SCIENTIFIC AND PRACTICAL ANALYSIS OF DETERMINING THE ADMISSIBILITY OF AN APPLICATION (COMPLAINT) IN THE ADMINISTRATIVE LITIGATION OF THE REPUBLIC OF UZBEKISTAN

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https://doi.org/10.5281/zenodo.10241827

Abstract: In this article, we will try to reveal some legal problems regarding the determination of the admissibility of an application (complaint) in the administrative proceedings of the Republic of Uzbekistan. The judicial practice and legislation of Uzbekistan do not use the concept of admissibility of administrative claims. But based on the experience of Germany and a number of other countries, one can learn that in administrative proceedings the concepts of the admissibility and validity of administrative claims stand out. These concepts are used to ensure that in administrative proceedings the court has the opportunity to cut off those claims that, according to formal requirements, cannot be considered on the merits. This makes it possible for the courts not to waste time and resources on cases that cannot be considered according to formal requirements.

Also, the presentation of requirements under the conditions of the admissibility of a claim in administrative proceedings prevents the filing of unnecessary claims, thereby enabling the courts to consider only those disputes that are of legal significance. Complaints are decreasing, the workload of the courts is also becoming moderate, which makes it possible to concentrate on really problematic cases from the point of view of law. Therefore, the admissibility of a claim in administrative proceedings is a very important mechanism for cutting off unnecessary claims and considering really problematic disputes.

On the other hand, if the courts are exempted from unnecessary claims, then the courts have a greater opportunity to qualitatively consider the cases that are pending in administrative proceedings.

This article will highlight issues regarding the exhaustion of the instance order (subsidiarity), the permissible time limits for submitting an application (complaint) in administrative proceedings.

Keywords: administrative proceedings in the Republic of Uzbekistan, judicial practice, administrative courts, the Law on Administrative Procedures, the Code on Administrative Procedures, determinations of the admissibility of an application (complaint) in administrative proceedings, the subject of the claim, the exhaustion of the instance order (subsidiarity), procedural legal capacity and procedural capacity , right to bring a claim, admissible grounds for bringing a claim, terms and form.

BACKGROUND: PERCEPTION OF THE ADMINISTRATIVE PROCESS IN THE SOVIET ADMINISTRATIVE LAW

Soviet administrative law was formed based on the communist idealogy and the proletarian-class approach. As a result, the essence and system of administrative law were mainly based on these phenomena[1].

As for whether there was a legal basis for administrative procedures in Soviet law, it was considered mainly within the administrative process. And, as an institution of administrative law, there were almost no separate scientific studies and legal norms on administrative procedures.

With the introduction to the Article 58 of the 1977 Constitution of the USSR, a completely new approach to the understanding of administrative process began to emerge: the right to appeal against the actions of public officials in court. In particular, there was a growing perception that the administrative process should be understood in a narrow sense. That is in the sense of conducting administrative, civil and criminal litigation. In particular, N.G.Salisheva describes the administrative process as an activity related to the settlement of disputes between the parties of the administrative-legal relationship. For her, these parties are not in a relationship of mutual subordination and the application of administrative coercive measures established by law[2].

Basically, the administrative procedures have a positive or regulatory nature, rather than a punitive one. For this reason, administrative procedures are more developed in the context of private properties, in market economy. Although some scholars of Soviet law such as D.N. Bakhrakh[3] have expressed the similar views, ignoring the important fundamentals of administrative law such as the rule of law, the principle of separation of powers, and the guarantee of the personal rights of citizens caused not to develop the legal theory on administrative procedures under Soviet administrative law. Therefore, as discussed above,

[1]See about soviet administrative law in cf.: *Пашуканис Е. Б.* Обзор литературы по административному праву // Революция права. – 1927. – №3. – С. 174–177 [Pashukanis Ye. B. Literature review on administrative law // Revolution of law. - 1927. - No. 3. - P. 174–177]; *Елистратов А.И.* Административное право // Основы советского права. – М.: Гос. изд-во, 1929. – Б. 92–94 [Elistratov A.I. Administrative law // Fundamentals of Soviet law. - M .: State. Publishing House, 1929. - P. 92–94]; Основные задачи науки советского социалистического права. Доклад А.Я.Вышинского, прения и заключительное слово на I Совещании по вопросам науки советского государства иправа. – М.: Юрид. изд-во НКЮ СССР, 1938. – С 39, 183–185 [The main tasks of science of Soviet socialist law. Report by A.Ya. Vyshinsky, debate and closing remarks at the First Meeting on Science of the Soviet State and Law. - M .: Yurid. Publishing House of the USSR NKJ, 1938. – P. 39, 183–185]; Советское государственное право / Под ред. А.Я. Вышинского. – М.: Юрид. изд. НКЮ СССР, 1938. – С. 59 [Soviet state law / Ed. A.Ya. Vyshinsky. - M .: Yurid. ed. NKJ USSR, 1938. - P. 59]; *Oda Hiroshi*. The emergence of pravovoye gosudarstvo (Rechtsstaat) in Russia // Review of Central and East European Law 3 (1999). – P. 412–416); *John N. Hazard*. What kind of propaganda in Administrative Law // Ginsburgs, George, Gianmaria Ajani,Gerard Pieter van den Berg, and William B. Simons, eds. Soviet administrative law: theory and policy. Vol. 40. [LawinE.E. 40] BRILL, 1989. – P. 28.

[2]*Салишева Н. Г.* Административный процесс в СССР. – М.: Юрид. лит., 1964. – С. 16 [Salisheva N.G. Administrative process in the USSR. - M .: Yurid. lit., 1964. - P. 16].

[3]*Бахрах Д. Н.* Советское законодательство об административной ответственности. –Пермь, 1969. – С. 267 [Bakhrakh D.N. Soviet legislation on administrative responsibility. –Perm, 1969. - P. 267].

the essence of the administrative process was interpreted very broadly in the form of all executive-command activities and considered as in the framework of administrative responsibility (i.e. administrative offense proceedings).

To sum up, Soviet administrative law does not have an institution of administrative procedures understood in contemporary administrative law. That is, administrative procedures was imagined mainly based on the general concept of "administrative process," and understood as activities of executive bodies in state governance regulated by legal norms. As a result, similar perceptions and views on Soviet administrative law, to a large extent, retained their long-lasting repercussions in post-Soviet Uzbekistan.[4] We will discuss the details of this topic in the following paragraphs.

LEGAL REGULATION OF THE ADMINISTRATIVE PROCEDURES IN MODERN UZBEKISTAN

In Uzbekistan, legal reforms was introduced in the realm of administrative justice. In addition, administrative litigation in ordinary courts was based on the Law “On appealing against actions and decisions violating human rights and freedoms in court” [5] and the former Civil Procedure Code (hereafter CPC) in Uzbekistan.

Similarities between administrative laws exist prior to the break-down of Soviet Union and the laws adopted during the years of independence. For instance, it is noticeable that 1995 Law on Appeal covering the general rules in 10 articles relatively identical to the 1989 Law on Appeal of the USSR. There was a general clause that allowed individuals to appeal to the court against any action of administrative bodies with no exception. However, in practice, it was utterly challenging to appeal to the court as observed in a great number of cases. For example, normative legal acts such as regulatory acts of administrative bodies and inaction of administrative bodies cannot be subject to the litigation in Uzbekistan which causes difficulties for individuals in finding remedies for their violated rights.

Legal system in Uzbekistan failed to provide with detailed provisions regarding the standards for examining administrative acts. Thus, courts lack a clear understanding of the degree to what extent they carry out fact findings, interpretation of the law, and examine the conclusions reached by the administrative body. Courts were able to hear new facts (de novo), and court procedure was more akin to litigation or a trial. As far as there were no administrative procedural rules leading to an administrative decision in Uzbekistan, the court hearings were not limited to the facts collected by an administrative body.

On the other hand, a distinct law on “Administrative procedures” did not exist, and this made it difficult to develop legal doctrine and practice in this issue.

In this regard, L.B.Khvan, I.A.Khamedov, and I.M.Tsay also noted that although those above-mentioned normative legal acts regulate certain aspects of administrative procedures,

[4] 市橋克哉「社会主義国の行政手続法の概要と特色」法律時報65巻6号87–89頁。[Ichihashi Katsuya. The main features and characteristics of administrative procedure law in socialist state. Houritsujishou 65/6. – P.87-89]; *Адушкин Ю.С.* Реформирование административно-деликтного законодательства Республики Узбекистан: итоги и проблемы // Ўзбекистон қонунчилиги таҳлили. – 2004. – № 2. – С. 43[Adushkin Yu.S. Reform of the administrative-tort legislation of the Republic of Uzbekistan: results and problems // Uzbekistan law review. - 2004. - No. 2. - P. 43].

[5] 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).

nonetheless they do not have a systematic approach to administrative procedures and only partially cover administrative procedures[6].

In addition to these considerations, it should be noted that these procedural rules are very different from administrative procedures. In particular, Law "On Administrative Procedures" sets many new regulations. However, they are not practiced in the legal system of Uzbekistan. For instance, principles of administrative procedures, procedural rights of the interested parties, rules ensuring impartiality, grounds and procedure for initiating, terminating administrative proceedings, hearing procedure (consideration of administrative cases at meetings of administrative bodies). This can be also pointed regarding rules regarding administrative acts such as the form, content, justification, termination, revocation, amendment, invalidation of the administrative acts. In fact, the Law on the administrative procedure aimed at ensuring due process principle in relationship between the administrative body and the interested parties. Nonetheless, the principle of due process is lacking in above-mentioned laws.

HOPES FOR CHANGE: NEW ADMINISTRATIVE LAW REFORMS

Newly elected President started to build new Uzbekistan and introduced several administrative reforms according to the Strategy Action Plan of 2017-2021[7] which introduced administrative court system and the concept of administrative reforms.[8]

Presidential Decree on February 21, 2017, proposed from June 1, 2017 the formation of administrative courts of Karakalpakstan, all provinces, the city of Tashkent and district (town) administrative courts. It also covered the formation of a judicial board on administrative matters under the Supreme Court which allows adjudication on administrative disputes arising from public law relations including administrative offenses.[9] The relevant

[6] *Хамедов И. А., Цай И. М.* Институт административных процедур в свете реформирования административно-процессуального права в Узбекистане // Ежегодник публичного права – 2014: Административное право: сравнительно-правовые подходы. – М.: Инфотропик Медиа, 2014. – С. 393.[Khamedov I.A., Tsai I.M. Institute of Administrative Procedures in the Light of the Reform of Administrative Procedure Law in Uzbekistan // Public Law Yearbook - 2014: Administrative Law: Comparative Legal Approaches. - M.: Infotropic Media, 2014 .- P. 393];
Хван Л.Б. Фиктивный административный акт: перспективы регуляции в странах Центральной Азии // Ежегодник публичного права 2016: Административный акт. – М.: Инфотропик Медиа, 2015. – С. 129-130 [Khvan L.B. Fictitious administrative act: regulatory perspectives in Central Asian countries // Public Law Yearbook 2016: Administrative act. - M .: Infotropic Media, 2015 .- P. 129-130];

[7] Указ Президента Республики Узбекистан от 07.02.2017 г. № УП-4947 «О Стратегии действий по дальнейшему развитию Республики Узбекистан» (Национальная база данных законодательства, 16.10.2017 г., № 06/17/5204/0114). [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"].

[8] Указ Президента Республики Узбекистан от 08.09.2017 № УП-5185 «Об утверждении концепции административной реформы в Республики Узбекистан» (Национальная база данных законодательства, 11.12.2019 г., № 06/19/5892/4134) [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)].

[9] Указ Президента Республики Узбекистан от 21.02.2017 г. № УП-4966 «О мерах по коренному совершенствованию структуры и повышению эффективности деятельности

changes made to the Constitution[10], the Law of the "On Courts," the Civil Procedure and Economic Procedural Codes[11], served for the formation of administrative courts remarkably.

Besides, at the beginning of 2018, the Law "On Administrative Procedures" (hereafter 'LAP'[12]) and the Code of Administrative Litigation (hereafter 'CAL'[13]) were adopted[14] which is assured to meet international standards[15]. Both LAP and CAL is a new concept for post-soviet Uzbekistan as it incorporated the new principles such as proportionality (Article 7 of LAP), the opportunity to be heard (Article 9 of LAP), protection of the trust (Article 16 of LAP). Simultaneously, it is also challenging to introduce an administrative act (Article 52-61 of LAP) as a new central concept of administrative-legal regulation.

LAP was designed by the Ministry of Justice of Uzbekistan in cooperation with groups of German and Japanese experts. However, CAL was written by the Supreme Court that kept

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судебной системы Республики Узбекистан» (Национальная база данных законодательства, 29.09.2017 г., № 06/17/5195/0033). [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"].

[10] Закон Республики Узбекистан от 06.04.2017 г. № ЗРУ-426 «О внесении изменений и дополнения в Конституцию Республики Узбекистан» (Собрание законодательства Республики Узбекистан, 2017 г., № 14, ст. 213). [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"].

[11] Закон Республики Узбекистан от 12.04.2017 г. № ЗРУ-428 «О внесении изменений и дополнений в Закон Республики Узбекистан «О судах», Гражданский процессуальный и Хозяйственный процессуальный кодексы Республики Узбекистан» (Национальная база данных законодательства, 30.01.2018 г., № 03/18/463/0634) [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"].

[12] Закон Республики Узбекистан от 08.01.2018 г. № ЗРУ-457 «Об административных процедурах», Дата вступления в силу 10.01.2019(Национальная база данных законодательства, 09.01.2018 г., № 03/18/457/0525). [Law of the Republic of Uzbekistan dated 08.01.2018 No. ZRU-457 "On Administrative Procedures", enter into force from 10.01.2019].

[13] Закон Республики Узбекистан от 25.01.2018 г. № ЗРУ-462 «Об утверждении Кодекса Республики Узбекистан об административном судопроизводстве», Дата вступления в силу 01.04.2018 (Национальная база данных законодательства, 26.01.2018 г., № 03/18/462/0626). [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].

[14] Of course, it is too early to say that the Uzbekistan's LAP is one of the foremost, since the analysis of this law shows that the LAP can be attributed to the first generation of laws on administrative procedures. See for generation of laws on administrative procedures.: (cf. Javier Barnes. Towards a third generation of administrative procedure. \\ Susan Rose-Ackerman, Peter L.Lindseth. Comparative administrative law: an introduction.// Comparative Administrative Law. Susan Rose-Ackerman, Peter L.Lindseth. Edward Elgar. 2010. P. 342-343).

[15] Йорг Пуделька. Право административных процедур и административно-процессуальное право в государствах Центральной Азии – краткий обзор современного состояния. Ежегодник публичного права 2015: Административный процесс. – М.: Инфотропик Медиа, 2015, стр. 63. [Jörg Pudelka. The law of administrative procedures and administrative procedure law in the states of Central Asia - a brief overview of the current state. // Public Law Yearbook 2015: Administrative Process. - M .: Infotropik Media, 2015. P. 63.] [In Russian]

the main approach of traditional administrative justice for post-soviet Uzbekistan.
Drafting of these two laws by different groups of scholars could be a reason why these two laws are not in harmony. For instance, CAL lacks types of litigation linked with administrative act and court decision, the execution of court decision also remained mainly unchanged with 1995 Law on Appeal. In that sence Uzbekistan's Soviet type administrative justice system did not change in substance in new CAL but only had separate regulation from CPC. Of course, there are certain changes in CAL, such as the introduction of a new type of litigation on ministries rulemaking (Articles 178-183 of CAL) and burden of proof settled mainly on administrative bodies (Article 67 of CAL). However, it is difficult to see a remarkable shift towards western administrative law which is supposed to be found in LAP. It continues to maintain the traditional administrative justice in the example of CAL.

These conflicts cause reluctance and hindrance in accepting western type LAP regarding both legislation and practice which will be discussed in detail in Part IV. Legislation almost had not changed after the adopting the LAP, which is supposed to have certain amendments to the relevant laws according to Article 87 of LAP. It is because LAP was designed by a few number of experts from German Corporation for International Cooperation (GIZ), while collaborating with many national scholars, experts and even staff of state bodies. Problem is that those experts assisted in drafting LAP without proper understanding of legal context of Soviet administrative law and its transformation during post-Soviet era.

The similar failure in legal reforms can be seen in the implementation of laws on administrative procedure in Tajikistan (2007) and in Kirgizstan (2004).[16] The laws on

[16] Йорг Пуделька. Право административных процедур и административно-процессуальное право в государствах Центральной Азии – краткий обзор современного состояния. Ежегодник публичного права 2015: Административный процесс. – М.: Инфотропик Медиа, 2015, стр. 42. [Jörg Pudelka. The law of administrative procedures and administrative procedure law in the states of Central Asia - a brief overview of the current state. // Public Law Yearbook 2015: Administrative Process. - M .: Infotropik Media, 2015. P. 42.] [In Russian];
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Боронбаева Д. Развитие административного судопроизводства в Кыргызской Республике // Ежегодник публичного права 2015: Административный процесс. – М.: Инфотропик Медиа, 2015. – С. 344[Boronbaeva D. Development of administrative proceedings in the Kyrgyz Republic // Public Law Yearbook 2015: Administrative process. - M.: Infotropic Media, 2015 .- P. 344.].
Аметистова О. В чем преимущество современного законодательного регулирования административного акта для государственного управления? Точка зрения немецкого юриста на примере Кодекса об административных процедурах Республики Таджикистан // Ежегодник публичного права 2016: Административный акт. – М.: Инфотропик Медиа, 2015. – С. 492–500[Ametistova O. What is the advantage of modern legislative regulation of an administrative act for public administration? The point of view of a German lawyer on the example

administrative procedure are adopted by national Parliaments of both countries, but not accepted by the administration. Therefore, they are not functioning well in judicial practice. Such a miserable outcome might leads us to conclude that simply duplicating and adopting the same content of western laws doomed to failure. This can cause more complexity and inconsistency of internal legislation, which may lead to more nihilism, negligence of the rule of law, and legal instability.

The disfunction of LAP in practice finally complled Uzbek government to take some steps. Presidential Decree on May 19, 2020[17] mentioned to establish new Department on Administrative procedures monitoring under the Ministry of Justice and restart make relevant amendments to laws and even to the LAP itself. This makes true our previous statement that 2018 LAP was not the product of Uzbek experts and rather was good example of simply duplicating of western laws doomed to failure.

But, it is yet to say that traditional administrative law in post-Soviet Uzbekistan is to remain unchanged. Adoption of LAP and CAL has greater potential to start a legal discussion among scholars and promote legal education on administrative law. For instance, based on this discussion Supreme Court started demanding that administrative courts should implement CAL rather than Civil code in administrative litigation, in the example of a limitation on the period of appeal to court.[18]

ADMISSIBILITY OF AN APPLICATION (COMPLAINT) IN THE ADMINISTRATIVE LITIGATION

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of the Code of Administrative Procedures of the Republic of Tajikistan // Public Law Yearbook 2016: Administrative Act. - M.: Infotropic Media, 2015. - P. 492–500].

Хван Л.Б. Правовые новации в административном правосудии стран Европейского Союза: возможности применения в странах Центральной Азии // Ежегодник публичного права 2015: Административный процесс. – М.: Инфотропик Медиа, 2015. – С. 97[Khvan L.B. Legal innovations in administrative justice of the countries of the European Union: possibilities of application in the countries of Central Asia // Public Law Yearbook 2015: Administrative process. - M.: Infotropic Media, 2015 .- P. 97];

Пуделька Й., Деппе Й. Общее административное право в государствах Центральной Азии – краткий обзор современного состояния // Ежегодник публичного права – 2014: «Административное право: сравнительно-правовые подходы». – М.: Инфотропик Медиа, 2014. – С. 20[Pudelka J., Deppe J. General administrative law in Central Asian states - a brief overview of the current state // Public Law Yearbook - 2014: “Administrative law: comparative legal approaches”. - M .: Infotropic Media, 2014 .- P. 20].

[17] Указ Президента Республики Узбекистан от 19.05.2020 г. № УП-5997 «О О мерах по дальнейшему совершенствованию деятельности органов и учреждений юстиции в реализации государственной правовой политики» (Национальная база данных законодательства, 20.05.2020 г., № 06/20/5997/0634).[Decree of the President of the Republic of Uzbekistan dated 05.19.2020 No. UP-5997 “On Measures for Further Improving the Activities of Justice Bodies and Institutions in the Implementation of State Legal Policy” (National Database of Legislation, 05.20.2020, No. 06/20/5997/0634).]

[18] Постановление Пленума Верховного суда Республики Узбекистан от 24 июля 2019 года № 24 «О судебной практике по рассмотрению дел об обжаловании решений, действий (бездействия) административных органов и их должностных лиц»[Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated July 24, 2019 No. 24 “On judicial practice for the consideration of cases on appeal of decisions, actions (inaction) of administrative bodies and their officials”].

Without exaggeration it can be said that for the first time in the history of the Republic of Uzbekistan, administrative courts were introduced separately from civil, criminal and economic courts from June 1, 2017, the adoption of the Law of the Republic of Uzbekistan "On Administrative Procedures" (hereinafter LAP) on January 8, 2018, as well as the adoption on January 25, 2018 of the Code of Administrative Proceedings (hereinafter referred to as the Code of Administrative Procedure), marked the beginning of a new era in the field of administrative law in the country. Since these fundamental laws gave a new impetus to the development of administrative law in the Republic of Uzbekistan.

Statistics of considered cases of administrative courts show that in 2020, out of 9,530 cases, 368 cases were terminated, 572 cases were left without consideration, in 2021, out of 9,236 cases, 536 cases were terminated, 369 cases were left without consideration, in 2022, out of 9,215 cases, 656 cases were terminated, 398 cases were left without consideration[19].

In judicial practice and legislation of Uzbekistan, the concept of admissibility of administrative claims is not used. But based on the experience of Germany and a number of other countries, one can learn that in administrative litigation proceedings the concepts of admissibility and validity of administrative claims are distinguished. These concepts are used so that in administrative litigation proceedings the court has the opportunity to cut off those claims that, according to formal requirements, cannot be considered on the merits. This allows courts not to waste time and resources on considering cases that cannot be considered according to formal requirements.

Also, presenting requirements for the conditions of admissibility of a claim in administrative litigation proceedings prevents the filing of unnecessary claims, thereby enabling the courts to consider only those disputes that have legal significance. Complaints are reduced, the workload of the courts also becomes moderate, which makes it possible to concentrate on truly problematic cases from a legal point of view. Therefore, the admissibility of a claim in administrative litigation proceedings is a very important mechanism for cutting off unnecessary claims and considering truly problematic disputes.

On the other hand, if the courts are freed from unnecessary claims, then the courts have a greater opportunity to qualitatively consider the cases pending in administrative proceedings.

Every legal system has conditions for the admissibility of claims. Martin Kaiser emphasizes "that based on the internationalization of administrative-judicial protection, 6 fundamental prerequisites for the admissibility of a claim can be distinguished, existing in almost any procedural code: the subject of the claim, the exhaustion of the instance order (subsidiarity), procedural legal capacity and procedural capacity, the right to bring a claim, admissible grounds for filing a claim, deadlines"[20].

The procedural legislation of the Republic of Uzbekistan and the theory of administrative law do not provide for the question of the conditions for the admissibility of a

19 https://stat.sud.uz/file/2023/03.05/%D1%81%D0%B0%D0%B9%D1%82%20%D0%BC%D0%B0%D1%8A%D0%BC%D1%83%D1%80%D0%B8%D0%B9%202023%20%D0%B9%D0%B8%D0%BB%203%20%D0%BE%D0%B9%D0%B8.pdf

20 Мартин Кайзер. Предпосылки права на предъявление иска. Допустимость исков к органам исполнительной власти. // Ежегодник публичного права 2015: Административный процесс. – М.:Инфотропик Медиа, 2015. Стр. 227.

claim. The issue of admissibility of a claim is mainly focused on the form and timing of filing an application (complaint) in administrative litigation proceedings.

This article will cover issues regarding the exhaustion of the institutional order (subsidiarity), the permissible time limits for filing an application (complaint) in administrative litigation proceedings.

Subsidiarity

Subsidiarity means that the interested party must exhaust all mandatory pre-trial procedures for appealing and filing a claim.

Martin Kaiser emphasizes that this principle of subsidiarity is based on the idea of the so-called ultima ratio [21]. That is, if it is possible to resolve an administrative dispute pre-trial, then there is no need to burden the courts with such cases. This will make it possible to save resources not only of the courts, but also of administrative bodies, and the interested person can also save their resources. Of course, it must be taken into account that the pre-trial procedure also had its own procedural regulation and legislative reinforcement, to the extent possible, qualified and impartial consideration.

The current version of the Law of the Republic of Uzbekistan "On Administrative Procedures" does not provide for mandatory pre-trial procedures for appealing administrative acts, actions (inactions). But there are provisions in the draft new edition of the Law of the Republic of Uzbekistan "On Administrative Procedures" regarding the mandatory pre-trial procedure for appealing administrative acts, actions (inactions).

Also, there are examples in the legislation of the Republic of Uzbekistan when mandatory pre-trial procedures for appealing administrative acts, actions (inactions) are provided. An example from tax legislation will be given below.

In particular, Article 231 of the Tax Code of the Republic of Uzbekistan establishes that appeals against decisions of tax authorities are carried out in accordance with tax legislation. In particular, Article 232 of the Tax Code of the Republic of Uzbekistan establishes that appeals against decisions of tax authorities made based on the results of on-site tax audits and tax audits are carried out primarily in an administrative manner, and not in a judicial proceeding.

In addition, Article 24 of the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin of Goods" establishes that a certificate for a trademark or a certificate of the right to use an appellation of origin of goods is invalidated in whole or in part based on a decision of the Appeal Council or the court .

Also, there is a Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On approval of the regulation on the Appeal Council of the Ministry of Justice of the Republic of Uzbekistan" dated October 9, 2019 No. 856 and in Appendix No. 1 of this act the Regulation on the Appeal Council of the Ministry of Justice of the Republic of Uzbekistan is approved. In accordance with paragraph 2 of this provision, the Appeal Commission of the Ministry of Justice is a collegial pre-trial appeal body.

Case 1. The applicant, Individual Entrepreneur LLC "A tech," filed a statement in court, in which he asked to invalidate the decision of the Intellectual Property Agency under

[21] Мартин Кайзер. Предпосылки права на предъявление иска. Допустимость исков к органам исполнительной власти. // Ежегодник публичного права 2015: Административный процесс. – М.:Инфотропик Медиа, 2015. Стр. 240

the Ministry of the Republic of Uzbekistan dated January 7, 2020 on the registration of trademarks.

By the decision of Mirzo Ulugbek Administrative Court of the city of Tashkent dated October 6, 2020, the application of Individual Entrepreneur LLC "A Tech" to invalidate the decision to register the trademarks "A-market" and "A" in the name of the individual Abdusalomov Abdulzokhid Abdulvokhidovich in relation to all goods 9, 16, 35, 36, 38, 39, 41, 42 classes of the ICGS on the territory of the Republic of Uzbekistan and apply the consequences of invalidation of certificates for the trademarks "A-market" and "A" under the number MGU 37404 and MGU 37405 dated February 11, 2020 – satisfied.

As can be seen from the materials of the administrative case, on the basis of the decisions "On registration of a trademark (service mark)" dated January 7, 2020 No. MGU 37404 and MGU 37405, the trademarks "A-market" and "A" were registered by the Intellectual Property Agency at The Ministry of Justice of the Republic of Uzbekistan on the territory of the Republic of Uzbekistan in the name of A. A. A. and issued certificates dated February 11, 2020 for No. MGU 37404 and MGU 37405 in relation to goods of classes 9, 16, 35, 36, 38, 39, 41, 42 ICTU.

Further, according to the agreements on the transfer of rights to trademarks dated August 28, 2020, A.A.A. assigned to R Group LLC its exclusive rights to trademarks under certificates MGU 37404 and MGU 37405 ("A-market" and "A"), which were registered on September 8, 2020 with the Intellectual Property Agency under the Ministry of Justice of the Republic of Uzbekistan.

Disagreeing with this, Individual Entrepreneur LLC "A Tech" filed a statement in court, in which it asked to invalidate the decisions of the Agency for Intellectual Property under the Ministry of Justice of the Republic of Uzbekistan on the registration of the trademarks "A-market" and "A" under certificates No. MGU 37404 and MGU 37405, and apply the consequences in the form of invalidation of certificates No. MGU 37404 and MGU 37405 for the trademarks "A-market" and "A".

The court of first instance prematurely and erroneously came to the conclusion that the stated requirements of IP LLC "A Tech" were satisfied, the decisions of the Agency for Intellectual Property under the Ministry of Justice of the Republic of Uzbekistan were recognized on the registration of the trademarks "A-market" and "A" under certificates No. MGU 37404 and MGU 37405, and certificates No. MGU 37404 and MGU 37405 for the trademarks "A-market" and "A" are invalid, which the judicial panel does not agree with for the following reasons.

Paragraph 2 of the Regulations "On the Appeal Board of the Intellectual Property Agency of the Republic of Uzbekistan," approved by Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated July 1, 2003 No. 298, provides that the Appeal Board carries out pre-trial consideration of appeals in the field of intellectual property.

Similar rules can also be seen in paragraph 46 of the Regulations "On the Ministry of Justice of the Republic of Uzbekistan, approved by the Resolution of the President of the Republic of Uzbekistan "On organizational measures to further improve the activities of the Ministry of Justice of the Republic of Uzbekistan" dated April 13, 2018 No. PP-3666.

As established by the judicial panel, IP LLC "A Tech" applied to the court to recognize the decisions of the Agency for Intellectual Property under the Ministry of Justice of the Republic of Uzbekistan on the registration of the trademarks "A-market" and "A" under

certificates No. MGU 37404 and MGU 37405, and certificates No. MGU 37404 and MGU 37405 for the trademarks "A-market" and "A" are invalid. At the same time, the applicant, without contacting the Appeal Council, directly appealed to the administrative court.

Also, Part 4 of Article 24 of the Law of the Republic of Uzbekistan "On Trademarks, Service Marks and Appellations of Origin of Goods" provides for the recognition of a trademark certificate as invalid in whole or in part based on a decision of the Appeal Council or the court.

It follows from this rule that both the Appeal Council and the court have the right to declare a trademark certificate invalid, which is their exclusive authority.

At the same time, Article 63 of the Law of the Republic of Uzbekistan "On Administrative Procedures" provides for the procedure for considering an administrative complaint.

Based on the established circumstances and the norms of the current legislation, it is seen that the applicant, Individual Entrepreneur LLC "A Tech," violated the pre-trial appeal procedure established by law.

Based on the foregoing, the judicial panel comes to the conclusion that the applicant must apply to the Appeal Council for pre-trial consideration of appeals related to the legal protection of intellectual property, and in case of disagreement with the decision made by the Appeal Council to the administrative court.

Article 108 of the Code of Administrative Offenses of the Republic of Uzbekistan, the court terminates the proceedings if the case is not within the jurisdiction of the administrative court.

Under such circumstances, the judicial panel considers it necessary to cancel the decision of the court of first instance and terminate the proceedings at the request of Individual Entrepreneur LLC "A Tech", explain to the applicant the right to appeal to the Appeal Council under the Ministry of Justice of the Republic of Uzbekistan, and partially satisfy the appeals.

This example also illustrates that in cases of appealing a decision to the Intellectual Property Agency under the Ministry of the Republic of Uzbekistan, mandatory pre-trial appeal procedures are provided. In this case, the applicant did not comply with this procedure, which led to the termination of the proceedings.

Acceptable time limits for filing an application (complaint) in administrative proceedings

The claim cannot be admissible years after the adoption of the relevant administrative act, it follows from the need to ensure the stability of the law[22]. Also, it should be noted that the requirement regarding the form for filing an administrative claim is also an important prerequisite for admissibility.

Article 186 of the Code of Administrative Litigation establishes 6 months and 10 days for appealing to an administrative court.

There are also shorter deadlines (for example, in Article 102 of the Election Code of the Republic of Uzbekistan) for submitting an application (complaint) to the administrative court.

[22] Martin Kaiser. Prerequisites for the right to file a claim. Admissibility of claims against executive authorities. // Yearbook of public law 2015: Administrative process. – M.: Infotropik Media, 2015. Pp. 242.

The deadline for filing an application (complaint) with the administrative court is also not provided as a condition of admissibility in Uzbekistan.

In paragraph 18-19 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On judicial practice in considering cases of appealing decisions, actions (inaction) of administrative bodies and their officials" dated December 24, 2019 No. 24, it is stipulated that filing an application with missed deadlines, established by legislative acts is not a basis for its return. In such cases, the application must be accepted for processing and considered on its merits. Based on the result of consideration of the application on its merits, if the deadline for applying to the court is missed or the court refuses to restore the missed deadline, the application is subject to refusal.

It should be noted that the lack of procedural rules regarding the admissibility of an application (complaint) in the administrative proceedings of the Republic of Uzbekistan shows its shortcomings, which are clearly expressed in questions regarding the deadline for filing an application (complaint). In practice, this means that administrative courts in Uzbekistan, knowing in advance that the deadline for filing an application (complaint) has been missed, will have to fully consider the case on its merits. But at the same time, based on the results of consideration of the application (complaint), the court will be forced to refuse satisfaction if there are no good reasons for missing the deadline. This means that the court's resources will be wasted, since the case, even if it does not have valid reasons for missing a deadline, must be considered on its merits.

Of course, we believe that this approach is incorrect and needs to be improved taking into account the institution of admissibility of a claim in the administrative proceedings of developed countries, in particular Germany.

Case 2. Citizen Gizatulin V.G. appealed to the administrative court with a complaint against the actions of officials of the Cadastre Service of Residential Buildings and Structures of the City of Tashkent, in which he asked to declare state registration TS 0118543 dated August 17, 2015 invalid. By the decision of the Bektemir District Administrative Court of the city of Tashkent dated May 22, 2018, Gizatulin's complaint was rejected. , cooperative "D", located at the address: Tashkent city, Bektemir district, street Z, building 1, was registered on the basis of a decision of the khokim of the Bektemir region in 1988. Also, in the materials of the administrative case there are supporting documents that Shkolenko L.P. from 2002 to 2016, he applied to the judicial authorities in order to recognize his ownership of this object. However, this dispute was not resolved in court.

After which, in 2015, Shkolenko L.P. appealed to the cadastre authorities of the city of Tashkent with an application to register the disputed object on the right of ownership in his name. To his statement Shkolenko L.P. attached both the title documents, the protocols of the special commission of the Bektemir district of the city of Tashkent, and the decision of the khokim of the Bektemir district of the city of Tashkent on the allocation of land to the cooperative "D", the decision of the economic court of December 11, 1998 on declaring bankruptcy and the creation of a liquidation commission in relation to the cooperative "D" ", the decision of the economic court of May 20, 1999 on the liquidation of the cooperative "D" and the application of the founders of the cooperative to receive from Shkolenko L.P. an amount of 5,000 rubles towards their due share in the property of the cooperative.

On the basis of these documents, on August 17, 2015, the cadastral service of the city of Tashkent registered as personal property an object located at the address: Tashkent, Bektemir district, street Z, building 1, behind L.P. Shkolenko.

As established by the judicial panel, after the death of Shkolenko L.P. on April 15, 2016, on the basis of a certificate of inheritance according to the law dated March 5, 2017, registered in the register under No. 644, this property was re-registered in the name of his son Anatoly Leonidovich Shevchenko, who, on the basis of the purchase and sale agreement dated November 9, 2017 sold the disputed object to A.M. Usmanov.

During the trial, the court of first instance, on behalf of the defendant Shkolenko A.L. an application was submitted to apply the appeal period, which the court of first instance accepted with reason, since the applicant did not provide to the court any reliable evidence of valid reasons for missing the appeal period for going to court.

According to Part 1 of Article 186 of the Code of Administrative Offenses of the Republic of Uzbekistan, the deadlines for going to court have been established. Thus, the period for appealing the action of an administrative body begins from the day when the person learned or should have learned about the violation of his right.

In his addition No. 2 dated May 8, 2018 to the application to invalidate the state registration of the right to real estate, the applicant indicated that he became aware of a violation of his rights in September-October 2017. Thus, the three-month period for appealing the actions of the State Enterprise “Land Management and Real Estate Cadastre of the City of Tashkent” expired before the beginning of February 2018.

The applicant filed a complaint with the court on March 1, 2018, that is, one month later than the due date.

The judicial panel of the appellate instance agrees with the conclusion of the court of first instance that the court has not established any grounds for restoring this period, and therefore, the applicant’s request to recognize the actions of the cadastral authority as illegal is subject to refusal due to the expiration of the period for appealing the actions (decisions) of the administrative body .

The applicant’s arguments that citizen Shkolenko L.P. was not a member of the cooperative “D”, cannot be accepted by the court and do not correspond to reality, since according to the applicant himself, Gizatulin V.G. certificate from the department of the off-budget pension fund dated January 24, 2018 Shkolenko L.P. was hired by cooperative "D" on March 1, 1989.

As established by the court, the applicant in the complaint and at the court hearing repeatedly stated that he worked in the cooperative “D”. However, he cannot provide his work book, citing its absence, and cannot provide any genuine documents confirming the fact of his work in the specified cooperative.

According to Article 73 of the Code of Administrative Offenses of the Republic of Uzbekistan, the court evaluates evidence according to its internal conviction.

From the letter of the Extra-budgetary Pension Fund of the Yashnabad district of Tashkent dated May 1, 2018, it follows that, according to the documents of the pension case, Gizatulin V.G. works in the company LLC "L Service" from June 01, 1999 to the present and information about work in the cooperative "D" for the period 1988-1990. not detected.

That is, this document confirms the fact that the applicant did not officially work at cooperative “D”. Other evidence that could confirm that at the time of liquidation of the cooperative the applicant was its member, Gizatulin V.G. was not provided to the court.

In accordance with Article 185 of the Code of Administrative Offenses of the Republic of Uzbekistan, an interested person has the right to go to court if there is a violation of his rights or legitimate interests.

Taking into account the fact that the applicant did not provide evidence confirming the fact of his membership at the time of liquidation of the cooperative and, therefore, could not lay claim to the property of the cooperative remaining after liquidation, the SE "Land management and real estate cadastre of the city of Tashkent" state registration of property rights Shkolenko L.P. for a building located at the address: Tashkent, Bektemir district, street Z, building 1, could not violate the rights and legitimate interests of the applicant at the time of its implementation.

Based on the foregoing, the judicial panel agrees with the conclusions of the court of first instance regarding the refusal to satisfy the demands of the applicant V. Gizatulin for recognition of state registration TS 0118543 dated August 17, 2015 is invalid.

The arguments of the appeal that the court of first instance, having simultaneously refused to satisfy the complaint about recognizing the state registration TS 0118543 dated August 17, 2015 as invalid, terminated the proceedings with its determination in the same requirements due to their lack of jurisdiction to this court, the judicial panel did not discuss, since this The court's ruling has not yet been appealed.

The judicial panel of the appellate instance also agrees with the conclusion of the court of first instance to collect from Gizatulin a state fee in the amount of 172,240 soums in accordance with the requirements of Article 115 of the Code of the Republic of Uzbekistan on Administrative Proceedings.

In accordance with Article 219 of the Code of Administrative Offenses of the Republic of Uzbekistan, based on the results of consideration of the appeal (protest), the appellate court has the right to leave the decision unchanged.

Taking into account the stated circumstances, the judicial panel considers the decision of the court of first instance to be left unchanged and the appeal to be dismissed.

Based on the above example, you can also see that although the deadline for filing an application (complaint) has been missed, the administrative court considers this case in full, but still, as a result, a decision is still made to refuse to satisfy the application (complaint).

It should be noted that in our previous studies we made recommendations for improving legislation and practice regarding administrative procedures and administrative proceedings in Uzbekistan.

CONCLUSION

We hope that the introduction of procedural rules regarding the admissibility of statements (complaints) in administrative proceedings of the Republic of Uzbekistan will serve to cut off those claims that, according to formal requirements, cannot be considered on their merits. This allows courts not to waste time and resources on considering cases that cannot be considered according to formal requirements. Therefore, the admissibility of a claim in administrative proceedings is a very important mechanism for cutting off unnecessary claims and considering truly problematic disputes. The introduction of this mechanism will serve to

free administrative courts in the Republic of Uzbekistan from unnecessary claims, thereby giving the courts a greater opportunity to qualitatively consider the cases pending.