

RESEARCH ARTICLE

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# SOME ASPECTS OF APPLYING THE BASIC PRINCIPLES OF ADMINISTRATIVE PROCEDURES IN UZBEKISTAN

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## Abstract

This article conducts a systematic analysis of efforts undertaken to ensure transparency and openness in the operations of executive bodies, a consequence of recent administrative reforms within our nation. The objective is to introduce contemporary methods of information dissemination to both individuals and legal entities, ultimately mitigating excessive administrative costs associated with societal and business interactions. Consequently, the study underscores the critical significance of comprehending the foundational principles articulated in the "On Administrative Procedures" legislation. These principles, enshrined in the aforementioned law, serve as the bedrock for the establishment of fundamental rules governing administrative procedures, thereby emphasizing the imperative of their direct application.

**Keywords** Administrative reforms, executive power, transparency, ensuring openness, physical and legal personality, information, private personality, measure of influence.

## INTRODUCTION

Significant changes have occurred during the administrative reforms carried out in our country in recent years. In accordance with the Decree of the President of the Republic of Uzbekistan dated September 8, 2017 No. DP-5185, the first Concept of administrative reform in the Republic of Uzbekistan was approved. The concept defines that the eventual result of the effective implementation of administrative reform should be the full implementation of the idea "It is not the people who should serve state bodies, but state bodies should serve the people" [1]

In order to ensure transparency and openness of the activities of executive authorities for the effective implementation of the Concept of administrative reforms in the Republic of Uzbekistan and for introducing modern forms of providing information to individuals and legal

entities, as well as for eliminating unnecessary administrative costs in the mutual cooperation of society and business, the Law was adopted on January 8, 2018 Republic of Uzbekistan "On administrative procedures". The main purpose of this law is to ensure fairness and transparency of various administrative procedures carried out by administrative bodies in relation to individuals and legal entities and to provide assistance to individuals in the exercise of their rights, freedoms and legitimate interests.[2]

## MATERIALS AND METHODS

During the study, an attempt was made to answer the following questions: taking into account the fact that the principles defined in the Law "On administrative procedures" determine the main provisions of administrative procedure, a number of proposals were put forward for the development of legislation of Uzbekistan for the direct

application of these principles in practice. This study uses comparison, systemic analysis, statistical analysis and generalization methods.

### **RESEARCH RESULTS**

A study of the law enforcement practice of foreign countries (Germany, Japan, Azerbaijan, Armenia, Sweden, Finland, Austria, Greece, Belarus, China, Czech Republic, Estonia, Georgia, Switzerland, Bulgaria, Latvia) indicates that most countries have legislation on administrative procedures. Although the regulation of relations in this area is based on different models, these countries have adopted special laws.

The Law "On administrative procedures" defines the basic principles of administrative procedures that determine the main provisions of administrative procedures.

### **ANALYSIS OF RESEARCH RESULTS**

In this regard, it is important to analyze how some principles of administrative procedures are applied in law enforcement practice. First of all, we can focus on the principle of proportionality. Section 7 of the Law provides that "Measures of influence on natural or legal persons provided in the course of administrative proceedings must be suitable and sufficient to achieve the legitimate aim pursued by the administrative body and the least burdensome for the persons concerned." This principle is manifested the fact that every administrative act adopted by an administrative body in relation to private individuals must be proportionate and sufficient to achieve the legitimate goal established in general and sectoral laws.

Also, the principle of proportionality is expressed the fact that each measure of influence applied by an administrative body must be proportionate and sufficient, taking into account the behavior of a private individual and should not cause unnecessary difficulties. In other words, this means that a less severe penalty is applied for a less significant act, and a more severe penalty is applied for a more serious act.

For clarifying understand of the meaning of the principle of proportionality, there is an example of judicial practice. Citizen G.A., living in the

Yunusabad district of Tashkent, in connection with the need to improve housing conditions, on January 8, 2022, submitted an application to the territorial commission to consider issues of assigning apartments in block of flats to individuals in need of improving housing conditions in Yunusabad area. He attached to his application documents that must be provided by an individual who needs to improve their living conditions in order to purchase an apartment in the block of flats. Having studied the appeal of citizen G.A., the territorial commission decided to assign him a 2-roomed apartment in one of the apartment buildings under construction in the Uchtepa district. Citizen G.A. expressed disagreement with the decision of the territorial commission and demanded to assign him a 3-roomed apartment. As the reason for his objection, he pointed to the decision of the territorial commission made the day before to assign a 3-roomed apartment to his neighbor D.M., who was in similar conditions. The chairman of the territorial commission explained to citizen G.A. that if he is dissatisfied with the commission's decision, he can appeal it to the relevant organizations. So, as can be seen from the above example, citizen G.A. dissatisfied with the housing provided to him. This issue will be considered only from the standpoint of the principle of proportionality, since violations of other principles can be seen in this issue.

According to the definition of the principle of proportionality, measures of influence on individuals or legal entities provided in the course of administrative proceedings must be appropriate and sufficient to achieve the legitimate aim pursued by the administrative body and the least burdensome for the persons concerned. Based on this, this problem can be analyzed as following:

Firstly, what administrative proceedings mean? Administrative proceedings are the process of consideration of an administrative case, and the adoption of an administrative act and its revision based on an administrative complaint. Moreover, the execution of an administrative act. So, administrative proceedings is a sequence of actions reflecting a comprehensive consideration and study of the application of citizen G.A. in the territorial commission of the Yunusabad district.

Secondly, how enforcement measures can be implemented against individuals and legal entities during administrative proceedings? As stated above, during administrative proceedings, a measure of influence (resolution, i.e. administrative act) is issued by an administrative body (here the administrative body is the territorial commission of the Yunusabad district). In this regard, the author considers it inappropriate to adopt an administrative act as a measure of influence and, in turn, considers it correct to make appropriate changes to the law. So, if you pay attention to the situation, the commission adopted an administrative act granting citizen G.A. 2-roomed apartment. This, in turn, can be understood as a measure of influence exerted in relation to individuals and legal entities.

Thirdly, the question is raised that the measures of influence against individuals and legal entities applied in the course of administrative proceedings must be suitable to achieve the legitimate goal pursued by the administrative body. Fitness of a legitimate purpose may be justified by the following circumstances. Citizen G.A. applied to the territorial commission to consider issues of assigning apartments in apartment buildings to individuals who is in need of improved housing conditions in the Yunusabad district, since he has a need to improve housing conditions. In this case, the main issue that you should pay attention to is the application for the allocation of an apartment for living. In this regard, after studying his appeal, the territorial commission decided to assign him a 2-roomed apartment in one of the apartment buildings, the construction of which has begun in the Uchtepa district. However, the citizen is dissatisfied with this. Does the commission's decision correspond to the submitted application? The administrative act is suitable for achieving the stated legal goal, since the citizen submitted an application with a request for housing. Considering that the house provided by the administrative body is intended for living, the pursued goal has been achieved and the citizen is provided with a house to live in. Therefore, we accept the decision of the administrative body as suitable for achieving the stated goal. This means that suitability for achieving a legitimate goal is considered to be

related to the purpose of the administrative act issued, and the purpose reflects a specific situation.

Fourthly, measures of influence on individuals or legal entities provided in the course of administrative proceedings must be appropriate and sufficient to achieve the legitimate goal pursued by the administrative body.

If an attempt was made above to justify the appropriate nature of the administrative act, now we will directly analyze its sufficiency in achieving the pursued legitimate goal. Sufficiency means that all circumstances in the application have been eliminated completely and without deficiencies, and will not cause further disagreement of the interested party. Adopted administrative act cannot be ineffective. E. Porokhov argues that the administrative procedures regulated by the Law of the Republic of Kazakhstan "On administrative procedures" were weak and ineffective and did not have any limiting or restraining effect on administrative power.[3]

Fifthly, it should be the least burdensome for interested parties. That is, having studied the citizen's appeal, the territorial commission decided to assign him a 2-roomed apartment in one of the apartment buildings, the construction of which has begun in the Uchtepa district. If the commission had explained the situation to citizen G., why they allocated a 2-roomed apartment, then it would not be burdensome for the citizen.

Also, newly revised Constitution of the Republic of Uzbekistan establishes that Uzbekistan is a sovereign democratic, legal and social state.[4] In particular, at the constitutional level it was confirmed that measures of legal influence on a person applied by state bodies must be based on the principle of proportionality and be sufficient to achieve the goals provided for by laws.

One of the most widely used principles in law enforcement practice is the principle of the opportunity to be heard. Article 9 of the Law "On administrative procedures" provides that "The administrative body is obliged to provide the interested person with the opportunity to express his opinion on all circumstances relevant to the adoption of an administrative act." According to

this principle, it is determined that the administrative body is obliged to provide the interested person with the opportunity to express his opinion on all circumstances relevant to the adoption of an administrative act, which we will try to explain with the help of the following example. A citizen contacted the Pension fund regarding a pension issue. The Pension fund, having studied the years of his work, decided to refuse to grant a pension to the citizen for the corresponding specified years. The citizen presented the entries in his work book to the Pension fund as evidence. However, the court, in accordance with the established procedure, established the fact that officials of the Pension fund did not take into account the citizen's arguments and evidence or did not conduct an additional check, and all the actions of the defendant were clearly indicated in the operative part of the decision. In this case, the principle of being heard has been violated. Since these violations have not been eliminated by administrative bodies, the applicant has the right to judicially appeal an administrative act.

Thus, in this example it is clear that there is an opportunity of the applicant to be heard by the administrative body, that is, the department of the Pension fund of the Uchtepa district which also violated the principle of the study.

In law enforcement practice, the principle of protecting trust, defined in Article 16 of the Law "On administrative procedures" is often violated. According to this principle, the trust of interested parties acting in good faith in an administrative procedures is protected by law. Administrative authorities are obliged to respect the legitimate expectations of interested parties according to established administrative practice. Changes in existing administrative practices must be justified by public interests, be general in nature and be sustainable.[5]

For understanding this principle, there is an example of judicial practice. In the decision, the applicant LLC "E" is acting in good faith. The LLC "E" applied an application to the mayor of the Uchtepa district for the construction of a building for a modern kindergarten, the mayor studied his application and allocated him a plot of land. After a

certain period of time, a new mayor of the district is appointed, who carried out an inventory and verification of all allocated land plots. By the decision of the newly appointed mayor, the decision of the previous mayor on allocation of land plot to LLC "E" has been canceled. The construction of the building by the LLC "E" was almost completed; only 20 days remained before the building was put into operation. In this case, it is appropriate to briefly discuss the actions of the new mayor.

Firstly, from the point of view of the principle of trust protection in administrative procedures, it can be seen that as a result of the LLC's trust in the decision of the former mayor, the construction of the building has been completed and is being prepared for commissioning. That is, as a conscientious interested party, the LLC "E" took actions and built a modern kindergarten for long-term use by the society, and also created corresponding jobs.

Secondly, administrative authorities must respect the legitimate expectations of stakeholders associated with established administrative practices. In other words, upon receipt of the land plot allocated for the construction of this building, the members of the commission created by the mayor drew up a protocol in the appropriate manner, in addition, this protocol, which serves as the basis for the administrative act, was signed by the commission members. Representatives of relevant organizations also participated in the construction process of this building. In general, since this situation occurred after January 2019, violations of the relevant law can be seen in the actions of the administrative body.

Here is another practical example, which reflects this principle. According to the decision of the mayor of the Khazorasp district dated February 19, 2020 No. 276k, citizen U.Kh. on the basis of a lease agreement, without the right of disposal, a land plot was temporarily allocated for a period of 30 years for the construction of an "Artificial indoor mini-football field" in the part of the lands of school No. 32, located in the district. Subsequently, by the decision of the mayor of the Khazorasp district dated June 9, 2020 No. 1501k, the decision of the



district mayor of February 19, 2020 No. 276k was declared invalid. Citizen K.O. on the basis of a lease agreement, without the right of disposal, temporarily, for a period of 30 years, in the part of the lands of school No. 32, located on the territory of the district, a land plot with an area of 250.0 sq.m. was allocated for the construction of an "Artificial indoor mini-football field" and a locker room, a store selling books and stationery.

However, based on protests from the prosecutor's office of the Khazorasp district dated April 8, 2021 No. 10.2/5-21 and dated June 30, 2021 No. 10.2/-21 by decisions of the mayor of the Khazorasp district dated April 16, 2021 No. 740/17 and dated August 13, 2021 No. 46-12-174-Q /21, the decision of the district mayor dated June 9, 2020 No. 1501k was cancelled.

After this, citizen K.O. appealed to the Urgench Interdistrict Administrative Court with a request to invalidate the decisions of the mayor of the Khazorasp district dated April 16, 2021 No. 740/17 and dated August 13, 2021 No. 46-12-174-Q /21.

By the decision of the Urgench Interdistrict Administrative Court dated October 18, 2021, the decisions of the mayor of the Khazorasp district dated April 16, 2021 No. 740/17 and dated August 13, 2021 No. 46-12-174-Q / 21 were declared invalid, and on the basis of this the decision of the mayor of the Khazorasp district dated June 9, 2020 No. 1501k, adopted in relation to K.O.

In this regard, the prosecutor's office of the Khazorasp district appealed to the Urgench interdistrict administrative court with a request to declare the decision of the district mayor of June 9, 2020 No. 1501k invalid.

The court found that the decision of the Khazorasp district mayor to allocate a land plot to citizen K.O. was adopted by the violation of the law.

Thus, paragraph 3 of the Decree of the President of the Republic of Uzbekistan dated September 5, 2018 No. DP-5538 "On additional measures to improve the public education management system" determines the provision of comprehensive assistance by mayors in ensuring, in the prescribed manner, the integrity and inviolability of the territory and real estate of

preschool and school education organizations. [6]

Also, paragraph 10 of the Resolution of the President of the Republic of Uzbekistan dated September 5, 2018 No. RP-3931 "On measures to introduce new management principles in the system of preschool and school education", the alienation of land plots and real estate of educational and non-school institutions without the consent of the Minister of preschool and school education of Uzbekistan is prohibited.

However, contrary to the above Decrees and Resolutions of the President of the Republic of Uzbekistan, by the decision of the mayor of the Khazarasp district dated June 9, 2020 No. 1501k, allowed the allocation of a land plot to citizen K.O without the consent of the Minister of preschool and school education of Uzbekistan, land plots and real estate of a general education school were alienated school No. 32 in the Khazarasp district.

The case documents contain a certificate issued by the head of the department of preschool and school education of the Khazorasp district, which states that the allocation of land on the territory of school No. 32 to citizen K.O. was not agreed with the Minister of preschool and school education of Uzbekistan.

In this situation, the decision of the mayor of the Khazorasp district dated June 9, 2020 No. 1501 cannot be considered as justified and legal.

According to Article 16 of the Law of the Republic of Uzbekistan "On administrative procedures", the trust of interested parties acting in good faith in an administrative act is protected by law.

Despite the fact that citizen K.O., believed in the validity of the decision of the mayor of the Khazorasp district dated June 9, 2020 No. 1501k, built a mini-football field with artificial turf and a locker room, a book store on the land plot allocated to him with an area of 250.0 square meters and stationery, his trust in the administrative act cannot be protected.

Since Part 7 of Article 59 of the Law of the Republic of Uzbekistan "On administrative procedures" stipulates that the trust of an interested person is not subject to protection if the interested person knew about the illegality of the administrative act

or did not know about it due to his own fault.

In this case, the court found that citizen K.O knew about the illegality of the decision of the mayor of the Khazorasp district on June 9, 2020 No. 1501k or did not know about it due to his own fault.

Article 18 of the Law "On administrative procedures" states the following on the principle of investigation: the administrative body is obliged to comprehensively, completely and objectively investigate all factual circumstances relevant for the correct resolution of administrative cases.

The principle of the study stipulates the need to approach administrative procedures not only from the point of view of the person concerned, but primarily from the point of view of public interest. Indeed, the interested party does not always submit to the administrative body documents that are contrary to his interests, or it may be impossible to consider the case comprehensively, completely and objectively within the framework of the submitted documents.

The principle of study is different as it serves to fill this gap. According to the Law "On administrative procedures", the determination of all circumstances affecting the content of the case, is primarily entrusted to the administrative body. If the administrative body does not fulfill this task, it is considered to have failed and violated the requirements of the principle of study, which will entail corresponding legal consequences.[7]

Here is an example from judicial practice of administrative courts of Uzbekistan. A citizen (interested person) applied to the administrative body (Pension fund) with a request to recalculate by adding to the length of service the period of work at Navruz LLC from 1999 to 2006, and to assign a pension in the prescribed manner; he attached copies to his application orders issued during periods of work, a copy of the passport, etc. Actually, these submitted documents are sufficient to recalculate his work experience and assign a pension in the prescribed manner. In this case, the administrative body accepts the citizen's appeal and makes the following decision, i.e. having established that the LLC had not paid insurance premiums for the purpose of a pension in the

prescribed manner, including for the period of work of the interested person from 1999 to 2006 at Navroz LLC, the application of the interested person was refused. However, for some reason, the work record book, which is recognized as the main evidence when calculating length of service, was not taken into account. Meanwhile, the work book indicates all periods of his work. The citizen was not satisfied with the response received and appealed in the prescribed manner to a higher administrative body; after he received a similar response, he appealed to the administrative court with a request to invalidate the decision made by the administrative body and impose the obligation to recalculate by adding to the length of service of the period work at Navruz LLC from 1999 to 2006, and assign a pension in the prescribed manner. The court declared the decision of the administrative body invalid and imposed the obligation to recalculate by adding to the length of service the period of work at Navruz LLC from 1999 to 2006, and to assign a pension in the prescribed manner. The basis is the entries in the work book of the interested person.

In this example, neither the district department of the administrative body nor the higher authority studied the relevant application sufficiently, that is, the decision was made only taking into account the absence of insurance contributions, the periods of work in the work book were not studied, and the documents attached in the prescribed manner to the application were not checked. Consequently, non-compliance with the principle of study on the part of the administrative body was revealed; upon completion of the case, an administrative act was issued to the detriment of the person concerned.

## **CONCLUSION**

Measures of influence on individuals or legal entities provided in the course of administrative proceedings must be appropriate and sufficient to achieve the legitimate aim pursued by the administrative body. In addition, administrative authorities are obliged to respect the legitimate expectations of interested parties. In general, today the issue of applying the principles of administrative procedures is of current importance. Administrative acts and

administrative actions must comply with the principles of administrative procedures. Non-compliance with the principles of administrative procedures entails the cancellation or revision of administrative acts and administrative actions.

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