons who cannot independently defend their interests in court (disabled, incapacitated, elderly people, children).

3) The first Constitution of Kyrgyzstan in 1993 provided an opportunity for the formation of a specialized form of courts in the republic, which follows from the provision of article 83 of Part 3 of the Constitution of the Kyrgyz Republic (1993).

Moreover, the possibility of establishing specialized courts in the republic was also provided by the

Constitution of Kyrgyzstan of 2010, which follows from the provision of article 93 of part 3 of paragraph 3 of the Constitution of the Kyrgyz Republic (2010).

However, as follows from the statistical analysis of the activities of the Constitutional Court of the Kyrgyz Republic in the period 1993-2010, as well as the Constitutional Chamber of the Supreme Court of the Kyrgyz Republic in the period 2010-2020 – not a single statement was sent on the interpretation of Article 83 of Part 3 of the Constitution of the Kyrgyz Republic (1993), as well as Article 93 of part 3 of paragraph 3 of the Constitution of the Kyrgyz Republic (2010), namely: what should be understood by the meaning of the expression “special court”, and what is meant by the meaning of “specialized court”?

In this regard, it is necessary to refer to the *normative resolution of the Constitutional Court of the Republic of Kazakhstan dated April 14, 2006* [30] in which the definitions of the concepts “special court” and “specialized court” were given quite accurately. Thus, the meaning of “special court” should be understood as a court formed according to a normative act, and not according to the provisions of the Constitution or a Constitutional law, that is, justice carried out in a non – judicial manner, which does not guarantee the constitutional protection of the rights and legitimate interests of citizens, and in addition, the system of separation and independence of the branches of power is not provided.

The meaning of “specialized court” should be understood as a court that is part of the judicial system of the state, and its status is determined by the Constitution or the Constitutional Law on the Structure of the Judicial system in the country, which guarantees the right to review judicial decisions by a higher court, as well as the equality of participants in legal proceedings.

4) On April 12, 2010, according to the Decree of the Provisional Government of Kyrgyzstan [18], the

Constitutional Court of the Kyrgyz Republic was liquidated. The preamble of this decree stated that the activities of the Constitutional Court led to the strengthening and usurpation of presidential power in the republic. Instead of the Constitutional Court, a Constitutional Chamber was created under the Supreme Court of the Kyrgyz Republic (Article 93, Part 3 of the Constitution (2010).

In my opinion, the disbanding of the Constitutional Court of the Kyrgyz Republic and the creation of the Constitutional Chamber under the Supreme Court of the Kyrgyz Republic was not the right step in the judicial reform of Kyrgyzstan, since in the future this state of affairs may lead to the dependence of the judges of the Constitutional Chamber under the Supreme Court of the Kyrgyz Republic on the leadership of the Supreme Court of the Kyrgyz Republic itself when the Constitutional Chamber considers unconstitutional any decisions of the Plenum of the Supreme Court of the Kyrgyz Republic or other legal acts.

5) I believe that when implementing the judicial reform in the Kyrgyz Republic, the right step was the liquidation of the military courts of the republic in 2003, since in peacetime these courts are emergency courts, and according to article 82 of part 3 of paragraph 2 of the Constitution of the Kyrgyz Republic of 1993, as well as article 93 of part 3 of paragraph 4 of the Constitution of the Kyrgyz Republic of 2010, the formation of emergency courts is prohibited. In addition, the regional garrison courts, as well as the Military Court of the Kyrgyz Republic, were liquidated, and their functions were transferred to courts of general jurisdiction (*Article 25, part 1, paragraph 1 of the Law of the Kyrgyz Republic of 18.07.2003 “On the Supreme Court of the Kyrgyz Republic and local courts”* [13]).

RESOURCES

1. О независимости Киргизской Советской Социалистической Республики : Декларация Верховного Совета Киргизской Советской Социалистической Республики от 15.12.1990 г. Жогорку Кенеш Кыргызской Республики 1990 г. № 273-XII. Централизованный Банк Данных Правовой Информации Кыргызской Республики 08.08.2009. Код документа 205081. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/205081/10/>.
2. О государственном суверенитете Кыргызской Республики : Декларация Верховного Совета Кыргызской Республики от 31.08.1991 г. Жогорку Кенеш Кыргызской Республики 1991 г. №578-XII. Код документа 913. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/913/10/>.
3. Конституция Кыргызской Республики от 05.05.1993 года. Жогорку Кенеш Кыргызской Республики 1993. Централизованный Банк Данных Правовой Информации Кыргызской Республики 08.08.2009. Код документа 1. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/1/90/>.
4. О системе арбитражных судов в Кыргызской Республике : Закон Кыргызской Республики от 01.12.1997 г. Жогорку Кенеш Кыргызской Республики 1997 г. №85. Централизованный Банк Данных Правовой Информации Кыргызской Республики 08.08.2009. Код документа 585. Опубликовано в газете «Эркин Тоо» 12.12.1997 №111. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/585/30/>.

5. Бекназаров А. Об усилении судебной власти. *Право и Предпринимательство*. Москва. 2000. № 6. С. 3.
6. О Конституционном суде Кыргызской Республики : Закон Кыргызской Республики от 18.12.1993 г. Жогорку Кенеш Кыргызской Республики 1993 г. №1335-ХП. Централизованный Банк Данных Правовой Информации Кыргызской Республики 08.08.2009. Код документа 776. *Свободные горы*. 29.04.1994. №25. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/776/20>.
7. О Конституционном суде Кыргызской Республики : Закон Кыргызской Республики от 18.12.1993 г. Жогорку Кенеш Кыргызской Республики 1993 г. №1337-ХП. Централизованный Банк Данных Правовой Информации Кыргызской Республики 08.08.2009. Код документа 777. Опубликовано в газете «Свободные горы» 05.04.1994 №18. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/777/30>.
8. О Верховном суде Кыргызской Республики и судах общей юрисдикции : Закон Кыргызской Республики от 24.04.1999 г. Жогорку Кенеш Кыргызской Республики 1999 №36. Код документа 203. *Эркин Тоо*. 05.05.1999 №34. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/203/30>.
9. О статусе судей в Кыргызской Республики : Конституционный Закон Кыргызской Республики от 30.03.2001 г. Жогорку Кенеш Кыргызской Республики 2001 №35. Код документа 417. *Эркин Тоо*. 06.04.2001 №25. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/417/20>.
10. Мырзалимов Р. М. Понятие и сущность Конституционного правосудия. Вестник Кыргызского Государственного Национального Университета. Бишкек. 2000. № 5. С. 3-4.
11. О признании неконституционным статьи 41 пункта 1 подпункта 4 Закона Кыргызской Республики от 24.04.1999 г. «О Верховном суде Респубике Кыргызстан и судах общей юрисдикции» и несоответствующим статье 15 пункта 4, статье 18 пункта 1 Конституции Кыргызской Республики 1993 года» : Решение Конституционного Суда Кыргызской Республики от 29.04.2008 года по делу гражданина Винника В.В. Централизованный Банк Данных Правовой Информации Кыргызской Республики 29.04.2008. Код документа 320024. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/320024>.
12. Бюллетень Верховного Суда Кыргызской Республики. 1999. №1 (17). URL: <http://sot.kg/category/bulleten>.
13. О Верховном суде Кыргызской Республики и местных судах : Закон Кыргызской Республики от 18.07.2003 г. Жогорку Кенеш Кыргызской Республики 2003 №153. Код документа 1279. *Эркин Тоо*. 25.07.2003 № 55. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/1279/145>.
14. Осмонов К.Э. Развитие судебной реформы в Киргизской Республике. *Право и Предпринимательство*. Москва. 2004. №2. С. 7-8.
15. Гражданский процессуальный кодекс Кыргызской Республики от 29.12.1999 года. Жогорку Кенеш Кыргызской Республики 1999 №146. Централизованный Банк Данных Правовой Информации Кыргызской Республики 08.08.2009. Код документа 12. *Эркин Тоо*. 12.01.2000 №2. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/12/300>.
16. Конституция Кыргызской Республики от 27.06.2010 года. Жогорку Кенеш Кыргызской Республики 2010. Централизованный Банк Данных Правовой Информации Кыргызской Республики 02.07.2010. Код документа 202913. *Эркин Тоо*. 06.07.2010 №61. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/202913/20>.
17. О статусе судей в Кыргызской Республики : Конституционный Закон Кыргызской Республики от 09.07.2008 г. Жогорку Кенеш Кыргызской Республики 2008. Централизованный Банк Данных Правовой Информации Кыргызской Республики 11.07.2008 №141. Код документа 202352. *Эркин Тоо*. 15.07.2008 №51. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/202352/140>.
18. Декрет Временного Правительства Кыргызской Республики от 12.04.2010 года. Временное Правительство 2010 №2. Централизованный Банк Данных Правовой Информации Кыргызской Республики 16.04.2010. Код документа 202766. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/202766/10>.
19. О разрешении спора, связанного с применением пункта 2 статьи 43 Конституции Кыргызской Республики о возможности участия Президента Кыргызской Республики Аскара Акаева на очередных выборах Президента Кыргызской Республики в 2000 году : Решение Конституционного Суда Кыргызской Республики от 13.07.1998 г. Конституционный Суд Кыргызской Республики 1998. Код документа 52542. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/52542/10>.
20. О Конституционной палате Верховного Суда Кыргызской Республики : Конституционный Закон Кыргызской Республики от 13.06.2011 г. Жогорку Кенеш Кыргызской Республики 2011 №37. Централизованный Банк Данных Правовой Информации Кыргызской Республики 15.06.2011. Код документа 203281. Опубликовано в газете «Эркин Тоо» 17.06.2011 №47. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/203281/40>.

21. Об образовании Совета по судебной реформе при Президенте Кыргызской Республики: Распоряжение Президента Кыргызской Республики от 25.09.2012 г. Президент Кыргызской Республики 2012 №142. Код документа 21116. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/21116/80>.
22. Типеров А. Становление и развитие судебной системы Кыргызской Республики. Научный журнал «Евразийская Адвокатура». Башкортостан. Уфа. 2013. № 2 (3). С. 19.
23. Научно-практический комментарий к Гражданскому процессуальному кодексу Кыргызской Республики. Бишкек. 2011. С. 461.
24. Об образовании Комиссии по выработке согласованных предложений по дальнейшему реформированию судебной системы Республики Кыргызстан : Указ Президента Кыргызской Республики от 17.01.2012 г. Президент Кыргызской Республики 2012 №6. Централизованный Банк Данных Правовой Информации Кыргызской Республики 21.01.2012. Код документа 61255. Опубликовано в газете «Эркин Тоо» 20.01.2012 № 4. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/61255/20>.
25. Об основах административной деятельности и административных процедурах : Закон Кыргызской Республики от 31.07.2015 г. Жогорку Кенеш Кыргызской Республики 2015 №210. Централизованный Банк Данных Правовой Информации Кыргызской Республики 18.08.2015. Код документа 111254. *Эркин Тоо*. 18.08.2015 № 78. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/111254/10>.
26. Кодекс об административном судопроизводстве Кыргызской Республики от 25.01.2017 года. Жогорку Кенеш Кыргызской Республики 2017 № 13. Централизованный Банк Данных Правовой Информации Кыргызской Республики 01.02.2017. Код документа 111520. *Эркин Тоо*. 01.02.2017 № 10-11. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/111520/40>.
27. О статусе судебного исполнителя и об исполнительном производстве : Закон Кыргызской Республики от 28.01.2017 г. Жогорку Кенеш Кыргызской Республики 2017 № 15. Централизованный Банк Данных Правовой Информации Кыргызской Республики 07.02.2017. Код документа 111522. Опубликовано в газете «Эркин Тоо» 07.02.2017 №15-16. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/111522/20>.
28. Гражданский процессуальный кодекс Кыргызской Республики от 25.01.2017 года. Жогорку Кенеш Кыргызской Республики 2017 №14. Централизованный Банк Данных Правовой Информации Кыргызской Республики 02.02.2017. Код документа 111521. Опубликовано в газете «Эркин Тоо» 01.02.2017 №12-13. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/111521/40>.
29. О внесении изменений в некоторые законодательные акты Кыргызской Республики (в Гражданский процессуальный кодекс Кыргызской Республики, Кодекс Кыргызской Республики о неналоговых доходах, Административно-процессуальный кодекс Кыргызской Республики, законы Кыргызской Республики «О Верховном суде Кыргызской Республики и местных судах», «Об утверждении структуры местных судов и штатной численности судей местных судов Кыргызской Республики : Закон Кыргызской Республики от 11.04.2020 г. Жогорку Кенеш Кыргызской Республики 2020 №39. Централизованный Банк Данных Правовой Информации Кыргызской Республики 28.04.2020. Код документа 112041. *Эркин Тоо*. 28.04.2020 №34. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/112041/10>.
30. Об официальном толковании статьи 75 пункта 4 Конституции Республики Казахстан : Нормативное Постановление Конституционного Совета Республики Казахстан №1 от 14.04.2006 г. URL: <http://ksrk.gov.kz/index.php/solutions/np-ks-rk-ot-14042006-g-no-1-ob-oficialnom-tolkovanii-punkta-4-stati-75-konstitucii>.

REFERENCES

1. O nezavisimosti Kirgizskoy Sovetskoy Sotsialisticheskoy Respubliki : Deklaratsiya Verkhovnogo Soveta Kirgizskoy Sovetskoy Sotsialisticheskoy Respubliki ot 15.12.1990 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 1990 g. № 273-XII. Tsentralizovanny Bank Dannykh Pravovoy Informatsii Kyrgyzskoy Respubliki 08.08.2009. Kod dokumenta 205081. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/205081/10/> [in Russian]
2. O gosudarstvennom suverenitete Kyrgyzskoy Respubliki : Deklaratsiya Verkhovnogo Soveta Kyrgyzskoy Respubliki ot 31.08.1991 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 1991 g. №578-XII. Kod dokumenta 913. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/913/10>.
3. Konstitutsiya Kyrgyzskoy Respubliki ot 05.05.1993 goda. Zhogorku Kenesh Kyrgyzskoy Respubliki 1993. Tsentralizovanny Bank Dannykh Pravovoy Informatsii Kyrgyzskoy Respubliki 08.08.2009. Kod dokumenta 1. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/1/90> [in Russian]
4. O sisteme arbitrazhnykh sudov v Kyrgyzskoy Respublike : Zakon Kyrgyzskoy Respubliki ot 01.12.1997 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 1997 g. №85. Tsentralizovanny Bank Dannykh Pravovoy Informatsii Kyrgyzskoy

- Respubliki 08.08.2009. Kod dokumenta 585. *Erkin Too*. 12.12.1997 g. №111. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/585/30> [in Russian]
5. Beknazarov A. (2000). Ob usilenii sudebnoy vlasti. *Pravo i Predprinimatelstvo – Law and entrepreneurship*, No. 6. Moskva [in Russian]
 6. O Konstitutsionnom sude Kyrgyzskoy Respubliki : Zakon Kyrgyzskoy Respubliki ot 18.12.1993 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 1993 g. №1335-XII. Tsentralizovanny Bank Dannyykh Pravovoy Informatsii Kyrgyzskoy Respubliki 08.08.2009. Kod dokumenta 776. *Svobodnyye gory – Loose mountains*, 29.04.1994 g. № 25. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/776/20> [in Russian]
 7. O Konstitutsionnom sude Kyrgyzskoy Respubliki : Zakon Kyrgyzskoy Respubliki ot 18.12.1993 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 1993 g. №1337-XII. Tsentralizovanny Bank Dannyykh Pravovoy Informatsii Kyrgyzskoy Respubliki 08.08.2009. Kod dokumenta 777. Opublikovano v gazete «Svobodnyye gory» 05.04.1994 g. №18. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/777/30> [in Russian]
 8. O Verkhovnom sude Kyrgyzskoy Respubliki i sudakh obshchey yurisdiktsii : Zakon Kyrgyzskoy Respubliki ot 24.04.1999 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 1999 №36. Kod dokumenta 203. *Erkin Too*. 05.05.1999 g. №34. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/203/30> [in Russian]
 9. O statuse sudey v Kyrgyzskoy Respubliki : Konstitutsionnyy Zakon Kyrgyzskoy Respubliki ot 30.03.2001 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 2001 №35. Kod dokumenta 417. *Erkin Too*. 06.04.2001 g. №25. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/417/20> [in Russian]
 10. Myrzalimov R. M. (2000). Ponyatiye i sushchnost Konstitutsionnogo pravosudiya. *Vestnik Kyrgyzskogo Gosudarstvennogo Natsionalnogo Universiteta*, 5, 3-4. Bishkek [in Russian]
 11. O priznanii nekonstitutsionnym stati 41 punkta 1 podpunkta 4 Zakona Kyrgyzskoy Respubliki ot 24.04.1999 g. «O Verkhovnom sude Respublike Kyrgyzstan i sudakh obshchey yurisdiktsii» i nesootvetstvuyushchim statye 15 punkta 4. statye 18 punkta 1 Konstitutsii Kyrgyzskoy Respubliki 1993 goda» : Resheniye Konstitutsionnogo Suda Kyrgyzskoy Respubliki ot 29.04.2008 goda po delu grazhdanina Vinnika V.V. Tsentralizovanny Bank Dannyykh Pravovoy Informatsii Kyrgyzskoy Respubliki 29.04.2008. Kod dokumenta 320024. URL: <http://cbd.minjust.gov.kg/act/view/ru-ru/320024> [in Russian]
 12. Byulleten Verkhovnogo Suda Kyrgyzskoy Respubliki. 1999. №1 (17). URL: <http://sot.kg/category/bulleten> [in Russian]
 13. O Verkhovnom sude Kyrgyzskoy Respubliki i mestnykh sudakh : Zakon Kyrgyzskoy Respubliki ot 18.07.2003 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 2003 g. №153. Kod dokumenta 1279. *Erkin Too*. 25.07.2003 №55. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/1279/145> [in Russian]
 14. Osmonov K.E. Razvitiye sudebnoy reformy v Kirgizskoy Respublike. Nauchnyy zhurnal «Pravo i Predprinimatelstvo». Moskva. 2004. №2. S. 7-8 [in Russian]
 15. Grazhdanskiy protsessualnyy kodeks Kyrgyzskoy Respubliki ot 29.12.1999 goda. Zhogorku Kenesh Kyrgyzskoy Respubliki 1999 №146. Tsentralizovanny Bank Dannyykh Pravovoy Informatsii Kyrgyzskoy Respubliki 08.08.2009. Kod dokumenta 12. *Erkin Too*. 12.01.2000. №2. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/12/300> [in Russian]
 16. Konstitutsiya Kyrgyzskoy Respubliki ot 27.06.2010 goda. Zhogorku Kenesh Kyrgyzskoy Respubliki 2010. Tsentralizovanny Bank Dannyykh Pravovoy Informatsii Kyrgyzskoy Respubliki 02.07.2010. Kod dokumenta 202913. *Erkin Too*. 06.07.2010 №61. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/202913/20> [in Russian]
 17. O statuse sudey v Kyrgyzskoy Respubliki : Konstitutsionnyy Zakon Kyrgyzskoy Respubliki ot 09.07.2008 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 2008. Tsentralizovanny Bank Dannyykh Pravovoy Informatsii Kyrgyzskoy Respubliki 11.07.2008 №141. Kod dokumenta 202352. *Erkin Too*. 15.07.2008 №51. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/202352/140> [in Russian]
 18. Dekret Vremennogo Pravitelstva Kyrgyzskoy Respubliki ot 12.04.2010 goda. Vremennoye Pravitelstvo 2010 №2. Tsentralizovanny Bank Dannyykh Pravovoy Informatsii Kyrgyzskoy Respubliki 16.04.2010. Kod dokumenta 202766. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/202766/10> [in Russian]
 19. O razreshenii spora. svyazannogo s primeneniym punkta 2 stati 43 Konstitutsii Kyrgyzskoy Respubliki o vozmozhnosti uchastiya Prezidenta Kyrgyzskoy Respubliki Askara Akayeva na ocherednykh vyborah Prezidenta Kyrgyzskoy Respubliki v 2000 godu : Resheniye Konstitutsionnogo Suda Kyrgyzskoy Respubliki ot 13.07.1998 g. Konstitutsionny Sud Kyrgyzskoy Respubliki 1998. Kod dokumenta 52542. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/52542/10> [in Russian]

20. O Konstitutsionnoy palate Verkhovnogo Suda Kyrgyzskoy Respubliki : Konstitutsionnyy Zakon Kyrgyzskoy Respubliki ot 13.06.2011 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 2011 №37. Tsentralizovanny Bank Danykh Pravovoy Informatsii Kyrgyzskoy Respubliki 15.06.2011. Kod dokumenta 203281. *Erkin Too*. 17.06.2011 №47. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/203281/40> [in Russian]
21. Ob obrazovanii Soveta po sudebnoy reforme pri Prezidente Kyrgyzskoy Respublike: Rasporyazheniye Prezidenta Kyrgyzskoy Respubliki ot 25.09.2012 g. Prezident Kyrgyzskoy Respubliki 2012 №142. Kod dokumenta 21116. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/21116/80> [in Russian]
22. Tiperov A. Stanovleniye i razvitiye sudebnoy sistemy Kyrgyzskoy Respubliki. Nauchnyy zhurnal «Evraziyskaya Advokatura». Bashkortostan. Ufa. 2013. № 2 (3). S. 19 [in Russian]
23. Nauchno-prakticheskiy kommentariy k Grazhdanskomu protsessualnomu kodeksu Kyrgyzskoy Respubliki. (2011). Bishkek [in Russian]
24. Ob obrazovanii Komissii po vyrabotke soglasovannykh predlozheniy po dalneyshemu reformirovaniyu sudebnoy sistemy Respubliki Kyrgyzstan : Ukaz Prezidenta Kyrgyzskoy Respubliki ot 17.01.2012 g. Prezident Kyrgyzskoy Respubliki 2012 №6. Tsentralizovanny Bank Danykh Pravovoy Informatsii Kyrgyzskoy Respubliki 21.01.2012. Kod dokumenta 61255. *Erkin Too*. 20.01.2012 №4. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/61255/20> [in Russian]
25. Ob osnovakh administrativnoy deyatel'nosti i administrativnykh protsedurakh : Zakon Kyrgyzskoy Respubliki ot 31.07.2015 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 2015 №210. Tsentralizovanny Bank Danykh Pravovoy Informatsii Kyrgyzskoy Respubliki 18.08.2015. Kod dokumenta 111254. *Erkin Too*. 18.08.2015 №78. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/111254/10> [in Russian]
26. Kodeks ob administrativnom sudoproizvodstve Kyrgyzskoy Respubliki ot 25.01.2017 goda. Zhogorku Kenesh Kyrgyzskoy Respubliki 2017 №13. Tsentralizovanny Bank Danykh Pravovoy Informatsii Kyrgyzskoy Respubliki 01.02.2017. Kod dokumenta 111520. *Erkin Too*. 01.02.2017 №10-11. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/111520/40> [in Russian]
27. O statuse sudebnogo ispolnitelya i ob ispolnitel'nom proizvodstve : Zakon Kyrgyzskoy Respubliki ot 28.01.2017 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 2017 №15. Tsentralizovanny Bank Danykh Pravovoy Informatsii Kyrgyzskoy Respubliki 07.02.2017. Kod dokumenta 111522. *Erkin Too*. 07.02.2017 №15-16. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/111522/20> [in Russian]
28. Grazhdanskiy protsessualnyy kodeks Kyrgyzskoy Respubliki ot 25.01.2017 goda. Zhogorku Kenesh Kyrgyzskoy Respubliki 2017 №14. Tsentralizovanny Bank Danykh Pravovoy Informatsii Kyrgyzskoy Respubliki 02.02.2017. Kod dokumenta 111521. *Erkin Too*. 01.02.2017 №12-13. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/111521/40> [in Russian]
29. O vnesenii izmeneniy v nekotoryye zakonodatel'nyye akty Kyrgyzskoy Respubliki (v Grazhdanskiy protsessualnyy kodeks Kyrgyzskoy Respubliki. Kodeks Kyrgyzskoy Respubliki o nenalogovykh dokhodakh. Administrativno-protsessualnyy kodeks Kyrgyzskoy Respubliki. zakony Kyrgyzskoy Respubliki “O Verkhovnom sude Kyrgyzskoy Respubliki i mestnykh sudakh”. “Ob utverzhenii struktury mestnykh sudov i shtatnoy chislennosti sudey mestnykh sudov Kyrgyzskoy Respubliki : Zakon Kyrgyzskoy Respubliki ot 11.04.2020 g. Zhogorku Kenesh Kyrgyzskoy Respubliki 2020 №39. Tsentralizovanny Bank Danykh Pravovoy Informatsii Kyrgyzskoy Respubliki 28.04.2020. Kod dokumenta 112041. *Erkin Too*. 28.04.2020 №34. URL: <http://cbd.minjust.gov.kg/act/properties/ru-ru/112041/10> [in Russian]
30. Ob ofitsial'nom tolkovanii stati 75 punkta 4 Konstitutsii Respubliki Kazakhstan : Normativnoye Postanovleniye Konstitutsionnogo Soveta Respubliki Kazakhstan №1 ot 14.04.2006 g. URL: <http://ksrk.gov.kz/index.php/solutions/np-ks-rk-ot-14042006-g-no-1-ob-ofitsial'nom-tolkovanii-punkta-4-stati-75-konstitucii> [in Russian]

БУРЕНКО РОМАН

Магістр юридических наук (Університет Вроцлавський, Польща, 2012), випускник докторантури Інститута Адміністративного Судебного Права Факультета Права і Адміністрації Університета Варшавського (Польща, 2020)

ТРАНСФОРМАЦИЯ СУДЕБНОЙ СИСТЕМЫ КЫРГЫЗСТАНА ПОСЛЕ 1991 ГОДА. АСПЕКТЫ РАЗВИТИЯ АДМИНИСТРАТИВНОЙ ЮСТИЦИИ

В данной статье исследуется трансформация судебной власти в Кыргызской Республики после 1991 года, а также аспекты развития административной юстиции в государстве.

В статье представлены основные этапы развития судебной системы Кыргызской Республики: 1993-2002, 2003-2009, 2010-2020. Описывается устройство судебной системы республики, судов общей юрисдикции, межрайонных экономических судов, судебных коллегий Верховного суда Кыргызской Республики, а также судов второй инстанции, а кроме того ликвидация системы арбитражных и военных судов в республике (2003), расформировании Конституционного суда Кыргызской Республики (2010), создание Конституционной палаты в Верховном суде республики. В статье приводятся аспекты развития административной юстиции.

Ключевые слова: Кыргызстан, реформа и структура судебной системы, суды общей юрисдикции, межрайонные экономические суды, Верховный Суд, Конституционный Суд, Конституционная палата, административные суды, административное производство.

БУРЕНКО РОМАН

Магістр юридичних наук (Університет Вроцлавський, Польща, 2012), випускник докторантури
Інституту Адміністративного Судового Права Факультету Права та Адміністрації У
ніверситету Варшавського (Польща, 2020)

ТРАНСФОРМАЦІЯ СУДОВОЇ СИСТЕМИ КИРГИЗСТАНУ ПІСЛЯ 1991 РОКУ. АСПЕКТИ РОЗВИТКУ АДМІНІСТРАТИВНОЇ ЮСТИЦІЇ

Постановка проблеми. В даній статті досліджується трансформація судової влади в Киргизької Республіки після 1991 року, а також аспекти розвитку адміністративної юстиції в державі.

Метою статті є порівняльний аналіз трансформації судової системи в Киргизстані після 1991 року в різні періоди становлення судової системи в цій державі: 1993-2002, 2002-2009, 2010-2020 роки. Аналіз проблеми розвитку адміністративної юстиції в республіці.

Аналіз останніх досліджень і публікацій. У державах колишнього Союзу Радянських Соціалістичних Республік багато авторів приділяли особливу увагу розвитку судової системи: Олексій С., Банева А., Бібіло В., (Білорусь), Петросайн Р., Туманянц Е. (Вірменія), Мамедов Ф. (Азербайджан), Дворніков Д., Христова К., Ковачова Д., Сухарев А., Устюжанінова Е. (Грузія), Бахрач Д., Назаркулова Л., Зеленків А. (Казахстан), Бекназаров А., Мирзалімов Р., Осмонов К., Тіперов А. (Киргизстан), Ходжаєва Н., Чоліков К., Джураєв С., Зайцев І. (Таджикистан), Авакян С., Клеандров М., Крутіков Я., Вінницький А. (Туркменістан), Аріпов Т., Рячовська Т., Езонов А., Кудрявцев І., Сотиболдєв Ж. (Узбекистан). Однак, незважаючи на численні наукові дослідження, що стосуються розвитку судової системи в державах колишнього Союзу Радянських Соціалістичних Республік, проблеми функціонування та розвитку адміністративної юстиції в державах колишнього СРСР після 1991 року залишаються недостатньо дослідженими, і недостатньо досліджені також питання розробки процедури оскарження адміністративних актів органів державної адміністрації до суду, проблеми відсутності адміністративних судів або проблеми неповноти компетенції адміністративного суду з питань судового контролю за адміністративними актами органів державного управління, а також участь прокурора у розгляді судом адміністративних скарг.

Виклад основного матеріалу. У статті представлені основні етапи розвитку судової системи Киргизької Республіки: 1993-2002, 2003-2009, 2010-2020. Описується пристрій судової системи республіки, системи судів загальної юрисдикції, міжрайонних економічних судів, судових колегій Верховного суду Киргизької Республіки, а також судів другої інстанції, а крім того ліквідація системи арбітражних і військових судів в республіці (2003), розформування Конституційного суду Киргизької Республіки (2010), створення Конституційної палати у Верховному суді республіки. У статті наводяться аспекти розвитку адміністративної юстиції.

Висновки і пропозиції. Для подальшого розвитку адміністративної юстиції в Киргизстані необхідно виключити із Цивільного процесуального кодексу Киргизької Республіки (2017) категорію справ, що впливають з адміністративно-громадських відносин, та включити цю категорію справ до Кодексу про Адміністративне провадження Киргизької Республіки (2017) з віднесенням до юрисдикції адміністративних судів. Крім того, необхідність участі прокурора в адміністративному провадженні має бути суворо регламентована, оскільки

громадянам протистоїть у такому процесі не лише адміністративний орган, а й сам прокурор, який захищає інтереси держави. Участь прокурора адміністративним органом має бути заборонена на законодавчому рівні, залишаючи лише можливість участі в адміністративному процесі безпосередньо самим адміністративним органом або безпосередньо самим прокурором. Крім того, участь прокурора має бути обов'язковою для захисту прав та законних інтересів осіб, які не можуть самотійно відстоювати свої інтереси в суді (інваліди, недієздатні, літні люди, діти).

Ключові слова: Киргизстан, реформа і структура судової системи, суди загальної юрисдикції, міжрайонні економічні суди, Верховний Суд, Конституційний Суд, Конституційна палата, адміністративні суди, адміністративне провадження.

Burenko R. The transformation of the judicial system in Kyrgyzstan an after 1991. Aspects of the development of administrative justice. *Law and innovative society*. 2021. № 2 (17). URL: <http://apir.org.ua/wp-content/uploads/2021/12/Burenko17.pdf>.