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Research Article

ADMINISTRATIVE PROCEEDINGS: LEGAL FRAMEWORK AND ISSUES OF IMPROVEMENT

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Bakhtiyor Qilichov

Independent Researcher At The Supreme School Of Judges, Uzbekistan

ABSTRACT

The article analyzes the concept, essence and specific features of (conducting) administrative proceedings from a scientific and legal point of view, and develops proposals and recommendations related to the improvement of its legal framework.

KEYWORDS

Administrative reforms, administrative process, (conducting) administrative proceedings, relations with administrative bodies, rule of law, administrative courts, administrative procedures.

INTRODUCTION

Administrative proceedings is crucially important for ensuring a constructive dialogue based on the rule of law in the relations between administrative bodies and citizens. In fact, one of the main tasks of (conducting) administrative proceedings is to ensure “respect for the rule of law, rights and legitimate interests of citizens, as well as enterprises, institutions, organizations in their relations with administrative bodies”.

According to legal scholar J. Nematov, “administrative (court) proceedings are not of punitive nature, but of positive nature, that is, consideration of disputes related to administrative-legal activities of administrative bodies aimed at the implementation of regulatory norms in the administrative sphere”. Researcher D. Joraev claims that “administrative courts are of great importance in removing bureaucratic barriers between the governing institutions in the society and citizens, increasing the vitality of the institutions in the society, and increasing

citizens' trust in the government and state administration”.

According to scientific conclusions developed by Russian legal scholar V.Panova, “administrative (court) proceedings are not an activity, but a type of judicial process for consideration of administrative cases and a special method regulated by administrative norms and procedural law”.

From the the above-mentioned scientific conclusions it can be concluded that the administrative court is the primary tool for strengthening the legitimacy and effectiveness of the work of administrative bodies in safeguarding the rights and freedoms of individuals and legal entities.

From the point of view of the legal axiom, the improvement of administrative (court) proceedings is closely related to the extent to which its legal foundations are strong. Here, it is appropriate to quote the following opinion developed by legal scholar D. Artikov: “In the world, the judiciary pays special attention to the improvement of the legislation on the operation of the administrative court during the control over the activities of the executive authority. Through this, it is defined as an urgent task to ensure the principle of separation of powers, to introduce effective mechanisms for the protection of individual rights and freedoms” . In fact, the concerns relating to the protection of the rights of individuals and legal entities in state administration and the legal control of public legal relations are still relevant today. According to Kazakh legal scientist A. A. Sabitova, “there is currently special attention being paid, from both scientific and legislative points of view, to the problems of improving the mechanisms of (conducting) administrative court proceedings specialized in the consideration of administrative-legal disputes in the protection of the legal interests of

citizens in the Republics of the former Soviet Union (Tajikistan, Kazakhstan, Ukraine, Belarus)” .

In Uzbekistan, the development of the legal framework for administrative proceedings, which is relatively recent but immensely significant in terms of its relevance and role, can be conditionally split into the two periods listed below:

1) The time span starting with Uzbekistan's declaration of independence up until 2016;

2) The time span starting in 2016 and up to the present.

Following our nation's declaration of independence on August 31, 1991, the totalitarian system - the previous system of governance based on administrative command during the time of the former union (based on the fallacious ideology that conflicts cannot arise in the relations between state bodies and citizens) was abandoned, and democratic humane norms in the relations between state bodies and citizens started to be instilled into our national legislation.

In particular, in Article 2 of our Constitution, which is the legal basis for the development of independent Uzbekistan, enshrined that “The state shall express the will of the people and serve their interests. State bodies and officials shall be accountable to the society and the citizens.” This constitutional clause's fundamental tenet is that state authorities, management bodies, and their representatives should exercise special care in their decision-making and refrain from adopting policies and practices that are at odds with the legal rights, liberties, and interests of citizens. In addition, according to Article 7 of the Constitution, “The people are the sole source of state power. State power in the Republic of Uzbekistan shall be exercised in the interests of the people and solely by the bodies empowered by the Constitution of the

Republic of Uzbekistan and the laws passed on its basis”.

However, in the 1st period (since the independence of Uzbekistan until 2016) in relations with administrative bodies there were a small number of regulatory legal documents aimed at protecting the rights and freedoms, legal interests of individuals and legal entities in the field of administrative and other public legal relations in the event of violation or dispute. One of the laws adopted in this period is the law of the Republic of Uzbekistan “On appealing to the court against actions and decisions violating the rights and freedoms of citizens” (expired on October 12, 2018). This law gives every citizen the right to appeal to the court if s/he believes that his/her rights or freedoms have been violated by illegal actions (decisions) of state bodies, enterprises, institutions, organizations, public associations, citizens' self-government bodies or officials. However, in considering and resolving administrative cases on the protection of violated or disputed rights, freedoms and legal interests of citizens and legal entities, the law did not specify the procedures and specific features of conducting administrative proceedings.

In addition, the relevant chapter of the Civil Procedure Code of the Republic of Uzbekistan, adopted in 1997, establishes legal norms on complaints against actions and decisions that violate the rights and freedoms of citizens. In addition, it defines only three types of cases on complaints against actions (decisions) of state bodies and other bodies, as well as officials. Also, the Economic Procedure Code of the Republic of Uzbekistan adopted in 1997 (annulled by the law ORQ-463 of January 29, 2018) included norms about invalidating (in whole or in part) documents of state bodies and citizens' self-government bodies that are not in accordance with the law, violate the interests of

organizations and citizens protected by law, norms about considering disputes related to the illegality of such actions (inaction) of officials, however, it does not allow to fully ensure the rule of law, the rights and legal interests of citizens, as well as enterprises, institutions, organizations in relations with administrative bodies.

As previously noted, the second phase of strengthening the legal foundation for administrative proceedings began in 2016. In the next phase of Uzbekistan's growth, organized efforts to strengthen the legal foundation of administrative proceedings have started to be put into practice. As a result, one of the main features of a developed democratic state and a modern free and open society - a number of regulatory documents related to the practical provision of the rights and freedoms and legal interests of individuals and legal entities in relations with administrative bodies were adopted and put into practice. For instance, adopted the followings: Presidential decrees No. PF-4850 (October 21, 2016) “On measures to further reform the judicial system, strengthen guarantees of reliable protection of citizens' rights and freedoms” and No. PF-4966 (February 21, 2017) “On measures to radically improve the structure of the judicial system of the Republic of Uzbekistan and increase the effectiveness of its activities”, No. PF-5185 “On approval of the concept of administrative reforms in the Republic of Uzbekistan” (September 8, 2017), No. PF-6034 (July 24, 2020) “On additional measures to further improve the activity of courts and increase the efficiency of administration of justice”, Resolution of the President PQ-107 “On measures to ensure the effective protection of the rights of citizens and business entities in relations with state bodies and to further increase the public trust in the courts”, Code of the Republic of Uzbekistan on Administrative Proceedings

(April 1, 2018), Law of the Republic of Uzbekistan “On Administrative Procedures” (January 8, 2018) .

In particular, in this period, in order to create an efficient and high-quality operating system of public administration (completely new, modern, in line with advanced international standards) most importantly, to organize harmonious activities of state administration bodies and local executive authorities, was adopted the “Concept of administrative reforms in the Republic of Uzbekistan” approved by the Decree of the President of the Republic of Uzbekistan No. PF-5185 (September 8, 2017) . This concept aims to improve the institutional and organizational-legal basis of the activities of executive authorities:

- introduction of clear criteria and procedures aimed at preventing unjustified increase in administrative apparatus, budget burden and bureaucratization of state administration, for the establishment and termination of executive authorities, including their structural and territorial divisions;

- optimization of executive authorities, their structures and divisions, taking into account the real need, avoiding negative impact on socio-economic processes, eliminating the disparity between republican and regional executive authorities, as well as ensuring the proper distribution of personnel and material resources;

- multiple important tasks such as increasing their independence and responsibility were defined for the implementation of state policy in the assigned field on the basis of revision and improvement of mechanisms of cooperation of executive authorities and their heads with relevant departments of the Cabinet of Ministers of the Republic of Uzbekistan . Today, as a result of the effective implementation of this concept, the institutional organizational and legal foundations of

executive authorities and economic management bodies that do not meet modern requirements are being improved, and their activities are being developed based on the requirements of the new society. In particular, a number of additions and amendments were made to the Law of the Republic of Uzbekistan “On Local State Authorities” .

In the Code of the Republic of Uzbekistan on Administrative Proceedings were established tasks of (conducting) administrative court proceedings, the procedure for conducting administrative court proceedings for consideration and resolution of administrative cases on the protection of violated or disputed rights, freedoms and legal interests of citizens and legal entities, that any interested person has the right to appeal to an administrative court to protect his violated or disputed rights or interests protected by law, and the form of appeal to this court and many other important norms.

According to the Decree No. PF-60 of the President of the Republic of Uzbekistan dated January 28, 2022, “On the Development Strategy of Uzbekistan for 2022-2026” , which defined the conceptual directions of the development of the new society, further enhancing the well-being of our people, and transform the economic sectors based on the principle of “For Human Value”, and priority directions of reforms aimed at rapid development of entrepreneurship, unconditional provision. Particularly, the following objectives were established as a task in order to adapt the institutional underpinnings of local government organizations to the demands of the times: court cases

“Further expanding the financial capabilities of local authorities in solving local issues and increasing their accountability to the public regarding the performance of each task, as well as the funds spent.

Formation of local executive authorities on the basis of democratic principles, including creation of legal basis for introducing the system of election of governors. Step-by-step expansion of the practice of defining state units and structures of regional executive bodies by local state authorities, formation of a "registry of powers" for the tasks performed in the regions.

Wide implementation of information technologies in the activities of local administration, launch of analytical geoportals of more than 40 regions, including information on transport, infrastructure, social and other fields". This is a logical continuation of the administrative reforms that began in 2016.

Despite the fact that these normative legal documents reflect a number of norms aimed at regulating social relations between citizens, business entities and administrative bodies, there is a need to further improve the legal basis of (conducting) administrative court proceedings.

First of all, it is appropriate to discuss the legal contradiction (collision) in the law of the Republic of Uzbekistan "On Administrative Procedures". According to Article 1 of this Law, main objectives of this Law are "to ensure the rule of law, the rights and legitimate interests of individuals and legal entities in relations with administrative bodies." This requirement is consistent with Article 2 of the Code of the Republic of Uzbekistan On Administrative Proceedings, which states that "respect for the rule of law, rights and legitimate interests of citizens, as well as enterprises, institutions, organizations in their relations with administrative bodies" which means the same thing. From the point of view of substance, practice and law, it is natural to ensure the rule of law, the rights and legal interests of individuals and legal entities in relations with administrative bodies through judicial bodies. However, the Law "On Administrative

Procedures". Article 3, devoted to the "Scope of the law", defines the norm of "inapplicability of this law to relations arising in the field of legal (court) proceedings, proceedings in cases of administrative offenses".

Secondly, there is no legal definition of the concept of (conducting) administrative proceedings in the national legislation. Article 6 of the above-mentioned Code of the Republic of Uzbekistan On Administrative Proceedings is called "Administrative case", and it mainly defines the norms on the procedure of electronic formation of administrative case.

As a matter of fact, the idea of conducting administrative proceedings is construed closely in relation to the institutions of administrative law and administrative process, and it has a very broad meaning and distinct characteristics. The fact that scientists who have undertaken study in this area hold varying opinions about the idea of conducting administrative proceedings deserves particular consideration. As legal scholar J. Nematov claims "administrative process in Germany is understood as administrative court proceedings. It should be mentioned, however, that in Uzbekistan, the phrase "administrative process" refers to a concept that broadly refers to the public administration process . "Маъмурий процесс - маъмурий-процессуал шаклда амалга ошириладиган ҳамда маъмурий-ҳуқуқий актларни қабул қилиш ва ижро этиш орқали маълум бир ишларни ҳал этишга қаратилган ижро органларининг ҳокимият фаолиятидир" . "Administrative process is the power activity of the executive bodies, which is carried out in an administrative-procedural form and is aimed at solving certain cases through the adoption and execution of administrative-legal acts."

Russian legal scientist A. I. Kaplunov in his research suggests that “administrative proceedings should be understood only as an administrative trial, and the activities of executive authorities should be considered as various options of administrative and procedural, administrative and jurisdictional activities, including the application of administrative penalties and disciplinary penalties.” As can be seen from these scientific opinions, there is no consensus on this matter.

We believe that the scientific perspective advanced in A. I. Kaplunov’s study is the correct one. The reason is that the administrative court proceedings is an essential part of the administrative process and are not in any way an exercise of the executive power, but arising from public law relations, as well as other cases referred by law to its competence rather an endeavor to ensure the legality of relations between executive bodies and individuals, businesses, and other entities. Administrative courts are considered to be the institution that examines and resolves disputes arising in this regard, and “Administrative Court shall consider administrative disputes on complaints and applications against decisions of state bodies, self-government bodies of citizens, actions (inaction) of their officials”.

Based on the above, the following proposals and recommendations are made in order to eliminate legal contradictions in our national legislation and to improve the legal basis of conducting administrative proceedings:

In light of the foregoing, the following proposals and recommendations are offered in an effort to resolve inconsistencies in our national legislation and strengthen the legal foundation for conducting administrative proceedings:

- to make amendments in the paragraph 2 of Article 3 of the Law of the Republic of Uzbekistan "On Administrative Procedures", that is, exclude the wording “inapplicability of this law to relations arising in the field of legal (court) proceedings, proceedings in cases of administrative offenses”;

- Supplementing the Code of the Republic of Uzbekistan on Administrative Proceedings with Article 61 entitled "Administrative Court Proceedings" with the following wording:

“The Administrative Court Proceedings is an activity aimed at considering and resolving administrative-legal disputes arising in the relations between the state authority and management bodies and individuals and legal entities in a judicial manner.”

REFERENCES

1. Code of the Republic of Uzbekistan On administrative proceedings
<https://lex.uz/docs/3527353>
2. J. N. Nematov. Conducting (administration) of administrative court cases (1). Monograph./ J. N. Nematov. - T.: Top Image Media, 2022. - 200 p. Page 7.
3. D. Juraev., Some problems and solutions related to the jurisdiction of disputes arising from administrative and public legal relations., Society and innovations - Obshchestvo i innovatsii - Society and innovations Special Issue - 01 (2022) / ISSN 2181-1415
4. I.V. Panova., Administrative justice., Law. Journal of the Higher School of Economics., 2020. No. 2.C.211–229.
5. D.R. Artikov., Administrative-legal aspects of administrative proceedings regarding the invalidation of a departmental regulatory legal

- document: Monograph. - T.: TSUL publishing house, 2021. 160–p., p. 5.
6. Sabitova A.A., Prospects for the development of administrative proceedings as a guarantee of protecting the rights of citizens of the Republic of Kazakhstan., Legal science and law enforcement practice 3 (33) 2015., P. 36-41, <https://cyberleninka.ru/article/n/perspektivy-razvitiya-administrativnogo-sudoproizvodstva-kak-garantii-zaschity-prav-grazhdan-respubliki-kazakhstan>.
 7. The Constitution of the Republic of Uzbekistan, <https://lex.uz/docs/6445145>.
 8. The Constitution of the Republic of Uzbekistan, <https://lex.uz/docs/6445145>.
 9. Civil Procedure Code of the Republic of Uzbekistan, <https://lex.uz/docs/3517337?ONDATE=01.04.2018%2000#3526665>.
 10. Decree of the President of the Republic of Uzbekistan “On measures to further reform the judicial system, strengthen the guarantees of reliable protection of the rights and freedoms of citizens”, <https://lex.uz/docs/3050491>.
 11. Decree of the President of the Republic of Uzbekistan “On measures to fundamentally improve the structure of the judicial system of the Republic of Uzbekistan and increase the effectiveness of its activities”, <https://lex.uz/docs/3121087>.
 12. Presidential decree No. PF-5185 “On approval of the concept of administrative reforms in the Republic of Uzbekistan”, <https://lex.uz/docs/3331174>.
 13. Presidential decree No. PF-6034 (July 24, 2020) “On additional measures to further improve the activity of courts and increase the efficiency of administration of justice”, <https://lex.uz/docs/4910826>.
 14. Resolution of the President of the Republic of Uzbekistan “On measures to ensure the effective protection of the rights of citizens and business entities in relations with state bodies and to further increase the trust of the population in the courts”, <https://lex.uz/uz/docs/5841287>.
 15. Code of the Republic of Uzbekistan on Administrative proceedings, <https://lex.uz/docs/3527353>.
 16. Law of the Republic of Uzbekistan “On administrative procedures”, <https://lex.uz/docs/3492199>.
 17. Concept of Administrative Reforms in the Republic of Uzbekistan, <https://lex.uz/docs/3331174#3331723>.
 18. Concept of Administrative Reforms in the Republic of Uzbekistan, <https://lex.uz/docs/3331174#3331723>.
 19. Law of the Republic of Uzbekistan “On Local State Authorities” <https://lex.uz/acts/112170>.
 20. Decree No. PF-60 of the President of the Republic of Uzbekistan dated January 28, 2022, “On the Development Strategy of Uzbekistan for 2022-2026”, <https://lex.uz/docs/5841063>.
 21. Development Strategy of Uzbekistan for 2022-2026, <https://lex.uz/docs/5841063>.
 22. Law of the Republic of Uzbekistan “On administrative procedures”, <https://lex.uz/docs/3492199>.
 23. The same law.
 24. J. N. Nematov. Conducting (administration) of administrative court cases (1). Monograph./ J. N. Nematov. - T.: Top Image Media, 2022. - 200 p. Page 5.
 25. E.T. Khojiev, G.T. Hakimov., Administrative law, Guide for students of jurisprudence Bachelor's degree 5A-380100 / Responsible editor: Ph.D., prof. M. H. Rustamboev; TSUL publishing house, 2011. - 407 pages, 281 pages.

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27. Kaplunov., Development of the theory of administrative process as a condition for improving the normative basis of administrative procedural activity, <https://cyberleninka.ru/article/n/razvitie-teorii-administrativnogo-protssessa-kak-uslovi-sovershenstvovaniya-normativnoy-osnovy-administrativno-protssessualnoy>
28. Law of the Republic of Uzbekistan “On Courts”, <https://lex.uz/docs/5534923>.

