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Administrative procedures: Uzbekistan's case

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ABSTRACT

The article reveals the importance of administrative procedures, the history of the development of the Law of the Republic of Uzbekistan "On Administrative Procedures" (hereinafter – **LAP/Law**), the structure of the LAP of the Republic of Uzbekistan, the basic principles of administrative procedures, general provisions on administrative procedures, as well as foreign experience in this area. In addition, the authors analyzed the problems of implementing administrative procedures, in particular, the topic of expected changes in the APR of the Republic of Uzbekistan was touched upon. Also, the article reveals the difference between positive and negative administrative law, provides the opinions of leading scientists in this field of law. It is substantiated that administrative procedures are aimed at unifying the rules established in various administrative regulations, which creates additional convenience for individuals. Moreover, it is noted that the main difference between the principles of administrative procedures is that many of them are unique, and also that they are not declarative (Article 19 of the Law).

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Ma'muriy tartib-taomillar: O'zbekiston misolida

Kalit so'zlar:
ma'muriy huquq,
ma'muriy tartib-taomillar,
tamoyillar,
"Ma'muriy tartib-taomillar

ANNOTATSIYA

Maqolada ma'muriy tartib-taomillarning ahamiyati, O'zbekiston Respublikasining "Ma'muriy tartib-taomillar to'g'risida"gi Qonunining (keyingi o'rinlarda – **MTT/Qonun** deb yuritiladi) rivojlanish tarixi, O'zbekiston Respublikasi MTTning

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to‘g‘risida”gi Qonun, islohotlar, ma’muriy hujjat.

tuzilishi, asosiy tamoyillari, ma’muriy tartib-taomillarning umumiy qoidalari, shuningdek, ushbu sohadagi xorijiy tajriba yoritib berilgan. Bundan tashqari, mualliflar tomonidan ma’muriy tartib-taomillarni amalga oshirish tatbiq etishdagi muammolar tahlil qilingan, xususan, O‘zbekiston Respublikasi MTTda kutilayotgan o‘zgarishlar mavzusiga to‘xtalib o‘tilgan. Shuningdek, maqolada ijobiy va salbiy ma’muriy huquq o‘rtasidagi farq keltirib o‘tilgan, hamda ushbu huquq sohasidagi etakchi olimlarning fikrlari keltirilgan. Ma’muriy tartib-taomillar turli ma’muriy reglamentlarda belgilangan qoidalarni birlashtirib turishga qaratilganligi, bu esa hususiy shaxslarga qo‘shimcha qulayliklar yaratishi asoslantirilgan. Bundan tashqari, ma’muriy tartib-taomillar tamoyillarining asosiy farqi ularning o‘ziga xosligi, shuningdek, deklarativ xarakterga ega emasligi qayd etilgan (Qonunning 19-moddasi).

Административные процедуры: опыт Узбекистана

Ключевые слова:
административное право, административные процедуры, принципы, Закона «Об административных процедурах», реформы, административный акт, Узбекистан.

АННОТАЦИЯ

В статье раскрыты значение административных процедур, история развития Закона Республики Узбекистан «Об административных процедурах» (далее – **ЗАП/Закон**), структура ЗАП Республики Узбекистан, основные принципы административных процедур, общие положения про административные процедуры, а также зарубежный опыт в данной сфере. Кроме того, авторы проанализировали проблемы имплементации административных процедур, в частности была затронута тема ожидаемых изменений в ЗАП Республики Узбекистан. Также, в статье раскрывается разница между позитивным и негативным административным правом, приводятся мнения ведущих ученых в данной сфере права. Обосновано, что административные процедуры направлены на унификацию правил, установленных в различных административных регламентах, что создает дополнительные удобства для частных лиц. Более того, отмечается, что основным отличием принципов административных процедур является то, что многие из них являются уникальными, а также то, что они не являются декларативного характера (ст. 19 Закона).

Considering the fact that the modern administrative law of Uzbekistan is formed around two major institutions of administrative law – administrative procedures and an administrative act – it can be noted with confidence that the institution of administrative procedures is the queen in this branch of law.

The process of “transition” of administrative law from negative *(previously, administrative law was mainly understood as the protective function of administrative law: administrative punishment and administrative coercion)* to positive *(here: administrative law is considered as a process of public administration aimed at meeting the needs of*

individuals. The state is perceived as an apparatus providing public services to its population) dramatically increased the prestige and necessity of the institution of administrative procedures.

The development of the Law of Uzbekistan "On Administrative Procedures" (hereinafter referred to as the Law) began in 2005 (and scientific developments began even earlier):

- In 2005, the first project was discussed with the participation of scientists from the USA, Germany and Japan;
- In 2007 – the Legislative Chamber of the Oliy Majlis adopted the Law – but the Senate did not approve this project;
- There were many projects in 2011 – in particular, a draft CAP (Code of Administrative Procedure) was developed;
- An important historical event for the adoption of the Law was the adoption of the Action Strategy (07.02.2017 UP-4947) and the Concept of Administrative Reform (08.09.2017 UP-5185);
- The Law itself was adopted on January 8, 2018 № LRU-457 "On Administrative Procedures" and entered into force on January 10, 2019 [1].

Administrative procedure are procedural rules governing the administrative and legal activities of administrative bodies, aimed at ensuring the rights and legitimate interests of stakeholders through the exercise of public administration powers in their relations with non-subordinate stakeholders in accordance with the law [2].

Procedure is the application of substantive law.

Administrative process:

In a narrow sense – administrative proceedings;

In a broad sense, the entire administrative process [3].

Why does a country like Uzbekistan need to adopt the Law "On Administrative Procedures"?

There are many reasons, but the main ones are:

❖ Administrative legislation of Uzbekistan occupies, perhaps, the largest part of the national legislation and it is very scattered (after all, the executive branch is the largest, massive branch of government, which has over 1000 bodies and organizations) – therefore there was (still exists) the need to bring administrative legislation in order [4];

❖ Administrative procedures are aimed at unifying the provisions of various administrative regulations, which creates convenience for the population;

❖ Through the accurate work of administrative bodies based on administrative procedures, business representatives and the population will know how the state works and will take their own steps to act also correctly (about this, Ms. Elke Büdenbender notes that "a citizen must rely on the fact that the decision of the state body will not be unexpected for him, like "a bolt from the blue". A citizen should be able to present his arguments and objections already during the administrative procedure, and the state body must comply with the rules of procedure and cannot behave "this way, that way"") [5. P. 12];

❖ Administrative procedures are a guarantee for foreign investors.

Khvan Leonid believes that "the Law allows, in a different algorithm, to establish the rules for the adoption of individual acts, procedures for performing administrative actions to implement prohibitions, permits, instructions, as well as other control, supervisory, registration and coordinating powers. First of all, this is an algorithm for

balancing public and private interests, interaction on the principles of the rule of law, the principles of proportionality, equality, legal certainty and the “right to be heard”. This is not so much the meaning of the idea of civil society development as the idea of “good governance” [6. C. 19–20].

Administrative procedures are essentially a system of legal standards governing the administration process. They allow organizing administration in such a way that it acts in accordance with the established measure of public authority and really serves the common good [7. P. 409].

With the help of administrative procedures, in particular, the following tasks are solved:

- the legality is ensured in the process of administration. The activities of administrative bodies are placed within a clear framework of the law;
- the guarantees of impartiality and fairness of administration are created;
- the transparency of administration is increased, its accessibility for public (judicial, parliamentary, public) and inter-departmental control;
- the conditions are created that are conducive to the growth of consciousness and responsibility of public officials, as well as their competence and professionalism;
- the guarantees for the protection of the rights of a private person in administration are created;
- improves the image of power, increasing public confidence in the administrative system;
- a basis is being created for the development of a unified administrative practice in administrative bodies [7. PP. 409–410].

Speaking about the role of administrative procedures, E.S. Kanyazov notes that administrative procedures and regulations are aimed at increasing the transparency of the activities of executive authorities, at increasing accountability by clearly assigning responsibility for various stages of the provision of public services to specific civil servants [5. PP. 113].

Professor of German and European administrative law, Dr. Eberhard Schmidt-Assmann notes that “(administrative) procedures should bring order to the activities of the executive: the individual stages of decision-making, the roles involved in it, the influence of various interests and the meaning of the result of the decision should become more transparent. Procedures, on the one hand, are real processes and, on the other hand, examples of ordering. They influence the application of substantive law by the executive branch and help ensure the legitimacy of the executive branch” [8. PP. 333–334].

Next, now we discuss the law itself. “The scope of this Law is the so-called “external” contacts of the public administration with private individuals, in relation to whom it is endowed with power or in relation to which they have obligations” [6. P. 20].

- ✓ Thus, the structure of Law is as following:
- ✓ General provisions (Chapter 1);
- ✓ General rules of administrative procedures (Chapter 2);
- ✓ Administrative proceedings (Chapter 3);
- ✓ Administrative act (Chapter 4);
- ✓ Proceedings on an administrative complaint (Chapter 5);
- ✓ Enforcement proceedings (Chapter 6);
- ✓ Final provisions (Chapter 7).

The main thing that is reflected in Chapter 1 of the Law is the scope of this Law, the basic concepts and principles of administrative procedures.

Thus, the Law **applies** to the administrative and legal activities of administrative bodies in relation to interested parties, *including licensing, permitting, registration procedures, procedures related to the provision of other public services*, as well as other administrative and legal activities in accordance with the law (part 1, Article 3 of the Law).

This Law **does not apply** to relations arising in the field of preparation and adoption of regulatory legal acts, collection of taxes and other obligatory payments, holding referendums, elections, defense, public security and law and order, as well as inquiry, preliminary investigation, other activities related to the application of measures of criminal coercion, legal proceedings, proceedings in cases of administrative offenses (Part 2, Article 3 of the Law).

The legislation on the appeals of individuals and legal entities does not apply to relations within the scope of this Law (part 3, Article 3 of the Law).

One of the main achievements of the Law is that it fixed the basic concepts of administrative procedures, among which are the following:

interested person is a person to whom the administrative act or administrative action being adopted is addressed, as well as whose rights and legitimate interests are affected or may be affected by the administrative act or administrative action;

administrative proceedings is the process of consideration of an administrative case, the adoption of an administrative act, its revision on an administrative complaint, as well as the execution of an administrative act, regulated by an administrative procedure;

administrative discretion (discretionary authority) is the right of an administrative body to apply, at its discretion, one of the measures allowed under the law or to refrain from applying the appropriate measure based on its own assessment of the legality and expediency;

administrative bodies is bodies endowed with administrative and managerial competence in the field of administrative and legal activities, including state administration bodies, local executive authorities, citizens' self-government bodies, as well as other organizations and specially formed commissions authorized to carry out this activity;

administrative procedure is procedural rules governing the administrative and legal activities of administrative bodies;

administrative actions is legally significant actions (inaction) of an administrative body in relation to individuals and legal entities, committed in the field of administrative and legal activities, which are not administrative or procedural acts;

administrative act is a measure of influence of an administrative body aimed at creating, changing or terminating public legal relations and generating certain legal consequences for individual individuals or legal entities or a group of individuals distinguished by certain individual characteristics;

administrative and legal activity is administrative activity that has an impact on individual individuals or legal entities or a group of individuals identified according to certain individual characteristics;

procedural act is an act adopted by an administrative body in course of administrative proceedings, by which an administrative case is not resolved on the merits [9].

Principles are the core, basic concepts of this or that phenomenon [10].

According to the APA, the main principles of administrative procedures are:

- ❖ legality;
- ❖ proportionality;
- ❖ reliability;
- ❖ opportunity to be heard;
- ❖ openness, transparency and clarity of administrative procedures;
- ❖ priority of the rights of interested persons;
- ❖ inadmissibility of bureaucratic formalism;
- ❖ meaningful absorption;
- ❖ implementation of administrative proceedings in “one-stop-shop”;
- ❖ equality;
- ❖ protection of trust;
- ❖ legality of administrative discretion (discretionary authority);
- ❖ checking [11].

One of the main differences between the principles of administrative procedures is that many of them have no analogues in other branches of law, as well as an article on mandatory application of the principles of administrative procedures (administrative acts and administrative actions must comply with the principles of administrative procedures [12]. Non-compliance with the principles of administrative procedures entails the cancellation or revision of administrative acts and administrative actions (Article 19 LAP)).

In addition, the Law establishes such basic points of administrative proceedings as the jurisdiction of administrative cases, interdepartmental interaction, participants in administrative proceedings, the rights and obligations of interested people, persons assisting in the resolution of an administrative case, issues of recusal, proper notification, terms of administrative proceedings, etc. [13].

Despite the high-level development of the current Law, there are significant problems in applying this Law in practice. The fact is that administrative procedures are the development of the European doctrine of administrative law [16]. The administrative bodies and officials of Uzbekistan have long been accustomed to work according to their old practice: they are not used to working “intensively”, within the given framework of the LAP of the Republic of Uzbekistan, since they must follow many procedural stages of administrative procedures [15].

Another important point is that the legislator of Uzbekistan has not conducted a major analytical study on the application of the Law of Uzbekistan. Leading scholars of administrative law also note this: the legislator has not conducted sociological research in any of the Central Asian countries, the doctrine is silent. An analysis through the prism of four dimensions of the institution of administrative procedures in Uzbekistan has not yet been done [6. PP. 22–23].

Therefore, the legislator took into account some of the problematic points of the Law of the Republic of Uzbekistan and decided to adopt the Law “On Administrative Procedures” in a new edition (currently (October 2022) the draft Law was adopted by the Legislative Chamber in the 3rd reading and is in the Senate of the Oliy Majlis of the Republic of Uzbekistan for approval) [16].

On November 24, 2021, a seminar was held in the Oliy Majlis of the Republic of Uzbekistan, the agenda of which was to discuss the new draft Law of the Republic of Uzbekistan "On Administrative Procedures" [17].

A comparative legal analysis of the project with the current Law shows the followings:

✓ there are articles that have remained unchanged;

✓ there are a lot of innovations (positive) that were not previously known to the legislation of Uzbekistan (including new principles of administrative procedures, the institution of a preliminary administrative act, a public register, etc.);

✓ there is a change in the structure (grammar) of sentences, which contributes to their better perception by the reader;

✓ there is a change in the internal structure of articles (parts of articles);

✓ the logical connection between the articles was re-built and now the Law has a better sequence of articles;

✓ some prepositions have been corrected;

✓ some words (for example, the consultation of a specialist was changed to the opinion of a specialist) have been changed (unified);

✓ the titles of some articles have been changed;

✓ some clarifications were made to the articles, and several reference articles to other articles of the same Law appeared;

✓ additions were made to the articles;

✓ additional and clarifying norms have been introduced;

✓ some articles (parts of articles) are omitted that are available in the current version of the Law [18].

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