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On the role of the public interest in administrative law and judicial proceedings

This article attempts to analyze the concept of public interest through the lens of scientific theories, international experience, and legislative practice. The study is a novelty in this field, as no similar review has been conducted within the framework of Kazakhstani administrative law and procedure. It has been identified that administrative discretion (the competence of an administrative body) serves as the primary mechanism for strengthening public interest. The effectiveness of this mechanism is supported by legislatively established administrative procedures and the ability to challenge public rights through litigation. The conducted analysis contributes to understanding the significance of legal protection of public interest and its benefits for the development of the legal system. The scientific value of the article also lies in examining the experience of administrative justice in Kazakhstan and other countries. By comparing the legal frameworks of developed states with that of Kazakhstan, it becomes evident that public interest is a legal construct that is difficult to regulate yet serves as a universal reference point for the development of legal systems. Therefore, the concept of public interest requires further clarification both for scientific comprehension and for broader interpretation and practical application. An additional value of the study is its systematic analysis of the concept of public interest in foreign legal doctrine, providing a foundation for further comparative legal research.

Keywords: public interest, administrative discretion, concept, society, governance, mechanism, administrative body, Government, justice, court.

Introduction

In some legal systems, the public interest is understood as a collection of public goods protected by administrative bodies. It can serve as a justification for state actions, such as in cases of limiting private rights (e.g., revocation of special rights, restriction of entrepreneurial activities, etc.).

The need for comprehensive research on the public interest in administrative law and process is determined by factors influencing the further sustainable development of administrative justice in Kazakhstan. The functioning of the state, involving public authority relations, is not only an expression of the legal progress of society but also a consequence of the strategic efficiency of the administrative and legal system. The intense legal development and centralized governance highlight the importance of ensuring and protecting the public interest as one of the key tasks.

Public interest is one of the essential components of public governance. Even during the Enlightenment era, the philosopher Charles-Louis Montesquieu, when exploring the public interest, noted that “public and private interests must be in harmony with each other, as public tranquility is the guarantee on the path to an ideal state” [1; 69]. It is worth noting that the concept of public interest is found not only in academic science but also in positive law. The category of “public interest” is universal and serves as an object of study in various disciplines (political science, sociology, cultural studies, philosophy) as well as in fundamental branches of law (constitutional, administrative, civil law, etc.). The place, role, and significance of public interest, as well as its protection in administrative law and process, remain highly relevant topics, which, unfortunately, have not been sufficiently studied by Kazakhstani legal scholars.

Considering the citizens’ ability to seek protection of their rights through claims in administrative courts, the importance of protecting the public interest and exploring its legal nature in the administrative context is growing. The development of legal relations between citizens and the administration (public au-

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thorities) cannot function properly unless procedural equality is ensured, and a balance of interests is achieved.

The public interest exists to ensure legality and order in society and the state [2; 3].

The public interest is the guiding principle of administrative discretion [3; 8]

Established scientific concepts and other significant formulations of the term "public interest" provide a foundation for the theoretical study of this institution, employing methods of comparison and analysis.

The aim of this study is to determine the role and significance of public interest in the context of the development of scientific doctrines and the sustainable evolution of administrative justice institutions.

In pursuing this goal, it is essential to analyze existing scientific concepts related to the study of public interest in the field of administrative law and procedure, as well as to demonstrate its growing importance and implementation in the context of the development of interconnected institutions of administrative law and procedure, including administrative discretion, administrative procedures, and administrative claims.

Given the interdisciplinary and sectoral nature of the public interest institution, an analysis of its expansive interpretation is justified.

Methods and materials

The article prioritizes general scientific, analytical, and comparative legal research methods. The general scientific method facilitates the identification of established concepts and the systematization of accumulated scientific knowledge in the field of public interest. It also allows for the analysis of previous sources, existing academic literature, and current legislation. The analytical method enables conclusions regarding the necessity of legal protection of public interest within the branches of administrative law and procedure. It focuses on identifying and extracting key theoretical arguments, legal definitions, and practical applications of existing concepts. By comparing public law based on country-specific experience, a stable understanding of the development of public interest is formed.

Results

The interpretation of the term "public interest" has been the subject of numerous studies in legal doctrine. Since ancient times, a well-established concept has emerged, stating that "the interests of the polis (state) are the interests of the citizens". The Roman jurist Ulpian, for example, equated the interests of the state with public interests [1; 89]. Subsequent research by philosophers such as John Locke and others focused on understanding the essence and mechanisms of protecting public interests [4]. In more democratic conditions of state development, scholars began to explore the principles of prioritizing the interests of the state over those of the individual. Specifically, A.V. Petukhova, examining N.M. Korkunov's sociological concept, notes that "the primary purpose of law is to ensure the coexistence of both personal and public interests" [5].

In the theory of administrative law, one of the first scholars to introduce the concept of "public interest" was S.V. Tikhomirov. He defined it as "a state-recognized and legally ensured interest of a social community, the satisfaction of which serves as a guarantee of its implementation and development" [6; 78]. In our view, this definition comprehensively reflects the essential characteristics of this category. We agree with the author that, for the implementation of the principles of the rule of law, societal interests transition into the legal domain, forming the essence of public interest.

Legal scholars characterize public interest as a synthesis of three forms: societal interests, state interests, and national interests [7; 9].

Kazakhstani legal scholar R.A. Podoprigora, while acknowledging the influence of foreign doctrines on Kazakhstan's administrative law, emphasized the strong necessity of separate protection for public interest. He stated, "Administrative law was originally created as a law for controlling state administration, a law for protecting citizens from the arbitrariness of administrative authorities" [8].

Contemporary research highlights the absence of a legislative definition of "public interest". The field of procedural law in Kazakhstan has also encountered the need for a legal definition of "public interest", as public interests are often involved in the large flow of legal disputes, particularly in relations with administrative bodies. We agree with international scholars that the legislative gap regarding "public interest" obstructs transparency in protecting public interests and the realization of citizens' right to a fair trial [9].

It is important to note the constitutional significance of public interest. According to A.A Gogin and others, "the foundation of public interest lies in the goals of the state's existence, which are enshrined in constitutional norms as a system of prioritized activities for empowered authorities in various spheres of public

life" [10]. Due to its specific properties and essence, public interest plays a leading, coordinating, and corrective role in societal development, determining future goals and prospects. It is the Constitution that should be regarded as the criterion for the development of public interest in society and the state in their continuous pursuit of the public ideal. Legal theorists also rightly include the interests of local government bodies and the community's interests in the concept of "public interest" [11; 34].

The content and priority of protecting public interests can be traced in the norms of the Constitution of the Republic of Kazakhstan, particularly in Article 39, Part 1, and Article 76, Part 1 [12], as well as in the Administrative Procedural and Process-Related Code, Article 5, Part 1 (hereinafter referred to as APPRC). In the APC, Article 31, Part 3, establishes the right of the prosecutor to bring a lawsuit in court for the protection of public interests [13]. Currently, the prosecutor's appeal to the court remains the most effective means of protecting public legal entities. A.E. Alibekov emphasizes the effectiveness of the legal protection mechanism for public interest with the involvement of the prosecutor, noting not only the supervisory function of the prosecution but also the representative function of the prosecutor, who acts on behalf of the state [14; 162].

Independent observations of the doctrine of public and administrative law have made it possible to identify key features that form the foundation for the implementation of public interest:

Public law mediates relationships governed by executive and regulatory authority through the use of administrative discretion.

Public interest is recognized as an essential attribute of the rule of law.

Public interest creates the legal basis for filing claims with an administrative body.

The qualitative characteristics of public interest as a legal category, in our opinion, include:

- Compliance with the needs and goals of society.
- The non-personalized nature of the interest holder. These may include citizens, citizen associations, local communities, or institutions for protection by specialized entities (the state, administrative bodies, courts).

Legality: public interest is enshrined in legislation and must conform to it.

The author's identified features and characteristics of the category of "public interest" merit further scientific interpretation and legislative formalization. At the current stage of the development of modern administrative justice, the concept of "public interest" should be recognized as an innovative term within the field of administrative law and procedure.

We believe that for proper interpretation and legal application, the legal structure of the term "public interest" should be incorporated into the current legislation of the Republic of Kazakhstan.

The proposed innovative approaches to the theoretical interpretation of public interest, along with international practices, demonstrate the practical necessity of developing it as an independent legal institution, adapted to contemporary challenges in the evolution of administrative justice.

Discussion

The established understanding of the public interest in legal science cannot be considered universal or aligned with contemporary trends in legal development. The interpretations of public interest, developed through the reception of Roman law and later refined by medieval commentators, can be viewed as a simplified approach to resolving the theoretical problem.

Public interests impact social relations by enshrining fundamental principles for the structure of society and the state. They determine the content of legal influence on all spheres of social relations and aspects of social reality; the means of their protection is the general system for safeguarding the Constitution and the constitutional order.

Public interest predominantly takes a constitutional form. It primarily consists of norms that function as principles, definitions, and goals. In terms of purpose, these norms are intended to ensure the systemic consolidation of conceptual ideas recognized as fundamental for society and the state.

At first glance, the concept of public interest appears to be a category with a single, unified content.

However, in practice, it has different interpretations and applications in various legal systems. Let's conduct a comparative analysis.

For example, in countries with a civil law system, public interest is enshrined in constitutions, laws, and subordinate regulations. In France, the concept of public interest is used as a criterion for assessing constitutional compliance and for verifying the legality of public administration activities. Administrative acts and decisions are checked against public interest standards.

In common law countries, public interest is a doctrinal concept developed through judicial precedents. In the United States, there is a viewpoint that administrative justice and governance should be separate. In Anglo-American legal traditions, public interest, as a mechanism, has a flexible form that is directly applied by courts in public proceedings (hearings). One such method is the "Duty of Care" principle. On the one hand, this allows for balancing private and public interests, while on the other, it enables the evaluation of a public authority's competence. According to foreign scholars, due care is a behavioral standard based on which a judge, upon finding a violation of public interest by an administrative body that failed to act appropriately, makes a final ruling [15].

In modern post-Soviet systems, including Kazakhstan, the concept of public interest has always been closely tied to state policies and administrative procedures. Issues of public administration were more concerned with the practical aspects of the functioning government; their resolution requires the adoption of methods that ensure a similarly practical approach. With this approach to administrative problems, it is necessary, first and foremost, to recognize the nature and importance of public governance.

The exercise of powers by administrative bodies is an equally pressing task for the administrative apparatus. From the perspective of administrative justice and public administration, the place of executing directive powers within the structure of the government is equally important and necessary in the fundamental aspects of developing a democratic state.

The practice of European states in protecting public interest relies on the principle of proportionality [16], while Kazakhstani legislation applies the principle of commensurability.

When defining the essence of the principle of commensurability in the administrative-legal aspect, it is important to note that, as a new element of judicial proceedings, it represents a requirement to maintain a necessary balance of interests in the protection of rights and freedoms. According to Article 10 of the Administrative Procedural and Process-Related Code of the Republic of Kazakhstan (APPRC RK), ensuring the principle of commensurability requires maintaining a fair balance of interests among participants in administrative proceedings [13]. This requirement aims to prevent abuse of power, protect the rights of citizens and their associations, and ensure the effective performance of the state's public functions.

The court's implementation of the principle of commensurability is based on the following triad: suitability, necessity, and proportionality. "Administrative act or administrative action (inaction) is considered proportional if the public benefit gained as a result of restrictions on the rights, freedoms, and legitimate interests of a participant in administrative proceedings exceeds the harm caused by such restrictions" [17].

Another layer of public interests is represented by local self-government. Recognizing it as a special form of authority and a unique social institution means acknowledging that, alongside individual interests and state interests, there also exists the public interest of the local community. This interest is focused on ensuring favorable conditions for people's coexistence within a given territory. As one form of authority (its lower level), local government implements state policy on the ground, making binding decisions on local matters, ensuring public safety, maintaining order, and performing other governmental functions. Regrettably, the current situation in this area falls short of satisfactory standards. Local self-government has not yet fully met its purpose of being an integrating factor that engages and activates the deep mechanisms of societal self-regulation. There are issues stemming from the general state of the governmental and legal reality. To overcome these problems, an appropriate conceptual and legal foundation for local self-government is necessary, one of whose key elements is ensuring public interest in cooperation with local administrations. Let us focus on another feature of the implementation of public interest through the institution of administrative discretion.

Administrative discretion is a key feature in the implementation of state policy.

Administrative discretion refers to the freedom of choice or judgment granted to an executive official or administrative body to ensure the constant and full realization of legislative policy in any situation that may arise in connection with the execution of managerial decisions.

Administrative discretion is the authority of an administrative body or official to make one of the possible decisions based on the evaluation of their legality [10].

There are several practical reasons why the state grants competence to administrative bodies to implement and ensure the enforcement of its expressed policy:

1. Control and resolution of many social or economic issues and needs of society.

2. Development of standards at the legislative level and their delegation to institutions created for this purpose.

3. Provision of long-term solutions to emerging complex problems related to the regulation of areas of public and state life.

The resolution of disputes between an administrative body and a plaintiff is described as an administrative court decision, as it, in some minor respects, resembles the exercise of judicial power. Judicial bodies recognize the inherent complexity involved in addressing matters of public administration. If courts are forced to consider such administrative matters, they would be acting beyond their judicial functions, thereby violating the doctrine of the separation of powers. Nevertheless, courts claim the right to substitute their own independent decision based on a completely new judicial review of the validity of administrative decisions, which by their very nature are either "legislative or administrative".

Legal theorists have suggested that the functions of administrative legislation should be separated from judicial processes and entrusted to a distinct body to avoid mixing such powers.

Despite their distinctive characteristics, these functions are in practice inseparable and interdependent parts of the same administrative process, intricately linked by the practical necessity of maintaining administrative justice.

We suppose that the proposal to separate these functions would undoubtedly reduce the efficiency and speed of governance and generally disrupt the entire administrative process at its later stages. We believe that it is necessary to direct judicial action to prohibit the merging of administrative powers. If we want to have a competent government, then administrative powers and the mechanisms delegated should be carried out in accordance with the goals of the expressed legislative policy, free from the restraining influence of strict constitutionalism.

The judiciary, within the framework of administrative justice, should be focused on working in specialized areas of public administration. We believe it is essential to address the issues arising from the implementation of modern legislative policy in defense of the public interest, which have, in a sense, been "assigned" to specialized administrative courts.

Overall, the research findings were achieved using modern methodologies. In addition to the classical method of theoretical analysis, methods of systematizing scientific knowledge and analytical approaches were employed, enhancing the validity of the conclusions drawn. The identified patterns in the development of public interest do not contradict the doctrine of administrative law; on the contrary, they confirm its reliability and effectiveness.

Conclusions

In general, it should be concluded that public interest holds a key position in shaping social relations that arise within the framework of public administration and administrative procedures.

Based on the research conducted, the fundamental characteristics of public interest as a legal category have been systematized, demonstrating its value for the fields of administrative law and procedure. Drawing from the reception of foreign practices, common historical patterns in the development of public interest have been identified. It has been determined that the key patterns and factors underlying the mechanism of public interest — such as administrative discretion, the executive and regulatory activities of state bodies, procedural and claim-based proceedings — have allowed for a deeper understanding of the legal nature of public interest and the mechanisms of its functioning. Existing scientific developments in the fields of public and administrative law, as well as the ongoing academic discourse, confirm the necessity of further research. The absence of a unified scientific doctrine regarding the mechanism of public interest creates difficulties in the legal interpretation of its structural elements. The terminology arising from the need for legal protection of public interest requires further clarification.

In our opinion, public interest can be defined as a legally ensured and protected interest that serves as an external manifestation and official expression of the needs of both society and the state.

The study of the administrative law sector and the analysis of procedural legislation have shown that the concept of public interest is further shaped by the specific characteristics of legal regulation and the subjects involved in the respective legal relations. We believe that ensuring public interest is a crucial means of fulfilling the most important social and legal values, meeting the needs of both society and the state, and achieving the objectives of administrative justice.

The scientific and practical value of the obtained results lies in their potential use for improving legislative practice, optimizing the administrative-legal system, and implementing the principles of administrative proceedings. The theoretical analysis conducted not only expands scientific knowledge but also has applied significance, enabling the use of the findings to address pressing issues in administrative justice.

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Д.Р. Егежанова, И.С. Сактаганова, Э. Юхневичус

Әкімшілік құқық пен сот ісін жүргізудегі қоғамдық мүдденің рөлі туралы

Мақалада заңнама мен сот тәжірибесі арқылы қоғамдық мүдденің тұжырымдамасын талдауға әрекет жасалған. Зерттеу осы саладағы жаңалық болып табылады, өйткені бұған дейін қазақстандық әкімшілік құқық пен процесс саласында мұндай шолу жүргізілген жоқ. Әкімшілік қалаудың (әкімшілік органның құзыреті) қоғамдық мүддені нығайтудың басты тетігі болатыны анықталып отыр. Әкімшілік талап арқылы әкімшілік заңнамадағы рәсімдерді және жария құқықтарды даулауға мүмкіндік береді. Жүргізілген талдау қоғамдық мүддені құқықтық қамтамасыз етудің маңыздылығын және оның құқықтық жүйені дамытудағы пайдасын түсінуге ықпал етеді. Мақаланың ғылыми құндылығы Қазақстанда жақында қабылданған Әкімшілік рәсімдік-процестік заңнамасын талдаудан көрінеді. Дамыған мемлекеттердің тәжірибесін салыстыра отырып, қоғамдық мүдде — құқықтық реттеуге қиын болатын құқықтық құрылым ретінде құқықтық жүйелерді дамытудың әмбебап бағдар

қызметі екендігі анықталды. Сондықтан қоғамдық мүдде ұғымы ғылыми түсіну үшін де, кеңейтілген түсіндіру және одан әрі қолдану үшін де нақтылауды қажет етеді. Зерттеудің қосымша құндылығы салыстырмалы перспективада ғылыми зерттеу жүргізу үшін ақпарат беретін шетелдік доктринаны қарау, бұл қоғамдық мүдденің тұжырымдамасын салыстырмалы талдауға мүмкіндік береді.

Кілт сөздер: қоғамдық мүдде, әкімшілік қалау, тұжырымдама, қоғам, басқару, тетік, әкімшілік орган, Үкімет, әділет, сот.

Д.Р. Егежанова, И.С. Сактаганова, Э. Юхневичус

О роли публичного интереса в административном праве и судопроизводстве

В данной статье предпринята попытка проанализировать концепцию публичного интереса через призму анализа научных концепций, зарубежного опыта и законодательной практики. Исследование является новшеством в этой области, так как ранее подобный обзор в отрасли казахстанского административного права и процесса не проводился. Было выявлено, что административное усмотрение (компетенция административного органа) является главным механизмом укрепления публичного интереса. Способствуют работе такого механизма установленные законодательством административные процедуры и возможность оспаривания публичных прав с помощью иска. Проведенный анализ способствует пониманию и значимости правового обеспечения публичного интереса и его выгоды в развитии правовой системы. Научная ценность статьи заключается в анализе опыта административной юстиции Казахстана и зарубежных стран. Сравнивая опыт более развитых государств и Республики Казахстан, приходит понимание, что публичный интерес — правовая конструкция, которая сложно поддается правовому регулированию, служит универсальным ориентиром для развития правовых систем. Поэтому понятие публичного интереса требует уточнения, как для научного понимания, так и для расширенного толкования и дальнейшего применения. Дополнительная ценность исследования заключается в системном анализе концепции публичного интереса в зарубежной доктрине права, что дает информацию для проведения научного исследования в сравнительной перспективе.

Ключевые слова: публичный интерес, административное усмотрение, концепция, общество, управление, механизм, административный орган, Правительство, юстиция, суд.

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