

УДК 347.97

DOI [https://doi.org/10.20535/2308-5053.2021.3\(51\).246462](https://doi.org/10.20535/2308-5053.2021.3(51).246462)

TRANSFORMATION OF THE JUDICIARY IN TURKMENISTAN AFTER 1991. ASPECTS OF DEVELOPMENT OF ADMINISTRATIVE JUDICIARY

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The article examines the process of formation of the Turkmen judicial system after Turkmenistan declared independence in 1991. The stages of reforming and transformation of the judicial system in the Republic of Turkmenistan in different periods are studied: 1990–2000, 2001–2020. In addition, the structure of the judicial system of Turkmenistan, the system of courts of general jurisdiction (regional courts and local courts), the system of arbitration courts, judicial boards of the Supreme Court of the Republic of Turkmenistan (in civil cases, arbitration cases, administrative cases, criminal cases) is analyzed, and the judicial self-government bodies of the Republic of Turkmenistan are also investigated: the National Conference of Judges, the Qualification Board of Judges, the Council of People's Assessors at district courts.

In addition, the norms of the Civil Procedure Code of the Republic of Turkmenistan, the Arbitration Procedure Code of the Republic of Turkmenistan and the Code of the Republic of Turkmenistan on Administrative Procedures on issues arising from administrative and public legal relations are analyzed.

The article draws attention to the lack of functioning of the constitutional judicial system and the Constitutional Court in the Republic of Turkmenistan, as well as the need to establish constitutional control over normative acts of the legislative and executive branches of the republic in the country.

It is proposed to establish administrative courts in Turkmenistan in all regional centres of the country and the capital of the republic, as well as to adopt the Code of Administrative Procedure of Turkmenistan in the country.

The article draws attention to the fact that the creation or liquidation of arbitration, regional or local courts would be carried out not only on the basis of a Presidential Decree, but also on the basis of a proposal of the Supreme Court of the Republic of Turkmenistan with the consent of the Parliament of the Republic of Turkmenistan.

Key words: Turkmenistan, judiciary reform, judiciary, general courts, arbitration court, colleges of the Supreme Court, analysis of legislation.

1. Introduction.

A state in Central Asia. It borders Kazakhstan in the north, Uzbekistan in the north and east, Iran and Afghanistan in the south. In the west it is washed by the Caspian Sea. From 1924 to 1991, Turkmenistan was part of the Union of Soviet Socialist Republics as a Union republic (Turkmen Soviet Socialist Republic). Turkmenistan's independence was proclaimed in October 1991. The capital of Turkmenistan is Ashgabat. The currency of Turkmenistan is the Turkmen manat (TMM) [1].

On August 22, 1990, the Supreme Council of the Turkmen Soviet Socialist Republic (abbreviation – TmSSR) adopted the *Declaration of independence of the Turkmen Soviet Socialist Republic* [2], which was signed by members of the TmSSR supreme council in the capital of the state – Ashgabat. The Declaration laid the foundations for the elaboration of a new Constitution of the TmSSR, the conclusion of a new trade union agreement within the USSR and the improvement of Republican legislation.

On 27 October, 1991, the supreme council (Mejlis – in the Turkmen language) of the Republic of Turkmenistan adopted the *Constitutional Law on the independence and foundations of the state system of Turkmenistan* [3]. It should be noted that Turkmenistan was the last of the Union republics of the USSR to declare its independence.

After the collapse of the USSR in Turkmenistan, a model of the so-called transitional economy was formed, so the primary importance in the country was given to the reform and improvement of civil and economic law. In contrast, other institutions of state and law, including the judicial system remained without significant changes until the end of the 1990s.

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

However, despite numerous scientific studies on the development of the judicial system in the countries of the former Soviet Union after 1991, as well as the problems of the functioning and development of the administrative judiciary in the countries of the former Soviet Union after 1991, they remain insufficiently studied by scientists, and the issues of the development of the procedure for appealing acts of state administrative bodies to the court are also insufficiently studied, including the problem of the lack of administrative courts in some states (Belarus, the Russian Federation, Tajikistan, Turkmenistan) or problems of weak or unspecified competence of the Administrative Court in judicial control over acts of. This problem is the purpose of the work. In addition, the article draws attention to the lack of functioning of the constitutional judiciary and the constitutional court in Turkmenistan, and indeed the administrative judiciary in this country.

The purpose of the article is a comparative analysis of the transformation of the judicial system in Turkmenistan after 1991 in different periods of the formation of the judicial system in this country: 1990–2000, 2001–2020, analysis of the problem of development of administrative judiciary in Turkmenistan, as well as constitutional judiciary and constitutional court in Turkmenistan.

2. Judicial reform in Turkmenistan in the period 1991–1999.

Until 1999, Turkmenistan had a judicial system in accordance with the *Law of the Republic of Turkmenistan of 29 May 1991 on the judiciary and status of the court (kazy*¹) in Turkmenistan* [4] and the *Law of the Republic of Turkmenistan of 12 November 1991 on economic courts* [5]. In accordance with Article 4, the judiciary in Turkmenistan was exercised by civil, arbitration and criminal courts [4].

On the other hand, according to Article 5 “*in administrative matters*” and in cases of executions could be established at the local courts (“etrap kazy” – in the Turkmen language). However, from the content of the provision it follows that the Turkmen legislator by the administrative jurisdiction in the country understands administrative and judicial proceedings on offenses [4].

The structure of the judiciary (“cassijets” – in the Turkmen language) of Turkmenistan was Article 20 of the *Law of the Republic of Turkmenistan of 29 May 1991 on the judiciary and the status of the court in Turkmenistan* from which it follows that the judiciary in the country are:

- 1) the Supreme Court of the Republic of Turkmenistan,
- 2) the Arbitration Court of the Republic of Turkmenistan,
- 3) the Regional Courts (“vilayet courts” – in the Turkmen language) and the Ashgabat City Court,
- 4) the Local Courts (“etrap courts” – in the Turkmen language).

It should be noted that “vilayet” – this is the unit of the highest division of the territory of Turkmenistan. Currently, 5 regions (“vilayets”) have been created: Achalsk, Balkansk, Dashoguzk, Lebapsk, Maryysk. In contrast, local courts (“etrap courts”) – this is the unit of the smallest division of the territory. Currently, there are 57 of them in Turkmenistan [6].

Pursuant to Article 21 (1), the court shall be constituted and dissolved by the president of Turkmenistan, with the exception of the Supreme Court of the Republic of Turkmenistan, which shall be constituted and dissolved in accordance with a decision of the parliament of the Republic of Turkmenistan [4].

The Regionals Courts and Ashgabat City Court consisted of the president of the court, the deputy president of the court, the judges, the people’s juries and acted in the composition of the Presidium

1* Kazy or kazyjet (in Turkmen language) – this is the name of the court, which can be formed in the vilayet (regional) or etrap (local) of Turkmenistan.

of the court, the collegium of the court in civil matters and the collegium of the court in criminal matters (Article 29) [4].

The Supreme Court of the Republic of Turkmenistan consisted of the president of the court, the first deputy president and the president's deputies of the court, the judges, the people's juries and acted as a part of the Plenum Supreme Court of the Republic Turkmenistan, the Presidium Supreme Court of the Republic of Turkmenistan, the collegium of the court in civil matters, the collegium of the court in criminal matters and the collegium of the court in arbitration matters (Article 39) [4].

The arbitration court of Turkmenistan, as a court and instance, dealt with disputes arising from economic matters (Article 37-1) [4].

It should be noted that the above legislation on the judicial system was adopted in the country before the introduction of the new Republic of Turkmenistan Constitution of 1992, while the regulation of procedural law and the judicial system in the country remained for a long time without significant changes (until the end of the 1990s). An example of this is the resolution of the Plenum of the Higher Court Arbitration of the Republic of Turkmenistan of 5 May 1994, in which it was pointed out that the courts of Turkmenistan allow violations related to the jurisdiction of economic cases when settling cases, and the cases themselves are rather poorly examined by judges when making their final decisions, as well as deadlines for considering cases (procedural deadlines) are not observed [7].

On 18 May, 1992, the Constitution of the Republic of Turkmenistan was adopted in Turkmenistan [8]. According to Article 4 of the Constitution of the Republic of Turkmenistan, power in the country is divided into legislative, executive and judicial, and judicial power is independent from other branches of government. According to Article 100 of the Constitution of the Republic of Turkmenistan, the judiciary in Turkmenistan is administered by the Supreme Court of the Republic of Turkmenistan and other courts provided for by the legislation of the country. The creation of extraordinary courts and other structures in the subdivided functions of the court are not allowed [8].

At this point, I would like to point out that the above provision of the Constitution of the Republic of Turkmenistan left open the way for the establishment of specialized courts in the country, such as administrative, financial, tax or juvenile cases, and also did not prohibit the establishment of military courts in the country.

It should be pointed out that Turkmenistan is the only country from the territory of the former USSR, where there is no Constitutional Court and constitutional control of legislation.

On December 23, 1989, the USSR adopted the *Law on the Constitutional Supervision Committee of the USSR*. According to Article 2 of the said law, constitutional supervision in the USSR was exercised by the Constitutional Supervision Committee of the USSR, as well as the relevant constitutional supervision bodies in the federal and autonomous republics [9]. In accordance with Article 10 of the above law, the constitutional supervision committee of the USSR or its corresponding body in the federal (autonomous) republic was created to check compliance with the Constitution of the USSR or the constitution of the federal (autonomous) republic of draft laws and other normative acts submitted for consideration by the Supreme Council of the USSR or the federal (autonomous) republic, as well as laws already adopted [9].

On the basis of this standard, on 25 May 1990 the Supreme Council of the Turkmen Soviet Socialist Republic adopted the law on constitutional supervision in the TmSSR [10]. According to Article 1 of the above law, the purpose of constitutional supervision in the Turkmen Soviet Socialist Republic was to ensure compliance of acts of state bodies and social organizations with the norms of the *Constitution of the Turkmen Soviet Socialist Republic of 1978* [11], as well as the protection of constitutional human rights and freedoms, the rights of the TmSSR people and democratic principles. Also in Article 3 paragraph 2 of the above law it was indicated that the Constitutional Supervision Committee of the Turkmen Soviet Socialist Republic is an independent body and is subject only to the norms of the Constitution of the TmSSR and the Constitution of the USSR [11].

On the other hand, on the basis of the rules of functioning of the Constitutional Supervision Committee of the Turkmen Soviet Socialist Republic, the Constitutional Court was not created in Turkmenistan, and the committee itself was recognized as not corresponding to the formed political system of the Republic and was liquidated [12].

The Constitution of the Republic of Turkmenistan (1992) established certain principles for the protection of the rights and freedoms of citizens in the country. In accordance with Article 43 of the Constitution, it is established that the law that aggravates the situation of a citizen cannot work, and Article 44 of the Constitution provides that any restriction on the rights and freedoms of a citizen can be applied only during a state of emergency or martial law in the state [8]. As stated in Article 40 of the Constitution, citizens are guaranteed judicial protection of their dignity, personal and political rights as provided for by the Constitution and legislation of Turkmenistan [8]. However, among scientists there are some doubts about the content of the above provision. Thus, J. Krutikov in his scientific article points out, firstly, that

the social, economic and cultural rights of citizens are not guaranteed by the possibility of their protection by the judiciary in the country, and secondly, such rights are not guaranteed for legal entities [13].

According to Article 66 of the Constitution of the Republic of Turkmenistan [8], the Parliament (Mejlis – in Turkmen language) of Turkmenistan may delegate the right of legislative initiative to the President of the Republic of Turkmenistan, but with the obligatory approval of such legislative acts by the Parliament (Mejlis – in Turkmen language) of the Republic of Turkmenistan. It is important to note that the Parliament may not delegate to other bodies the functions of legislative initiative arising from the criminal or administrative legislation, as well as in the sphere of legislation on the judicial system in the country. The right of legislative initiative belongs to the President of the Republic of Turkmenistan, members of the Parliament of the Republic of Turkmenistan, the Council of Ministers of the Republic of Turkmenistan, as well as the Supreme Court of the Republic of Turkmenistan (Article 68 of the Constitution).

As indicated above, the Constitution of the Republic of Turkmenistan (1992) does not specify which courts (system of courts), apart from the Supreme Court of the Republic of Turkmenistan, can be referred to the country's judicial system. On the other hand, the status of judges has been defined by individual normative acts of the President of Turkmenistan, namely: *Decree of the Presidium of the Republic of Turkmenistan of September 8, 1998 on the procedure for convening and holding conferences of judges of the courts of Turkmenistan* [14], *Decree of the President of the Republic of Turkmenistan of September 8, 1998 on disciplinary liability of judges, response or early dismissal of judges of the courts of Turkmenistan* [15], *Decree of the President of the Republic of Turkmenistan of September 8, 1998 on the qualification colleges of judges of the courts of Turkmenistan* [16], *Decree of the President of the Republic of Turkmenistan of September 8, 1998 on the qualification examination for judges of the courts of Turkmenistan* [17], *Decree of the President of the Republic of Turkmenistan of September 11, 1998 on the oath of judges of the courts of Turkmenistan* [18].

It should be noted that Turkmenistan in the international arena has the status of a neutral state. On 12 December, 1995, the general assembly of the United Nations adopted Resolution No. 50/80, according to which Turkmenistan was granted the status of a neutral state [19]. It can be said that this was a unique document and the first time adopted by the UN. For this document voted 185 member states of the United Nation.

3. The judicial reform after 2000.

On February 14, 2000, the *Law Republic of Turkmenistan No. 15-II on liquidation of the Higher Economic Court of Turkmenistan* [20].

On the other hand, in accordance with *the Law of Republic of Turkmenistan act of 14 February 2000 No. 16-II*, arbitration courts are established in the country, which in their activities are subordinate to the Supreme Court of the Republic of Turkmenistan [21].

On 15 August 2009, a new *Law on the court is adopted in Turkmenistan* [22], followed by a *new version of the Law on the court* on 8 November 2014 [23].

In accordance with Article 1 of the Law of the Republic of Turkmenistan of 8 November 2014 on the court [23], – the judicial authority in the country belongs to the Supreme Court of the Republic of Turkmenistan and other courts provided for by the legislation. The judiciary administers justice through arbitration, civil, administrative and criminal courts.

On the other hand, the local (“etrap” – in Turkmen language) courts handle all civil and criminal cases, as well as administrative and execution cases. Here it should be noted that the Turkmen legislator by “*administrative matters*” understands the proceedings on misdemeanors (criminal-administrative) (Article 18, paragraphs 1 and 2) [23].

The structure of the judicial system in Turkmenistan is (Article 14) [23]:

- 1) Supreme Court,
- 2) Arbitration Court,
- 3) The regional courts – for the regions of Achaal, Balkan, Dashoguz, Lebap, Mari and the capital city court – Ashgabat,
- 4) Local courts.

It should be noted that the Supreme Court of the Republic of Turkmenistan can be liquidated only on the basis of amendments made to the Constitution of the Republic of Turkmenistan, and the Arbitration Court of Turkmenistan, regional courts or local courts can be created and liquidated on the basis of the decree of the president of the Republic of Turkmenistan (Article 15 (1) and (2) [23].

Previously, the powers to create and liquidate the Supreme Court of the Republic of Turkmenistan belonged to the Parliament of Turkmenistan (Article 21 of the law of the Republic of Turkmenistan of 29 May 1991 on the judiciary and the status of the court in Turkmenistan) [4].

In turn, the Arbitration Court of Turkmenistan, regional or local courts, as before, are formed or liquidated on the basis of the decree of the president of Turkmenistan (Article 15 paragraph 2 of the law of the Republic of Turkmenistan of 8 November 2014 on the court [23]).

It should be noted that in the previous version of the law of the Republic of Turkmenistan of August 15, 2009 on the court [22], – courts could not be liquidated by decree of the President Republic of Turkmenistan, if their functions were not transferred to other courts.

As for the structure of the regional courts and the Ashgabat capital city court, they consist of the president of the court, the deputy president of the court, the judges and the people's jury and are composed of: The Presidium of the court, the judicial colleges in civil matters, arbitration (except for the Ashgabat capital city court), administrative and criminal (Article 23 of the Law of the Republic of Turkmenistan of 8 November 2014 on the court) [23], the qualification college (Article 66 (2) [23]. Here it should be noted that the Judicial College in administrative matters of the regional court considers cases of misconduct.

The arbitration court of Turkmenistan deals with disputes arising from economic and administrative matters (Article 32) [23].

As for the structure of the Supreme Court of Turkmenistan, the court consists of the president of the court, the first deputy president of the court, the deputy presidents of the court, the judges and the people's juries and is composed of: the Plenum of the Supreme Court, the Presidium of the Supreme Court, the judicial colleges in civil, arbitration, administrative and criminal matters (Article 37) [23], the qualification college (Article 66 (2) [23].

In summary, Turkmenistan has developed a centralized system of courts, with subordinate lower-level courts-the higher-level courts headed by the Supreme Court Republic of Turkmenistan.

In the establishment of the judicial system in Turkmenistan, two basic criteria of the dispute were applied: the **first criterion** of the dispute is to verify whether the dispute is economic or not, and the **second criterion** of dispute: whether the dispute relates to private or public law, and this criterion has a subsidiary function to differentiate cases [24].

The judicial system of Turkmenistan is of a two-party nature. The court of first instance directly examines the case, and the judgment or decision of the court of first instance may be appealed or protested to the Court of Cassation (second instance). In contrast, the second instance courts (Regional Courts or the Local Court of the capital city of Ashgabat) consider cases for their legality and validity.

As in Soviet times in Turkmenistan there is a so-called supervisory regime to verify the legality and validity of acts issued by the courts of I and II instance. Supervisory proceedings by the regional court and the Supreme Court of Turkmenistan. It should be noted that only the president of the Supreme Court of the Republic of Turkmenistan, the prosecutor general of the Republic of Turkmenistan and their deputies, the president of regional courts, as well as the prosecutor of the regions and their deputies can file a protest in the supervisory mode.

An appeal or appeal against a judgment or decision of the Supreme Court of the Republic of Turkmenistan as a court and instance may be addressed to the Presidium of the Supreme Court of the Republic of Turkmenistan. In contrast, a protest against the decision of the Plenum of the Supreme Court of the Republic of Turkmenistan may be filed through the president of the Supreme Court of the Republic of Turkmenistan or the prosecutor general of the Republic of Turkmenistan [25].

In Turkmenistan, a national conference of judges is convened once a year, as well as a conference of judges of the Supreme Court, the arbitration court and regional courts (Article 65 (1) to (3) [23]. However, the conference of judges cannot be considered as a structure of the judicial self-government in contrast to the qualification College of judges, because the judges-delegates of this conference (are not elected, and participate solely on the basis of their position.

Conferences of judges shall be convened for:

discussion of questions arising in judicial practice as to the application of the legislation;

– to discuss issues of improving the judicial system in the country;

– consideration of questions relating to the protection of the rights and interests of judges and the adoption of initiatives in search of legal solutions to these questions;

– clarifying the application of legislation in judicial practice.

On the other hand, the qualification colleges of judges are created in order to provide the judicial apparatus with highly qualified personnel and to strengthen the guarantee of judicial independence.

The competencies of the judicial qualification colleges include:

– evaluation of the candidate's preparation for the position of judge by conducting appropriate examinations (attestation);

– issue of an opinion on the possibility of nominating a candidate for a judicial post,

– conduct of qualification examinations for judges,

– issue an opinion dismissing a judge from his post,

– to bring to disciplinary responsibility the judge.

The Department of the qualification College of the Supreme Court of the Republic of Turkmenistan also considers complaints of judges and persons conducting disciplinary proceedings against decisions

of the qualification colleges of regional courts and the Ashgabat local court on dismissal from the post of a judge or disciplinary liability of judges.

It should be noted that the decision of the qualification colleges concerning the opinion on the assessment of the preparation of a candidate for the post of Judge and the assessment of the possibility of nominating a candidate for the post of Judge, as well as on the conduct of qualification examinations for judges – cannot be challenged, but such a decision can be reconsidered by the qualification college in accordance with a reasoned request of the president of the Supreme Court of the Republic of Turkmenistan within 7 days (Article 66) [23]. The scientific literature also indicates that the Council of jurors of local courts, which was established in accordance with Article 23 of the Law of the Republic of Turkmenistan of 8 November 2014 on the court, can be referred to the bodies of the judicial self-government of Turkmenistan [26].

In my opinion, the process of reforming the judicial system in Turkmenistan is not fully completed. In 2019, according to the index of democracy (Economist Intelligence Unit), Turkmenistan ranked 161st out of 166 countries, and the index itself was 1.72 points out of 10. The Democracy Index contains 60 key indicators, among which five main categories are distinguished: the internal state of democracy in the state, the electoral process and pluralism, government activity, political activity, political culture, human rights and freedoms [27].

4. Development of administrative law in Turkmenistan.

On 14 February 1999, the *Law on citizens' applications and the procedure for their consideration was adopted in Turkmenistan* [28]. This was an important step in the development of administrative law in the country. In accordance with Article 2 of the above-mentioned law, citizens were given the right to address their proposals, requests and complaints in written or oral form to state bodies, social associations, organizations and institutions.

According to Article 12 of the above law, the time limit for consideration of a proposal, application or complaint was 15 days, and in complex cases – 30 days, but this time limit could be extended to 45 days with simultaneous notification of the party. Supervision of the implementation of the above law was entrusted to the prosecutor's office of Turkmenistan (article 16) [28].

The next important step in the development of administrative law in Turkmenistan was the adoption of the *Law of the Republic of Turkmenistan of 3 July 2017 on administrative procedures* [29].

The law came into force on 1 January 2018.

At the same time, the law of the Republic of Turkmenistan act of 14 January 1999 on citizens' applications and the procedure for their consideration has lost its force [28] (Article 62 (2) [29]. The competence of the law extends to the activities of state administration bodies (Article 3 (1) [29]. In contrast, the law is not applicable in the elaboration and adoption of normative legal acts, in the consideration of applications of citizens in the framework of criminal, criminal, civil or arbitration proceedings of Turkmenistan, as well as labour law and on the activities of bailiffs (Article 3 (2) [29].

The state administration body should issue a decision or refuse to accept it within 1 month, and if the administrative procedure or administrative procedure is complicated, the state administration body extends this period to 45 days with simultaneous notification of the party (Article 20 (2) [29].

The decision (act) of the body of state administration may be appealed to the parent body within 30 days from the date of issuance of such a decision (act). On the other hand, it is possible to challenge the decision of a state administration body in court only after a preliminary examination of the administrative complaint by the superior state administration body (Article 43 (2, 3) [29].

It is important to point out that if the decision (act) of the state administration body for the first time concerns the interests of a person to whom this decision (act) was not previously addressed, then an administrative complaint against such a decision (act) can be directed within 1 year when the person became aware of the violation of his rights. The parent body of the state administration is obliged to consider such an administrative complaint within 10 days, and if the body does not issue a decision on the case, the complainant has the right to directly apply to the court with such a complaint (Article 48) [29].

5. Development of the administrative judiciary in Turkmenistan.

According to Article 40 paragraph 2 of the Constitution of the Republic of Turkmenistan, the activities of state bodies and social associations, as well as officials who violated the constitutional rights and freedoms of citizens, – can be challenged in court [8].

An important step in the development of the administrative judiciary in Turkmenistan was the adoption on 6 February 1998 of the *Law of the Republic of Turkmenistan on the right to challenge the actions of state bodies, social associations, local government bodies and officials who violated the constitutional rights and freedoms of citizens* [30].

According to Article 3 of the above law [29], a citizen has the right to address a complaint to a superior body of state administration, to a superior official, to a prosecutor or directly to a court. For filing a complaint to the courts are set appropriate deadlines:

1 year from the date on which the citizen became aware of the violation of his rights and freedoms,
3 months from the date of receipt by citizens of the response of the state administration body, official, prosecutor,

3 months from the date when the citizen should have received a response from the state administration body, official, prosecutor.

In the courts of Turkmenistan, cases arising from disputes of an administrative and legal nature are considered in accordance with the Code of Civil Procedure of the Republic of Turkmenistan of August 18, 2015 (abbreviation – C.C.P.) [31], which was adopted in place of the previous Code of Civil Procedure of the Turkmen Soviet Socialist Republic of December 29, 1963 [32], and in the arbitration courts of Turkmenistan – cases of an administrative-public nature are considered in accordance with the Code of Arbitration Procedure of the Republic of Turkmenistan of December 19, 2000 (abbreviation – C.A.P.) [33].

In accordance with Article 272 of the Code of Civil Procedure [31], the court of general jurisdiction of Turkmenistan considers the following categories of cases arising from administrative-public relations, namely:

- 1) cases of violation of electoral rights (Chapter 25, Articles 277–279 C.C.P.),
- 2) cases related to the activities of public administration bodies or officials who violated the rights of citizens (Chapter 26, Articles 280–288 C.C.P.),
- 3) cases in connection with the refusal in the state registration of acts of civil status or the refusal of the civil status authority to make appropriate amendments and additions to the acts of civil status (Chapter 27, Articles 289–291 C.C.P.),
- 4) matters related to the activities of a notary or in the refusal of notarial acts (Chapter 28, Articles 292–294 C.C.P.),
- 5) other matters arising from an administrative-public relationship, provided for by the legislation of Turkmenistan (Article 272, Paragraph 5 C.C.P.) [31].

It is important to note that the above-mentioned category of cases arising from administrative-public relations cannot be considered by the court in absentia (Article 273, Paragraph 2 C.C.P.) [31].

The court accepts complaints in cases related to the issuance of decisions of the election commission and the commission on holding a referendum in connection with the registration or refusal of such registration of a candidate or initiative group only if the complaint was previously addressed to the district election commission and such a complaint was rejected by this commission. Such a complaint shall be considered by the court within 3 days from the date of submission of the complaint to the court, and before the voting day or on the voting day – immediately (Article 278 C.C.P.) [31].

As follows from the content of Article 282 the Code of Civil Procedure of the Republic of Turkmenistan of August 18, 2015 [31] normative acts of state administration bodies cannot be challenged in court. An administrative complaint should be sent to the court within 3 months from the date of receipt by the citizen of a negative response from the parent body of the state administration or within 1 month from the date of the absence of such a response (Article 285, Paragraph 1 C.C.P.) [31]. The administrative complaint is considered by the court within 2 months from the date of receipt of the complaint to the court (Article 175, paragraph 1–2 and Article 286, Paragraph 1 C.C.P.) [31].

It should be noted that the Code of Civil Procedure of the Republic of Turkmenistan of August 18, 2015 contains Part II designated as “*proceedings in cases of uncontested jurisdiction*”, which, among other things, indicated the category of cases of compulsory hospitalization of citizens to specialized medical institutions (Articles 320–328 C.C.P.) [31].

However, the above-mentioned category of cases was not referred to administrative-public cases (Chapters 24–28 C.P.C.) [31], which, in my opinion, is not correct, since when considering applications for compulsory hospitalization of citizens to medical institutions, a dispute arises about the so-called *subjective sign*, consisting in the fact that one of the participants in the dispute is a health organization.

On the other hand, in the arbitration courts of Turkmenistan, the following categories of cases arising from administrative-public relations are split:

- 1) on the recognition as invalid (or partially invalid) non-normative acts of public bodies, bodies of local self-government, which do not comply with the requirements of the normative acts of Turkmenistan and violate the rights and interests of physical persons and legal entities, as well as compensation in connection with the adoption of such acts (Article 22, Paragraph 2, point 8 C.A.P.),
- 2) to challenge the refusal of the public administration bodies in the registration of a legal or physical person as an entrepreneur or silence of state administration bodies in such registration in due time (Article 22, Paragraph 2, point 10 C.A.P.),
- 3) for reimbursement from the budget of the funds collected by the body in an uncontested or unacceptable manner in violation of a normative act of law (Article 22, Paragraph 2, point 11 C.A.P.) [33].

6. Conclusions.

1. On 25 May 1990, the Supreme Council of the Turkmen Soviet Socialist Republic adopted the Law on constitutional supervision in the Turkmen Soviet Socialist Republic. According to Article 1 of the above law, the purpose of constitutional supervision was to ensure compliance of acts of state bodies and social organizations with the norms of the Constitution of the Turkmen Soviet Socialist Republic of 1978, as well as the protection of constitutional human rights and freedoms, the rights of the Turkmen Soviet Socialist Republic people and democratic principles. On the other hand, on the basis of the principles of functioning of the Constitutional Supervision Committee of the Turkmen Soviet Socialist Republic, a constitutional tribunal was never established in Turkmenistan, and the committee itself was recognized as not corresponding to the formed political system of the Republic and was liquidated. It should be noted that Turkmenistan is the only country from the territory of the former Union of Soviet Socialist Republics in which there is no constitutional court. In the Constitution of Turkmenistan 1992 [8] also nothing is indicated about the constitutional court or constitutional review of legislative acts in the country.

In my opinion, in order to develop human rights and freedoms in Turkmenistan, as well as the development of the country as a democratic state, it is worth creating a *Constitutional Court in Turkmenistan*, which will become the body of supreme judicial constitutional control of human rights and freedoms in the state and will control the compliance of the norms of legislation with the norms of the Constitution of Turkmenistan and international agreements. Accordingly, appropriate amendments should be made to the Constitution of the Republic Turkmenistan (1992) [8] concerning the role of the Constitutional Court in the judicial system of Turkmenistan.

2. In accordance with Article 100 of the Constitution of the Republic of Turkmenistan [8], judicial authority in Turkmenistan is exercised by the Supreme Court of the Republic of Turkmenistan and other courts.

At this point, I would like to point out that the above provision of the Constitution of the Republic of Turkmenistan left open the way for the establishment in Turkmenistan of a specialized form of judiciary, such as administrative, financial, tax or juvenile justice, and also article 100 of the Constitution of the Republic of Turkmenistan did not prohibit the establishment of military courts in the country.

In my opinion, it would be worthwhile to make the rule of Article 100 of the Constitution of the Republic of Turkmenistan more concrete by making it possible to set up specialized courts in the country.

3. In accordance with Article 15 paragraph 1 of the Law of the Republic of Turkmenistan of 8 November 2014 on the court [23], the Supreme Court of the Republic of Turkmenistan has been established in accordance with the Constitution of the Republic of Turkmenistan and may be abolished only on the basis of amendments made to the Constitution of the Republic of Turkmenistan.

Previously, the competence to establish and liquidate the Supreme Court of the Republic of Turkmenistan fell within the competence of the parliament of Turkmenistan (Article 21 of the law of the Republic of Turkmenistan of 29 May 1991 on the judiciary and the status of the court in Turkmenistan) [4].

In contrast, the arbitration court of the Republic of Turkmenistan, regional or local courts are created or liquidated on the basis of a decree of the President of Turkmenistan. However, these courts may not be liquidated if their functions have not been transferred to other courts (Article 15 Paragraph 2 of the Law of the Republic of Turkmenistan of 8 November 2014 on the court) [23].

In my opinion, in order to develop an independent judicial system in Turkmenistan, it is necessary to amend the norm of Article 15 Paragraph 2 of the Law of the Republic of Turkmenistan of 8 November 2014 on the court – in such a way that the arbitration court of the Republic of Turkmenistan, regional or local courts can be established or abolished by the President of Turkmenistan in accordance with the proposal of the Supreme Court of Turkmenistan with the consent of the parliament of Turkmenistan.

4. In my opinion, the adoption and introduction of the Code of Civil Procedure of the Republic of Turkmenistan [31] should be a strategic goal for the development of the judicial system in Turkmenistan, which would introduce administrative justice in the country, set out the rules for the consideration of cases arising from administrative-public relations and list the exact category of cases in this character. To this end, all cases arising from administrative-public relations and considered by courts of general jurisdiction of Turkmenistan should be excluded from the scope of the Code of Civil Procedure of the Republic of Turkmenistan of 18 August 2015 [31] and, accordingly, transfer this category of cases to the competence of the newly created *administrative courts* of Turkmenistan or specialized judicial colleges for the *new Code of the Republic of Turkmenistan “on judicial and administrative proceedings in Turkmenistan”* namely:

- 1) cases of violation of electoral rights (Chapter 25, Articles 277–279 C.C.P.);
- 2) cases related to the activities of public administration bodies or officials who violated the rights of citizens (Chapter 26, Articles 280–288 C.C.P.);

3) cases in connection with the refusal in the state registration of acts of civil status or the refusal of the civil status authority to make appropriate amendments and additions to the acts of civil status (Chapter 27, Articles 289–291 C.C.P.);

4) matters related to the activities of a notary or in the refusal of notarial acts (Chapter 28, Articles 292–294 C.C.P.);

5) other matters arising from an administrative-legal relationship, provided for by the legislation of Turkmenistan (Article 272, Paragraph 5 C.C.P.);

6) cases on compulsory hospitalization of citizens in specialized medical institutions (Chapter 34, Articles 320–328 C.C.P.) [31];

7) and also, it was worth adding cases related to the consideration of complaints about the provisions, actions (or inaction) of enforcement bodies.

5. In my opinion, it is also necessary to exclude all economic cases arising from administrative-public relations and considered by the arbitration courts of Turkmenistan from the scope of the Code of Arbitration Procedure of the Republic of Turkmenistan of 19 December 2000 and to transfer this category of cases to the jurisdiction of the newly created *administrative courts of Turkmenistan* or specialized judicial the scope of the *new Code of the Republic of Turkmenistan “on judicial and administrative proceedings in Turkmenistan”*, namely:

1) on the recognition as invalid (or partially invalid) non-normative acts of public bodies, bodies of local self-government, which do not comply with the requirements of the normative acts of Turkmenistan and violate the rights and interests of physical persons and legal entities, as well as compensation in connection with the adoption of such acts (Article 22, Paragraph 2, point 8 C.A.P.);

2) to challenge the refusal of the public administration bodies in the registration of a legal or physical person as an entrepreneur or silence of state administration bodies in such registration in due time (Article 22, Paragraph 2, point 10 C.A.P.);

3) for reimbursement from the budget of the funds collected by the body in an uncontested or unacceptable manner in violation of a normative act of law (Article 22, Paragraph 2, point 11 C.A.P.) [33].

6. In my opinion, in order to develop the administrative judiciary in Turkmenistan, it would be worthwhile to create specialized collegiums in administrative matters in the regional courts of the regions Akhal, Balkan, Dashoguz, Lebap, Mari, as well as in the Capital City Court – Ashgabat, as well as in the Supreme Court of the Republic of Turkmenistan (Articles 23 and 37 of the Law of the Republic of Turkmenistan of 8 November 2014 on the court) [23] and introduce specialization of judges in local courts in the field of administrative and judicial administrative law, and as a strategic goal to create administrative courts in each of the regions of Turkmenistan and in the capital – Ashgabat.

Буренко Роман. Трансформація судової системи Туркменістану після 1991 року. Аспекти розвитку адміністративної юстиції

У статті розглядається процес формування Туркменської судової системи після проголошення Туркменістаном Незалежності в 1991 році. Досліджуються етапи реформування і трансформації судової системи в Республіці Туркменістан в різні періоди: 1990–2000, 2001–2020. Крім того, аналізується структура судової системи Туркменістану, системи судів загальної юрисдикції (обласні суди і місцеві суди), системи арбітражних судів, судових колегій Верховного Суду Республіки Туркменістан (у цивільних справах, з арбітражних справ, з адміністративних справ, у кримінальних справах), а також досліджуються органи судового самоврядування Республіки Туркменістан: Національна конференція суддів, кваліфікаційна колегія суддів, Рада народних засідателів при районних судах.

Крім того, проводиться аналіз норм Цивільного кодексу Республіки Туркменістан, Арбітражного процесуального кодексу Республіки Туркменістан і Кодексу Республіки Туркменістан про адміністративні процедури з питань, що виникають з адміністративно-публічних правовідносин.

У статті звертається увага на відсутність функціонування конституційної судової системи та Конституційного Суду в Республіці Туркменістан, а також необхідності створення в країні конституційного контролю за нормативними актами законодавчої та виконавчої гілок влади Республіки.

Пропонується створити адміністративні суди в Туркменістані у всіх обласних центрах країни і столиці республіки, а також прийняти в країні Кодекс адміністративного судочинства Туркменістану.

У статті звертається увага, що створення або ліквідація арбітражних, регіональних або ж місцевих судів мали проводитися не тільки на підставі Указу Президента, а й на підставі пропозиції Верховного Суду Республіки Туркменістан за згодою парламенту Республіки Туркменістан.

Ключові слова: Туркменістан, судова реформа, судова влада, суди загальної юрисдикції, арбітражний суд, колегії Верховного Суду, аналіз законодавства.

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Стаття надійшла до редакції 15.11.2021

Стаття рекомендована до друку 22.11.2021