

THE HISTORY OF DEVELOPMENT OF ADMINISTRATIVE JUSTICE ON PROTECTION OF ENTREPRENEURS RIGHTS IN UZBEKISTAN DURING INDEPENDENCE YEARS

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Abstract: *This article analyzes the history of development of administrative justice on protection of entrepreneur's rights in Uzbekistan during independence years. At the same time, it separately studies the periods of the first stage (1991-2017) of hearing of administrative disputes in civil and economic courts and the second stage (since 2017) in specialized administrative courts. Besides, based on the analysis of the results of administrative justice practice over the past 5 years, the article puts forward conceptual proposals to improve administrative court proceedings.*

Keywords: *legal state, principle of state responsibility, guarantee of appeal to the court, judicial model of administrative justice, administrative court proceedings.*

The occurrence of a procedure for appealing and considering decisions of state bodies goes back to the times when the State appeared.

That is, based on the peculiarities of the state political and legal system in different historical periods, as well as the level of socio-cultural development of the population, administrative disputes have been resolved by courts, quasi-government agencies and similar institutions.

The history of the consideration of administrative disputes involving entrepreneurs in the territory of present-day Uzbekistan should be studied within the framework of the following three periods:

- the emergence of institutions that until Soviet times were similar to the institutions of the administrative Justicia;
- formation of elements of administrative Justicia in Soviet times;
- development of administrative Justicia during Independence.

In previous studies, elements of administrative Justicia before and during the Soviet period were studied in detail, and this article analyzes issues related to the development of administrative Justicia during the years of independence.

It is advisable to study this period, in particular the processes of consideration of administrative disputes related to the protection of the rights of entrepreneurs, into two separate parts:

the first stage is the period of consideration of administrative disputes by General (Civil) Courts and economic courts in 1991-2017;

the second stage is the period of consideration of administrative disputes by separate specialized administrative courts from 2017.

State structure after independence of Uzbekistan and radical reforms were carried out in its management, and the model for resolving administrative disputes was also formed from this.

The ideas of the administrative Constitution, first of all, are embedded in the content of the preface to the Constitution of the Republic of Uzbekistan. In particular, it was noted that the people of Uzbekistan solemnly declared their loyalty to human rights and adopted this Constitution in order to establish a humane democratic legal state.

One of the mechanisms that make the conceptual ideas of "loyalty to human rights" and "legal state" in the preamble come true in everyday life is administrative courts. It would be correct to understand the "human rights" in this place in a broad sense and interpret it as a private person, which includes, in addition to a citizen, business entities.

Because it is the administrative Justicia that serves to build a state (legal state) that limits its powers on the basis of law, by protecting the rights of private individuals (human) from officials.

The norm that the state in Article 2 of the Constitution serves the interests of the people fully corresponds to the theory of social contract, on which the formation of an administrative Constitution is based, and the norm on the responsibility of officials before a citizen, to the principle of state responsibility.

While these norms are the fundamental legal basis of administrative Justices, one can say the practical legal basis of Articles 19, 44, 106 and 110 of the Constitution.

In particular, the fact that no one is entitled to deprivation of rights without a court decision in Article 19, while each person in Article 44 is guaranteed to appeal to the court over illegal actions of a state body, indicates that more priority has been given to the judicial model of administrative justices.

And Article 110 of the Constitution recognized the conduct of administrative proceedings as a separate form of conviction.

The law "on Courts" of September 3, 1993 also provided for a judge on administrative cases within the District Court. But in the legislation and scientific and theoretical views of this period, administrative cases were understood mainly as cases of administrative offenses.

In general, the above documents confirm that from the first years of independence in Uzbekistan, important conceptual steps have been taken to form the Institute of administrative Justices.

Later, on August 30, 1995, "citizens' rights an important contribution to the development of the judicial model of administrative Justicia was the adoption of the law" on appeal to the court over acts and decisions that violate the rights and freedoms of citizens "and the plenum of the Supreme Court on July 19, 1996, No. 18" on the practice of seeing in the courts the complaints presented

However, in this law, the concept of a person recognized by the Constitution is narrowed by the application of the concept of a citizen, and the activities of all private subjects are not covered.

Because, firstly, this law is based on the USSR law of 1987 prepared, and secondly, the relevance of the issue of protecting the rights of private individuals who are entrepreneurs through an administrative Justicia has not yet been fully realized due to the fact that market relations are now being formed.

Nevertheless, since the 90s of the XIX century, the Institute of administrative justices with the participation of entrepreneurs in Uzbekistan began to develop in the system of economic courts.

The roots of this also go back to Soviet times. In Particular, A.N.Artamonov noted that in 1979, state arbitration, which is not part of the judicial system, was given the authority to indirectly control illegal decisions of governing bodies, in 1988 to consider complaints from state enterprises, and in 1990 other entrepreneurs, such as cooperatives, about dissatisfaction with such decisions.

After that, as market relations entered rapidly, arbitration courts were established in the Russian Federation instead of State arbitrations in 1991, specializing in the consideration of disputes about the dissatisfaction of entrepreneurs with the decisions of state bodies.

As a result, the administrative Justicia for the consideration of disputes with the participation of entrepreneurs was improved in relation to the administrative Justicia with the participation of citizens.

This situation can be compared with the fact that as a result of the establishment of economic courts in Uzbekistan, the administrative Justicia on disputes involving entrepreneurs is

also well developed in relation to the administrative Justicia in courts of general jurisdiction.

Even, in the economic Procedure Code of September 2, 1993, it was established that the economic Court will resolve disputes arising from civil legal relations (economic disputes) and legal relations in the field of management. The sentence "disputes arising from legal relations in the sphere of Management" in this norm is precisely administrative disputes with the participation of entrepreneurs and is the recognition of the Institute of administrative Justicia.

Without the use of this sentence in the economic Procedure Code of August 30, 1997, the economic Court of legal entities in the field of Economics and it is established that it will resolve disputes arising from civil, administrative and other legal relations between individual entrepreneurs.

The sentence "the dispute arising from the administrative legal attitude in the field of economics" is very close in content to the "dispute in the field of management", and the introduction of the Institute of administrative justices continued.

The economic Procedural Code of January 24, 2018 also states that the these cases are maintained by the vision of the economic courts, only 2018

In the Msiyutk on January 25, it was established that cases regarding the protection of the right of citizens and legal entities, arising from administrative legal relations, also apply to administrative courts.

Simply put, the administrative Justicia with the participation of entrepreneurs formed in the system of economic courts until 2018 continues to develop after the adoption of these new codes, simultaneously in the system of both economic courts and administrative courts (this situation causes various problems, and proposals for their elimination are covered in separate scientific articles).

Another distinctive feature is that administrative disputes about the protection of the rights of entrepreneurs were considered in a separate panel in economic courts, which made it possible to form sufficient experience in understanding the importance of specialization in administrative justices.

President of the Republic of Uzbekistan on June 14, 2005

The fact that, according to decree PF-3619, the procedure for the application of measures of legal influence in relation to entrepreneurs only through the court was a serious previous shift in the introduction of administrative justices.

However, in the decision of the Supreme Court and the Supreme economic Court of December 22, 2006 No. 12/149, adopted on this issue, it is also established that these cases are considered in the economic Court in accordance with the rules of the administrative court proceedings in the courts of general jurisdiction—an integrated system of administrative justices is not fully implemented.

In general, the formed experience of resolving administrative disputes in the field of Economics in the above-mentioned state arbitrations, arbitration and economic courts also left its mark on the structure of judicial offices.

Therefore, a system of specialized courts, that is, economic courts, has arisen, independent of the courts of general jurisdiction, having its own Supreme instance.

Based on the above, it can be said that economic courts, to a certain extent, until the establishment of administrative courts, formed an integrated system of administrative justices with the participation of entrepreneurs in Uzbekistan. It is noteworthy that at the very top of this system was the Supreme Economic court, like the Federal Administrative Court in the model of the administrative Justicia of Germany.

Just as no phenomenon from the past has disappeared without a trace, this period serves as a historical experience in studying the issue of establishing a Supreme instance of

administrative courts in Uzbekistan, independent of the Universal courts. In the development of the Institute of administrative Justicia in Uzbekistan

In our country on November 12, 2010, the concept of further deepening democratic reforms and the development of civil society was important.

Based on the legislation and scientific research formed in post-Soviet law, the concept provides for the development in a new edition of the code of administrative responsibility of the Republic of Uzbekistan, and not the establishment of administrative courts, and certain work was carried out by the relevant expert group.

As a member of the Expert Group, I can say that in 2010-2014 this group was not limited to improving the code, perhaps he also carried out scientific and practical work on the prospects for the introduction of the Institute of administrative Justicia, the possibility of its unification with the legislation on administrative responsibility.

Business trips to countries such as Germany, France have been organized and advanced foreign experience in administrative Justicia has been studied, Tashkent and international scientific and practical conferences were held in Samarkand, and collections were published on its results.

Also, according to the resolution of the legislative chamber adopted under the above concept No. 235 of December 30, 2010, an international conference was held on the topic "priorities for the development of administrative justice: the experience of Uzbekistan".

It should be noted that these collections were one of the first scientific and practical sources on the introduction of the administrative institution in Uzbekistan.

The issue of organizing administrative courts at expert group meetings and international conferences was seriously discussed not only by legal scientists, but also in official circles at the level of parliamentary chambers, the Supreme Court, the Ministry of Justice and representatives of the prosecutor general's office.

In particular, in the 2013 information of the Minister of Justice in the Senate of the Oliy Majlis, it is indicated that violations in the activities of state bodies are caused, among other problems, by the absence of the legal basis of the Institute of Administrative Justice. This is stated in the resolution of the Senate of the Oliy Majlis dated April 11, 2014 No. 428 on this information.

In general, by 2013-2016, before Uzbekistan from now on, there were different approaches to resolving administrative disputes, that is, choosing which model of administrative justices:

the first approach is the specialization of judges in administrative cases within the courts of the All-Russian Federation and economic courts, continuing the Soviet model of resolving administrative disputes within the framework of civil and economic legislation;

the second approach is to strengthen the activities of kvazisudlov agencies such as departmental kvazisudlov structures or the prosecutor's office, paying more attention to the extrajudicial model of administrative dispute resolution;

the third approach is the organization of administrative courts, choosing a judicial model of administrative justices and continuing to specialize.

At this point, the scientific forecasts of legal scientists about which model the countries of Central Asia will choose attract attention (unfortunately, both such scientific research and scientific forecasts are extremely rare).

In Particular, S.In his 2013 study, Ibragimov notes that "these countries, while maintaining traditions, take a direction to Russia's choice, occupy a "waiting position". In the future, there may be such a situation that the countries of Central Asia, at least Tajikistan, Uzbekistan, Kyrgyzstan, will also choose which model of the administrative Justicia Russia chooses."

As practice has proven the viability of any forecast, changes in all spheres of the state and

society after 2016 in Uzbekistan have shown that this conclusion has not passed the test of time.

In particular, at a time when administrative courts were not established in Russia, administrative courts began to work in Uzbekistan, which saw mass disputes in 2017, in Kazakhstan in 2021.

At this point it is worth noting that S.Ibragimov's conclusion was conceptually correct for the period before 2016, since earlier the position of the states of Central Asia was close to this. Only reforms beginning in 2016 have positively changed approaches in the field of judicial law, as well as in other areas of the economy and social life.

In particular, the administrative courts are also President Sh. The result of judicial and legal and administrative reforms initiated under the leadership of Mirziyoyev marked the beginning of a new stage in the development of administrative Justicia in Uzbekistan.

In particular, one of the program documents that initiated judicial and legal reforms-2016 of the president of the Republic of Uzbekistan

Decree PF-4850 of October 21 provides for the establishment of administrative courts by revising the powers of civil, criminal courts and economic courts.

This decree also provides for the preparation of a separate draft law, which determines the Proceedings of the court for the consideration of administrative disputes.

Another software document, namely the decree of the president of the Republic of Uzbekistan dated February 21, 2017 PF-4966, reveals the need for administrative courts, and the Supreme Court, which is their highest instance, has established a judicial panel on administrative cases.

According to him, the issues of ensuring reliable judicial protection of the rights of citizens and entrepreneurs, the realization of the constitutional norm for the administrative proceedings and increasing the legal culture of the population necessitated the organization of these courts.

Decree No. 4850 above provided that administrative courts consider administrative cases arising from public-legal relations, while Decree No. 4966 established that they also carry out cases of administrative offenses.

At this point, it is necessary to dwell on what causes administrative offenses are also assigned to administrative courts, along with public disputes.

On the one hand, it can be explained that the cases of administrative Justicia and administrative responsibility are united in one court – the influence of the model of administrative Justicia, formed in Soviet and post-Soviet law, and the scientific doctrine in this regard.

But, as a member of the collective Working Group on administrative reforms during this period, I can say that the specialists who developed these documents had a clear understanding and a strict position on the differences between administrative Justicia and administrative responsibility.

On the second hand, my opinion as a researcher was that the administrative courts were given administrative offence cases, which were more of an experimental nature and depended on providing the new courts with the necessary amount of work when they were just starting to work.

In other words, there were no so many specialized administrative courts in Uzbekistan at this time, although there were forecasts of expert groups on how these courts work, it was necessary to take the test of time how much they fit into practice.

In addition to this, the number of administrative disputes before these reforms was very small, and in 2016 648 cases were considered in civil courts, 1,038 in economic courts, that is, a total of 1,686 cases arising from public relations.

And the number of cases seen in administrative courts was 7,902 in 2017, increasing to 15,066 in 2020 (almost 9 times more than in 2016).

The transfer of cases of administrative offenses from 2021 to the competence of criminal courts also confirms our above points.

President of the Republic of Uzbekistan on July 24, 2020

According to decree PF-6034, the fact that administrative courts at the inter-district and regional levels are maintained as a separate structure serves to ensure the consistency of the introduction of administrative justices.

Supreme Court plenum No. 15 of May 19, 2018, 2018

Decisions No. 36 of November 30, No. 24 of December 2019, No. 11 of July 3, 2020, No. 1 of January 15, 2021, No. 15 of April 20, 2021 and No. 34 of November 27, 2021 were also important in solving various practical problems in the activities of administrative courts.

An analysis of 5 years of practice after the formation of Administrative Courts shows that to date, problems have begun to arise with the fact that the administrative Justicia has not been fully introduced. These problems and proposals for their elimination are substantiated in other scientific articles of the researcher.

In fact, it should be understood that the emergence of such problems is natural.

Because:

– first, after the administrative courts began to act as a new institution, it was clear that there would be problems in practice. Therefore, it is necessary for legislators, practicing specialists and scientists, ready for this, to identify problems and develop proposals aimed at solving them;

- secondly, these problems and shortcomings are explained by the fact that in 2017, when administrative courts were established, there were no comprehensively scientifically worked studies that would show problems at the border of practice and theory with specific solutions.

Therefore, the president of the Republic of Uzbekistan Sh.Mirziyoyev's inauguration speech at a joint session of the chambers of Parliament on November 6, 2021 marked the future improvement of the activities of the administrative courts on the basis of international standards – as a programmatic task, and practical work began.

In particular, for the first time in the legislation, the concept of "administrative Justicia" was used president of the Republic of Uzbekistan 2022

In the resolution of January 29, PQ-107, a serious step was taken to remove the activities of administrative courts from the post-Soviet model.

At the same time, in order to ensure the implementation of the program assignment in the inauguration speech, to achieve the consistency of the innovations in this decision, it is necessary to develop a concept for improving the administrative proceedings in Uzbekistan, deeply analyzing the results of the practice of administrative Justices of the past 5 years.

Only then will all the goals pursued in Uzbekistan at a new stage in the development of administrative justices, which began in 2017, be fully achieved.

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