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TRANSFORMATION OF SOVIET ADMINISTRATIVE LAW: UZBEKISTAN'S CASE STUDY IN JUDICIAL REVIEW OVER ADMINISTRATIVE ACTS

Judicial protection against individual and normative acts of the public administration continues to be problematic in Uzbekistan. One central reason for this mischief is the continuing prevalence of Soviet-style ideas and patterns in legal thinking as well as the legal practice. This article describes the problems of jurisdictions face when trying to overcome their Soviet heritage by developing legal protection in administrative matters, and analyses the strategies for the improvement of this situation. Key factors are a comprehensive and harmonised development of administrative procedure and administrative litigation in the field of legislation, and what might be termed a "constitutionalisation" of legal thinking, theory and teaching – i.e. the respect for values enshrined in Constitution such as the rule of law and access to judicial protection against the public administration – in the field of legal science. Uzbekistan is a good example how foreign partners and donors of international legal assistance can help strengthen these factors.

This paper explores (1) to what extent Soviet thinking on judicial review over administrative acts has been set aside or to what extent is it still alive in today's Uzbekistan, and (2) what are the transformation points of judicial review. Overall, I argue that Soviet thinking on judicial review over administrative acts has big change in legislation level under new regime of Uzbekistan, however legal reforms are not still accepted by legal practice, doctrine and legal education.

To analyse these statements, the first step is to describe the main characteristics and legal reforms on judicial review over administrative acts taken in Soviet period (part II). Part III and IV analyses the current legal system and judicial practise of Uzbekistan. Lastly, I map out recent steps taken to introduce some reforms in the field of judicial review over administrative acts in Uzbekistan (part V).

Key words: Soviet style administrative justice, administrative litigation, administrative procedure, legal education, the Strategy Action 2017–2021, administrative courts, jurisdiction, case study, textual positivism, judge-made law.

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1. Introduction

Judicial review over administrative acts in Uzbekistan and other post-Soviet countries has its common history. Until the 1960s, it was mainly refused by the Soviet regime. Later, there were major changes in the law, but legal practice did not change much. The 1977 Constitution of the USSR and the 1987 Law „On the procedure for appealing to the court against unlawful acts by officials that infringe the rights of citizens" played a significant role in introducing judicial review over administrative acts into Soviet law. After the collapse of the Soviet Union, legal thinking and practice in the field of judicial review over administrative acts has not changed substantially in many post-Soviet countries, as well as in Uzbekistan which causes problems in putting into reality the right of access to the courts and to a fair procedure in court trials of administrative cases.

2. Background: the Soviet style administrative justice

Judicial review over administrative acts was called 'administrative justice' in Soviet legal doctrine, though its existence was not admitted in Soviet legislation for a long time[1]. Barry points out that the disfavour leading to a rejection of administrative justice during the Stalin period was largely based on two reasons: Administrative justice was deemed to be a „bourgeois" legal concept, and administrative justice was associated with a separate system of administrative courts which did not have much support among Soviet lawyers (Donald D. Barry, 1989: 65). Additionally, the existence of the system of complaints to the procuracy which was faster and less costly than going to courts, was a major alternative and deterrent to using courts in reviewing administrative acts (Peter Solomon, 2000: 70). However, the nature of court review and of complaining to the procuracy is different. Administrative justice mainly aims to protect the citizen's subjective rights and freedoms, not so much to provide the objective legality of the administration. Rather, complaining to the procuracy – even if it had indirect effects and was an informal process of recovery of infringed individual rights and interests – was mainly

[1] For the difference between the terms „administrative justice" and „judicial review", cf. (Donald D. Barry, 1989: 64-66).

used to guarantee what was called the "socialist legality" in the administration. It was under the discretion of the administration as to how and to what extent infringed rights of citizens were remedied. There were no guarantees that these informal proceedings repaired all infringed rights.

Furthermore, the main reason for the weak development of administrative justice in the Soviet Union was that socialism denied the antagonism between the state and the citizens as a principle (Burkov, 2005: 25). The interests of the state, which were illustrated by administrative bodies, were deemed not to be in conflict with citizen's interest. However, Sirenko argued in the late 1970s that even when interests are realized and correctly reflected in policy, history shows that in practice they did not always reach the necessary unity and implementation. This covers to a certain degree how socialist states envisioned their role in society (Sirenko, 1980: 32–34).

In sum, Soviet scholars brought an argument for a possible inconsistency of interests between the administration and the citizens even in socialist states. This kind of thinking already had been accepted by the majority of Soviet scholars in the 1960s, and prominent Soviet legal scholars supported the introduction of administrative justice in USSR (Konstantin Simis, 1979: 206). More and more Soviet scholars argued that there was no rational argument for barring citizens from complaining about administrative bodies to the courts and for not permitting them to file court cases. The administrative justice was considered more effective than administrative complaints made to higher administrative bodies for various reasons. First, administrative justice was perceived to have more procedural guarantees for citizens (Eliseykin, 1963: 30; Stolmakov, 1971: 10). Second, decisions made upon administrative complaints were of a more declarative nature (Guk, 1991: 2) whereas decisions made by courts were legally binding. Third, administrative complaints procedures did not guarantee impartial and independent decisions (Nedbaylo, 1957: 26; Kvitkin, 1967: 41), and four, the more channels for remedy existed, the better chances a citizen had to obtain a remedy (Bonner and Kvitkin, 1973: 6). Other points were also mentioned (Barry, 1989: 71; Gordon Smith, 1978: 37–54).

These arguments stressed by Soviet scholars gradually changed the way of thinking of the Communist regime and led to changes in the 1977 USSR Constitution. This 1977 Constitution adopted for the first time the constitutional right of citizens to appeal to the court against administrative acts.

However, this constitutional provision was „dead letter" (Ioffe, 1989: 499; Jürgen Kuss, 1990: 167–268) until the adoption of the Law of the USSR „On the procedure for appealing to the court against unlawful acts by officials that infringe the rights of citizens" on 30 June, 1987 (hereafter, 1987 Law on Appeal). The 1987 Law on Appeal adopted a general clause for judicial review over officials' acts which was also widened to administrative bodies' acts by the Law of the USSR „On the procedure for appealing to the court against unlawful acts by administrative bodies and officials that infringe the rights of citizens" on 2 November, 1989 (hereafter, 1989 Law on Appeal). Although

Article 3 of the 1987 Law on Appeal stated some exceptions from judicial review, the citizen's right to appeal against administrative acts to a court became a reality for the first time in the USSR. However, it was still problematic "whether judicial practice delivers what the words of the statute seem to promise" (Barry, 1989: 79).

Administrative justice became a reality, but it was still considered to be an instrument for providing socialist legality, not as a guarantee of the protection of the citizens' rights and freedoms. In this regard, traditionally, the legal protection of human rights and freedoms was not considered as important in the Soviet Union as they were in Western countries. More attention was paid to the material satisfaction of certain needs, and less importance was paid to the legal protection of certain rights and freedoms of citizens (Kvitkin, 1967: 13). However, more and more Soviet scholars admitted that the legal protection of rights, freedoms and interests of citizens were important to make sure that administrative bodies observed them. While some scholars indicated the importance of legal protection (Chechot, 1969: 32; Malein, 1975: 124; Khamaneva, 1984: 75–77), others mentioned the nature of the legal relationship arguing that right and obligation existed in administrative legal relationships (Yurkov, 1974: 47; Stolmakov, 1971: 4) even because a right without a corresponding obligation was fiction (Chechot, 1969: 55). Thus, it became an accepted fact that judicial review, without the legal protection of rights and freedoms and a sophisticated procedural system, could not function (Khamaneva, 1984: 75–77).

However, in reality, there were almost no statutes that guaranteed rights, freedoms and interests for citizens in the field of public administration, a fact that influenced administrative practice. In most cases, the administration was deemed to have a wide range of discretion which barred the courts from reviewing administrative acts in favour of citizen's rights and freedoms. In this regard, some scholars such as Chechot argued that the adoption of a general clause of judicial review over administrative acts would lead to a triumph of administrative discretion in the courts since courts did not take a final political responsibility for public administration (Chechot, 1972: 43). For this reason, it seems that Chechot admitted to the existence of a wide range of administrative discretion that was in most cases completely beyond the control of the law, which made Chechot hesitate to grant such discretion to the courts. Khamaneva stressed that deciding administrative cases based on discretion in absence of any procedural legal norms would have a negative effect on the whole administrative activity in general (Khamaneva, 1984: 26).

Additional obstacles were also created by the constitutional basis of the Soviet Union. Since it rejected the separation of powers, the administrative justice system was not impartial and independent from the administrative branch. Furthermore, the most problematic issue was the definition of administrative law in the USSR which had different meanings and structures compared to Western administrative law. Hazard points out that the administrative law in the USSR was understood as the branch of law penetrating the very spheres of activity that were repeatedly mentioned by Soviet

leaders as a goal towards the eventual achievement of communism (John Hazard, 1989: 28). However, Western understanding of administrative law is mainly targeted at controlling the power of administration in its statutory limits (Bernard Schwartz, Roberto L. Corrada, J. Robert Brown, 2010: 4–5; William Wade, Christopher Forsyth, 2000: 4–5). These obstacles were so immense, as well as complicated, that they rendered the implementation of the 1989 Law on Appeal inoperative. Nonetheless, the fall of the Soviet Union in 1991 did not bring the expected changes in most of the Post-Soviet countries.

3. Administrative litigation in modern Uzbekistan: continuity, changes, and problems

Uzbekistan's Constitution and laws guarantee rights and freedoms for citizens and private entrepreneurs in relation to the administration. For instance, Article 44 of the Constitution of Uzbekistan (December 8, 1992) guarantees to everybody the right to appeal to courts against administrative acts (right to access the courts)[2] .

Uzbekistan has tried to introduce legal reforms in the sphere of administrative justice. Administrative litigation in ordinary courts was based on the Law "On appealing against actions and decisions violating human rights and freedoms in court"[3] and the former Civil Procedure Code (hereinafter referred to as former CPC) in Uzbekistan. There were many similarities between these laws in the early stages of their adoption.

Uzbekistan's 1995 Law on Appeal contains the general rules and consists of 10 articles which were quite similar to the 1989 Law on Appeal of the USSR. There was a general clause which allowed individuals to appeal to the court against any action of administrative bodies without any exception. However, in practise it was quite difficult to appeal to the court in a number of cases. For example, normative legal acts (regulatory acts of administrative bodies) and inaction of administrative bodies could not be objects of litigation in Uzbekistan, which caused difficulties for individuals in finding remedies for their violated rights.

Article 7 of the 1995 Law on Appeal and Article 265 of the former CPC of Uzbekistan set out that the court hears appeals in agreement with the rules of civil procedure, which refers to the general rules of the former CPC. However, Shorahmetov argues that, in reality, there were no differences and additions in the procedural provisions on administrative litigation, and administrative cases are action based proceedings, which referred to the civil litigation procedure

[2] "Everyone shall be entitled to legally defend their rights and freedoms, and shall have the right to appeal any unlawful action of state bodies, officials and public associations." (Article 44 of the Constitution of Uzbekistan). For the English translation of the Constitution of Uzbekistan cf. http://gov.uz/en/constitution/#a1836 (accessed on 01.04.2020). In this paper, the term „administrative litigation" is used to indicate the judicial review over administrative acts as guaranteed by article 44 of the Uzbek Constitution.

[3] Law "On appealing against actions and decisions violating human rights and freedoms in court" of the Republic of Uzbekistan, August 30, 1995, № 108-I; hereinafter, 1995 Law on Appeal, http://www.lex.uz/Pages/GetAct.aspx?lact_id=116760 (accessed on 01.01.2018).

(Shoakbar Shorahmetov, 2007: 346). The former CPC of Uzbekistan was based on the adversarial system. Nevertheless, in administrative litigation, one side of the process – the appellant (citizen) – is much weaker than the administrative body. For this reason, the judge should be more active towards protecting the appellant's rights (inquisitorial principle).

The Uzbek legal systems did not provide detailed provisions regarding the standards of review. Thus, courts lack a clear understanding about the degree to which they may review fact findings and interpret the law and the conclusions reached by the administrative body. Constantly, courts can hear new facts (de novo), and court procedure is more akin to litigation or a trial. As far as there were no administrative procedural rules on rendering an administrative decision in Uzbekistan, the court hearings were not limited to the facts collected by the administrative body.

4. Case studies

It is difficult to generalize all main features of legal practice on administrative litigation in Uzbekistan, but some tendencies of legal practise on administrative litigation can be mentioned by following cases.

Case № 1.

According to the case file, the applicant, whose permanent residence is in X region, applied for a permit to travel abroad as a tourist. According to the letter of the Department of Immigration and Citizenship of the X region dated April 6, 2017 No. 22/4-1395, the issuance of an exit permit (sticker) was found to be temporarily inappropriate due to the fact that the exit was controlled.

Also, according to the information received by the competent authorities by the letter No. 22/V-13 dated April 13, 2017 of the Ministry of Internal Affairs of the Republic of Uzbekistan, the applicant was announced that he was under temporary control due to a violation of law in the UAE.

The court of the first instance was informed that the applicant had been restricted from traveling abroad due to his illegal activities abroad, in reviewed case in the UAE, on the basis of information received from the competent authorities[4].

– Comment on the case № 1 –

On the grounds that the restriction of the right to travel abroad for the reasons specified in subparagraph "z" of Section 3 of the "Procedure for entry into the territory of the Republic of Uzbekistan", approved by the Cabinet of Ministers of the Republic of Uzbekistan dated January 6, 1995 No. 8, the appellate and supervisory instance (the Supreme Court) rejected the appeal, arguing that it was inexpedient to apply to the court with a complaint about the restriction of the right to travel abroad.

It has to be mentioned that a citizen has the right to appeal to the court

[4] Examples of Administrative Proceedings [Text]. Tashkent : Baktria press, 2018. P. 380–383. [In Uzbek]

against the actions (decisions) of state bodies and their officials, enshrined in Article 44 of the Constitution of the Republic of Uzbekistan. Provisions restricting this right are not mentioned in the Constitution and other laws.

Case № 2.

The applicant J.S., the administrator of the liquidation enterprise of Kashkaldak Beruni SFU, filed a lawsuit against the responsible Uychi district khokimiyat (mayor), in which he asked to revoke the decisions of the Uychi district khokim No 5782 of July 30, 2019 and № 5998 of August 23, 2019.

After reviewing the application and the documents attached to it, the administrative court considers it necessary to refuse to accept the application (complaint) for processing on the following grounds.

According to Article 189 of the Code of Administrative Litigation of the Republic of Uzbekistan, an administrative court deal with cases that ask to recognize the decision or it's part invalid, or an action (inaction) to recognize illegal. Due to this cases on the revoke of decisions of their officials are not in jurisdiction of administrative court[5].

– Comment on the case № 2 –

It is true that applicant J.S. failed to form his legal sue. However, it is too technical to state that revocation differs from invalidity in sense of citizen. CAL sets only the litigation on invalidity of certain administrative acts or actions. There is no type of sue on revocation of administrative act in CAL. Respectively, it would be proper not to refuse in acceptance of complaint motivating that administrative court has no jurisdiction on such cases.

Case № 3

Sharopov, born on July 22, 1959, applied to the Pension Fund for an old-age pension for reaching retirement age. However, Sharopov was sent a letter dated June 2, 2017, No BT130-1001-1529, signed by the head of the city department of the Pension Fund. Although the period of employment from 1979 to 1997 was recorded in the employment record book, but due to the fact that the documents confirming the length of service in these periods were not kept in the archives and in the organizations themselves, and salary information for these periods was not provided It was stated that the above-mentioned employment activities will not be included in the length of service.

The claim was satisfied by the decision of the court of first instance, and the response letter of the head of the city branch of the Pension Fund dated June 2, 2017, No BT130-1001-1529, was declared illegal.

However, in the manual named "Judicial practice on administrative cases" edited by Supreme court regarding this case, it is noted that "the court made a mistake in finding the response letter of the head of the city branch of the Pension

[5] URL: http://sud.uz/ (accessed on 10.02.2020). [In Uzbek]

Fund dated June 2, 2017, No BT130-1001-1529, illegal. Because this letter is not a document with legal consequences. Therefore, such letters should not be considered valid or illegal by the court[6].

– Comment on the case № 3 –

It should be noted that according to the Regulation on the procedure for appointment and payment of state pensions, approved by the Cabinet of Ministers of the Republic of Uzbekistan on September 8, 2011 No 252, Pension Fund under the Ministry of Finance of the Republic of Uzbekistan on restoration (restoration) of previously suspended (suspended) pension payments in accordance with the established procedure placing of the district (city) department foresees the application. In the example above, it can be seen that a citizen has applied with a content such as a pension appointment, recalculation of the pension amount.

Based on the content of paragraphs 4, 7, 8, 116, 120, 121 of the Regulation approved by the Cabinet of Ministers of the Republic of Uzbekistan dated September 8, 2011 No 252, it can be said that a citizen submits an application for a pension to the relevant department of the Pension Fund and also receives the relevant final decision from this body. In this case, the citizen does not enter into a direct legal relationship with the pension commission. It can also be said that the commission is an internal body of the Pension Fund Department. Accordingly, it is difficult to recognize that the commission is an independent body.

Most importantly, from the point of view of the citizen, the application was submitted directly to the competent administrative body, ie the Department of the Pension Fund, and the relevant response was provided by this body. Second, it is possible to recognize the existence of an external subject-oriented legal relationship between the citizen and the Pension Fund Department. Third, the Department of the Pension Fund is the competent state body for pension appointments, so applications are submitted directly to this body, not to the commission. Relevant decisions are made on the basis of the authority of the authorities. Fourth, in this case, it can be seen that the refusal to award the relevant pension affects the certain rights and legitimate interests of the citizen, that is, there is a certain legal consequence. Fifth, the case is considered to be individual (specific), as it concerns the case of citizen A. Sharopov. Hence, the reply letter of the head of the city branch of the Pension Fund No BT130-1001-1529 dated June 2, 2017 is an administrative act and can be appealed in court to find it invalid. In our opinion, the court should consider the content of the complaint in this case and make a legal assessment of the legality or illegality of the administrative act expressed in the reply letter of the head of the city branch of the Pension Fund dated June 2, 2017 BT130-1001-1529. Relevant decisions are made on the basis of the authority of the relevant body. Fourth, in this case, it can be seen that

[6] See.: Administrative court practice / Edited by I. Alimov. Tashkent : Complex Print, 2018. P. 19–21. [In Uzbek]

the refusal to award the relevant pension affects the certain rights and legitimate interests of the citizen, that is, there is a certain legal consequence. Fifth, the case is considered to be individual (specific), as it concerns the case of citizen Sharopov. Hence, the reply letter of the head of the city branch of the Pension Fund No BT130-1001-1529 dated June 2, 2017 is an administrative act and can be appealed in court to find it invalid. That is why, the court had to consider the content of the complaint in this case and make a legal assessment of the legality or illegality of the administrative act expressed in the reply letter of the head of the city branch of the Pension Fund dated June 2, 2017 BT130-1001-1529.

Regarding Uzbekistan legal practise, it is difficult to see a general trend, however, from the analysed cases and published casebooks, it can be concluded that courts have limited options of remedy and the only option is filing the *appeal on recognition of the invalidity of the acts of state bodies (or officials)* in administrative courts. If the appellant fails in constructing his (her) claim, the result is that the court refuses the consideration of appeal. Furthermore, new adopted APL is not actively implemented in judicial practice. Concept of administrative act mentioned in APL weakly used by courts.

This outcome leads us to the research analysis of Kühn and gives weight to the idea of path dependence as a reason for the present problems. In Uzbekistan, courts are still formalist and it is still true that "judges employ arguments of the plain meaning of a statutory text and present their analysis as a sort of inevitable logical deduction from this text" (Kühn, 2011: 75). The reason for that is that the judges are bound by statutes (for example, Article 15 of the CAL of Uzbekistan) and they must observe enacted laws (Kühn, 2011: 118). Courts do not consider their role as being to ensure respect for the *right to access to the courts* and guarantee constitutional rights and freedom. In other words, Courts are not conscious of protecting constitutional rights and freedoms of citizens. It seems that it is not the court's function but rather, it is the procuracy's function to protect the rights and freedoms of citizens provided by the Constitution and statutes.

Besides, such tendency is also caused by legal education. Modern Uzbekistan legal education is still different from many American, European as well as Continental law faculties. For example, the Ministry of Higher Education of Uzbekistan maintains control over the curriculum in law faculties. Both in Uzbekistan and Russia, few "analytical studies of case law" can be found. Emphasis is still given on "memorization rather than on the ability to think and analyse". While law school students are not educated and "trained in legal argumentation", "the statutory interpretation is not a subject of study at law faculties" (Kühn, 2011: 130-135). In this regard, Kühn argues that even in socialist law, it was accepted that judge-made law and any supplementary interpretations done by judges was assumed to be harmful, or, at best, suspicious (Kühn, 2004: 542-543). One of the reasons of this problem comes from a lack of sufficient knowledge of legal professionals, scarcity of comprehensive and fundamental research at law schools, an absence of law textbooks and updated

casebooks, very limited access to court practise and insufficiency of legal trainings on administrative litigation and administrative law in general.

What is the reason behind the inability of the judges to interpret law? It can be concluded from Kühn's analyses that the main reason is that the concept of law is different in post-Soviet countries. Law still tends to consist of acts enacted by parliament and administrative authorities. It is accepted that legal principles deducible from statutes and judge-made law cannot be a source of law. That is why it seems that there is no need for analytical legal thinking and interpretation of legislative acts for judges (Kühn, 2011: 132-134). From the Soviet period, it is still widely accepted that statutes are revised as soon as it is considered necessary and there is no necessity for judge-made law (Kühn, 2011: 142-143).

One more reason for textual positivism in Uzbekistan is that law review articles "almost never cite domestic case law" and do not analyse systematically case law regarding certain legal issues. Similarly, a court's decisions or Supreme Court resolutions are based on quotation of statutes and other legally binding sources of law, "reference is almost never made to law review articles", or legal books of prominent scholars (Kühn, 2011: 144-145).

Nevertheless, it should not lead the reader to think that government of Uzbekistan is not conscious about those on-going problems. Government is trying to introduce some legal reforms that are giving hope for change in the near future. For instance, government became more and more conscious about these sets of problems. In this context, recent decrees of the new elected President of the Uzbekistan Sh. Mirziyoyev are very progressive. These decrees aim to further improve the system of legal education and introduces new methods of analytical legal education as well as case study[7].

5. Hopes for change: recent transformations

The problems analysed above are mostly rooted in the Soviet past. Yet, there are not only problems, but also there some hopes for change.

New administrative law reforms: changes in legal system

New elected President of the Uzbekistan Sh.Mirziyoyev started to build New Uzbekistan and introduced several administrative law reforms according to the Strategy Action 2017-2021[8]. As a result of this there were introduced administrative court system, adopted Concept of administrative reforms[9].

On June 1, 2017, the Presidential Decree of the Republic of Uzbekistan proposed

[7] Resolution of the President of the Republic of Uzbekistan dated 28.04.2017 No PP-2932 "On measures to fundamental improve the system and increase the efficiency of personnel training at the Tashkent State University of Law".[In Russian]

[8] Decree of the President of the Republic of Uzbekistan dated 07.02.2017, No. UP-4947 "On the Strategy for Action for the Further Development of the Republic of Uzbekistan". [In Russian]

[9] Decree of the President of the Republic of Uzbekistan dated 08.09.2017 No. UP-5185 "On approval of the concept of administrative reform in the Republic of Uzbekistan" (National Database of Legislation, 12/11/2019, No. 06/19/5892/4134). [In Russian]

the formation of administrative courts of the Republic of Karakalpakstan, regions and the city of Tashkent, district (city) administrative courts, as well as the formation of a judicial board on administrative matters of the Supreme Court of the Republic of Uzbekistan, which adjudicates administrative disputes arising from public law relations, as well as cases of administrative offenses[10]. The relevant changes were made to the Constitution of the Republic of Uzbekistan[11], the Law of the Republic of Uzbekistan "On Courts", the Civil Procedure and Economic Procedural Codes of the Republic of Uzbekistan[12], providing for the formation of administrative courts.

In addition, at the beginning of 2018, the Law "On Administrative Procedures" (hereinafter referred to as LAP[13]) and the Code of Administrative Litigation of the Republic of Uzbekistan (hereinafter referred to as CAL[14]) were adopted[15], which, without exaggeration, basically meet international standards (Jörg Pudelka, 2015: 63).

Reforms regarding administrative justice are going to be one of the important one in near future also. The Presidential Decree dated 02.03.2020 No UP-5953 announced to abolish administrative offense case litigation from the administrative courts and handle administrative offence case's litigation to the criminal courts[16].

Since the Soviet period, the administrative offence system has been settled as a main part of administrative law. However, if we look from the point of Western countries, we see that administrative justice is not a system centring on the punishment of misconduct, but it is about abolishing unlawful administrative acts.

Even today, some Uzbek scholars equate the administrative offence system and administrative justice or at least argue that the administrative offence system is one part of administrative law (Alimov and Solovyova, 1998: 214; Hojiyev and Hojiyev, 2006: 536; Hojiyev, 2010: 204).

[10] Decree of the President of the Republic of Uzbekistan dated 21.02.2017 No UP-4966 "On measures fundamental improve the structure and increase the efficiency of the judicial system of the Republic of Uzbekistan". [In Russian]

[11] Law of the Republic of Uzbekistan dated 06.04.2017 No ZRU-426 "On Amendments and Additions to the Constitution of the Republic of Uzbekistan". [In Russian]

[12] Law of the Republic of Uzbekistan dated 12.04.2017 No ZRU-428 "On Amendments and Additions to the Law of the Republic of Uzbekistan" On Courts ", Civil Procedure and Economic Procedural Codes of the Republic of Uzbekistan". [In Russian]

[13] Law of the Republic of Uzbekistan dated 08.01.2018 No ZRU-457 "On Administrative Procedures", enter into force from 10.01.2019. [In Russian]

[14] Law of the Republic of Uzbekistan dated 25.01.2018 No ZRU-462 "On Approval of the Administrative Litigation Code of the Republic of Uzbekistan", enter into force from 01.04.2018. [In Russian]

[15] Of course, it is too early to say that the Uzbekistan's APL is one of the foremost, since the analysis of this law shows that the APL can be attributed to the first generation of laws on administrative procedures. See for generation of laws on administrative procedures.: (cf. Javier Barnes, 2010: 342-343).

[16] Decree of the President of the Republic of Uzbekistan dated 02.03.2020 No UP-5953 "On the State Program for the Implementation of the Action Strategy for the five priority areas for the development of the Republic of Uzbekistan in 2017-2021 in the Year of the Development of Science, Education and the Digital Economy" (National Database of Legislation , October 16, 2017, No 03.03.2020, No 06/20/5953/0246). [In Russian]

In this regard, it is quite common in post-Soviet countries to think that citizens are allowed to appeal against the administrative penalty that was imposed after disobedience against a certain administrative act, rather than directly appeal to the court against the administrative act prior to an administrative penalty. This is why it is quite difficult to develop administrative justice without changing the misperception in the understanding of administrative offences as a part of administrative justice in both countries.

Importantly, the recent reforms taking place in Uzbekistan give big hope to develop administrative justice without including administrative offence cases. It is a positive move in the context of post-Soviet countries that administrative justice is becoming separated from traditional Soviet administrative offence cases[17].

The above reforms and legislative changes created the basis for a major breakthrough in administrative law in the Republic of Uzbekistan. Many scientific discussions and proposals on the development of administrative law have not yet seen their practical implementation[18]. The legislative reforms carried out over a short period of time brought these long-awaited ideas to life. But it must be borne in mind that with the adoption of the relevant laws it is impossible to achieve a major breakthrough in the development of modern administrative law in the Republic of Uzbekistan. Legal doctrine, practice and education also should accept these changes.

Here is another rare example from judicial practice where APL is used in some extend.

Case № 4.

The applicant of the ANOR LLC JV appealed to the court with the defendant in the Tashkent city hokimiyat on invalidating the decision of the Tashkent city hokim dated May 27, 2019 No 763 to cancel paragraph 8 of the appendix to the decision of the Tashkent city hokim for No 85 dated January 18, 2018 and assign the responsibility to the hokim of the city of Tashkent to make a decision to cancel the decision No 763 dated May 27, 2019 and uphold the decision of the hokim of Tashkent city No 85 dated January 18, 2018 in the previous edition.

As seen from the case materials, the decision of the hokim of the city of Tashkent dated January 18, 2018 for No 85 of SAVDO LLC allocated a building located next to the non-residential premises at the address: Tashkent city, Mirabad district,

[17] The existence of the procuracy supervision is also one of the factors that make administrative justice difficult to reform in Uzbekistan. Currently, both the procuracy and the administrative courts try not to give up their jurisdiction on controlling administrative bodies. Consequently, the introduction of legal reforms in administrative justice meets difficulties and even open resistance because they may cause a loss of control over administrative bodies in favour of either the procuracy or the administrative courts. In that regard, it would be logical if the rules (article 46 of CAL) allowing the participation of the prosecutor in administrative litigation were liquidated in near future.

[18] See.: J. Nematov, 2014 (№ 259): 247-275; J. Nematov, 2015(№ 261):195-224; J. Nematov, 2015(№ 263): 323-356; J. Nematov, 2016 (№ 267): 161-192; J. Nematov, 2016 (№ 268): 247-269; J. Nematov, 2017 (№ 271): P.127-155; J. Nematov, 2014 (№ 2): 2-32; J. Nematov, 2019: 31–54; J. Nematov, 2018: 29-38; J. Nematov, 2020: 42–51.

Mirabad str., 27/10, with adjoining territory (Liter 0001, 0002) as compensation for a building demolished for state and public needs.

Based on agreement No 427 of February 15, 2018 between "SAVDO" LLC and the Department for the use of buildings and structures of the Tashkent city hokimiyat, as well as the above-mentioned decision of the Tashkent city hokim, buildings located near house No 27/10 along Mirabadskaya street on an area of 0.3000 hectares under a single cadastral number 10110102020590000l-letter 0001 is a one-story building with a total area of 342 sq.m., and letter 0002 is a one-story building with a total area 91.0 sq.m. transferred to the ownership of SAVDO LLC, about which a certificate was issued for TS 0351191.

According to the contract of sale dated June 11, 2018, concluded between LLC SAVDO and JV LLC ANOR, the specified object was sold to JV LLC ANOR.

Further, on May 15, 2019, the Tashkent city prosecutor's office protested the cancellation of paragraph 8 of the decision of the Tashkent city governor No 85 of January 18, 2018, regarding the allocation of the building located next to the non-residential premises at the address: Tashkent city, Mirabad district, Mirabad street, 27/10, with an adjacent territory (Liter 0001, 0002).

In pursuance of this protest, on May 27, 2019, the hokim of the city of Tashkent adopted decision No 763 to satisfy the protest of the prosecutor of the city of Tashkent and the cancellation of paragraph 8 of the annex to the decision of the hokim of Tashkent city No 85 dated January 18, 2018.

As seen from the case materials, by the decision of the Tashkent city hokim No 763 dated May 27, 2019, the protest of the Tashkent city prosecutor on the cancellation of paragraph 8 of the appendix to the decision of the Tashkent city hokim No 85 dated January 18, 2018 was satisfied.

The reason for the cancellation of paragraph 8 of the appendix to the decision of the hokim of Tashkent city No 85 dated January 18, 2018 indicated that the area of the building located next to the non-residential premises at the address: Tashkent city, Mirabad district, Mirabad street, house No 27/10 is 440 sq.m., which did not pass state registration in the State Enterprise "Land Management and Real Estate Cadaster Services" of Tashkent. In addition, the allocated building did not have an adjacent territory. When allocating the building with the adjacent territory, it was not taken into account that there was no adjacent plot to the building in the given territory, the area of the allocated land plot was not indicated, and the underground facility "bomb shelter" was located on the border of the building. Thus, when allocating a building with an adjacent territory, the requirements of the Regulation "On the procedure for the provision of land in settlements for urban planning, design and registration of construction projects, as well as acceptance for operation of objects", approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan, were violated dated February 25, 2013 No 54 and Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated August 22, 2008 No 189 "On measures for further improving the procedure for the provision of land in the city of Tashkent and their intended use".

Disagreeing with the above decision of the hokim of the city of Tashkent, the applicant appealed to the court with this statement.

During court litigation it was stated that, in accordance with the letter of the Emergency Management Department of the city of Tashkent dated April 8, 2018 No 730, SAVDO LLC is forbidden to dismantle buildings located above the bomb shelter due to the fact that construction work can lead to the destruction of the integrity of the bomb shelter.

According to the Consolidated Expert Opinion of the Tashkent City Branch of the State Unitary Enterprise "Urban Planning Expertise" under the Ministry of Construction of the Republic of Uzbekistan dated May 1, 2019 No 311, the location near the bomb shelter being built does not create any obstacles for construction that does not touch the borders of the shelter[19].

– Comment on the case № 4 –

Above mentioned example, you can also consider applying the principle of trust protection. The public interest is not to erect a building near the bomb shelter. The interest of the addressee is to maintain the validity of the administrative act and to obtain fair compensation in cases of cancellation of the administrative act.

However, from the above it can be stated that "the location next to the bomb shelter under construction is not creating any obstacles to construction that does not touch the borders of the bomb shelter".

Consequently, the question of the application of part 9 of Article 59 of the APL may not be considered.

The next issue is the issue of bad faith. In this case, it can be stated that there are no signs of dishonesty according to the Article 59 of the APL.

Therefore, it can be assumed that the preservation of an administrative act that does not contradict the public interest that did not entail the fault of the addressee complies with the rules of article 59 of the APL.

6. Conclusions

This article discussed the legal problems of administrative litigation in modern Uzbekistan. In conclusion, it should be mentioned that administrative litigation remains one of the most problematic issues of administrative law. There still exist vast loopholes and unnecessary remnants of former Soviet theory and law in modern legislation. This situation requires changes of perception of scholars first; then necessary reforms should be held.

It should also be concluded that establishing procedural rules is not enough to solve the problems regarding administrative litigation in modern Uzbekistan[20].

[19] The decision of the court of appeal of the Tashkent city administrative court of 11/06/2019 (Extract). [In Russian]

[20] In this regard, Khvan's urge is very important. "Certainly, the system of administrative courts can become a guarantee of providing the public rights of citizens and at the same time to legitimacy of actions of executive bodies only in that case when accomplishment of justice will be in reality (in practice) independent and competence." See.: (L.B. Khvan, 2011: 67.)

First of all, legal education should be reformed in a way which favors protecting rights and freedoms of citizens and legal entities. Further emphasis should be given to analytical case law study, based on legal argumentation and statutory interpretation. Through the analysis of this article, it is hoped that changes in legislation would guarantee timely and fair access to justice.

Current Uzbekistan's government is doing much in that regard. There are many ongoing reforms in the sphere of administrative law and policy. More and more legal guarantees are being given to business activities. For example, the recently adopted law "On administrative procedure" and Code on Administrative litigation of Uzbekistan, the future liquidation of the trial of administrative offence cases from the jurisdiction of the administrative courts by the end of 2020 initiated by the government gives hope for the future development of administrative law in Uzbekistan.

Based on this, it should be emphasized that the development of the theory of administrative law in Uzbekistan is important. In particular, the need to maintain the relationship between theory and court practice through constant analysis of court decisions in the field of administrative law, the importance of training legal personnel based on case study of researching administrative court decisions, the importance of developing substantive administrative law, and developing new areas of positive administrative law.

In that sense, not only the legislature and practicing lawyers, but also administrative law scholars should be more active in establishing and developing theories and educating law school students in the spirit of analytical legal thinking, legal argumentation and interpretation of legislative acts. Last but not least, the role of international donor organizations and partner universities is enormous in this process. Conducting joint comparative research, publishing textbooks, organizing conferences, workshops and trainings can facilitate interactive dialog, inspire all concerned actors and eventually lead to the overall improvement of access to justice and development of business activities and entrepreneurship, in Uzbekistan.

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ТРАНСФОРМАЦІЯ РАДЯНСЬКОГО АДМІНІСТРАТИВНОГО ПРАВА: ТЕМАТИЧНЕ ДОСЛІДЖЕННЯ СУДОВОГО РОЗГЛЯДУ АДМІНІСТРАТИВНИХ АКТІВ В УЗБЕКИСТАНІ

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Судовий захист від окремих та нормативних актів державного управління в Узбекистані залишається складним. Однією з головних причин цієї проблеми виступає тривале поширення в правовому мисленні та юридичній практиці ідей та моделей радянського стилю. Стаття описує проблеми юрисдикції, які виникають під час спроб подолати радянську спадщину шляхом розробки правового захисту в адміністративних питаннях, та аналізує стратегії покращення цієї ситуації. Ключовими факторами є всебічний і гармонізований розвиток адміністративної процедури та адміністративного судового процесу у галузі законодавства і те, що можна назвати «конституціоналізацією» правового мислення, теорії та викладання – повага до цінностей, закріплених у Конституції, таких як верховенство права та доступ до судового захисту від державного управління – у галузі юридичної науки. Узбекистан – хороший приклад того, як іноземні партнери та донори міжнародної правової допомоги можуть зміцнити ці фактори.

У роботі досліджено (1), якою мірою відбулася відмова від радянського мислення щодо судового розгляду адміністративних актів або наскільки воно все ще функціонує в сучасному Узбекистані, та (2) якими є точки трансформації судового розгляду. Загалом я стверджую, що радянське мислення щодо судового розгляду адміністративних актів значно змінило законодавчий рівень в умовах нового режиму Узбекистану, проте правові реформи досі не приймаються юридичною практикою, доктриною та юридичною освітою.

Першим кроком до аналізу цих тверджень є опис основних характеристик та правових реформ судового розгляду щодо адміністративних актів, прийнятих у радянський період (розділ II). У розділах III та IV аналізується сучасна правова система та судова практика Узбекистану. Наприкінці я окреслюю нещодавно вжиті кроки для впровадження деяких реформ у сфері судового розгляду адміністративних актів в Узбекистані (розділ V).

Ключові слова: адміністративне судочинство радянського стилю, адміністративний судовий процес, адміністративна процедура, юридична освіта, Стратегія Дій в 2017–2021 роках, адміністративні суди, юрисдикція, тематичне дослідження / кейс-стаді, текстовий позитивізм, суддівське правотворення.