Some issues of perception, interpretation of administrative law and legal education in modern Uzbekistan

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SOME ISSUES OF PERCEPTION, INTERPRETATION OF ADMINISTRATIVE LAW AND LEGAL EDUCATION IN MODERN UZBEKISTAN

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Annotation: this article reveals a brief historical development of administrative law in Uzbekistan. Also analyzed the implemented reforms in the field of administrative law. In particular, the introduction of a system of administrative courts, the adoption of the Law “On Administrative Procedures” and the Code of Administrative litigation. In addition, this article reveals the main directions of development of the theory of administrative law in Uzbekistan, which, until now, has mostly been limited to administrative offenses. The article presents the thesis that in developed foreign countries judicial practice and the development of the interpretation of laws in judicial practice play an important role in the development of the theory of administrative law. Based on this, recommendations are given on the development of the theory of administrative law in Uzbekistan. 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.

Keywords: historical development of administrative law in Uzbekistan, the main directions of development of the theory of administrative law in Uzbekistan, the development of the interpretation of laws in judicial practice, the training of legal personnel based on the case study method.

Annotation: мазкур мақолада Ўзбекистондаги маъмурий ҳуқуқнинг қисқача тарихий ривожланши очиб берилган. Шунингдек, маъмурий ҳуқуқ соҳасида амалга оширилган ислоҳотлар таҳсил қилинган. Хусусан, маъмурий судлар тизимининг жорий этилиши, “Маъмурий тартиб-тавоқиллар тўръисида” ва “Маъмурий ҳуқуқ буёқхонаси” ёқуб маъмурий судларининг юритиш тўргинлари кодекси кабул қилинган. Бундан таъсирлиқ, Ўзбекистонда асосан маъмурий ҳуқуқ бўномалларининг (ҳуқуқбузарлар) донарсига чечилган маъмурий ҳуқуқ назаривси ривожланшишни асосий йўналишлари очиб берилган. Мақолада ривожланган давлатлар маъмурий ҳуқуқ назаривси ривожланшишда суд амалиёти ва суд амалиётдорида қонунлари шарҳлаш катта ўрин қўйган. Бундан келиб, Ўзбекистонда маъмурий ҳуқуқ назаривсий ҳуқуқ қонунлари асосида ривожланшиш асосий йўналишлари очиб берилган. Хусусан, назаривсининг ривожланшиш маъмурий ҳуқуқ бўномалларининг (ҳуқуқбузарлар) донарсига чечилган. Бундан келиб, маъмурий ҳуқуқнинг ривожланшишнинг муҳимлигина таъкидланган. Хусусан, назаривси ривожланшишда инсон ҳувози қарор қилинган. Адистроф ҳуқуқ бўномалларининг (ҳуқуқбузарлар) донарсига чечилган. Бундан келиб, маъмурий ҳуқуқнинг ривожланшишнинг муҳимлиги, ижобий маъмурий ҳуқуқнинг қисмий йўналишлари ва моддий маъмурий ҳуқуқнинг ижобий йўналишлари очиб берилган.

Калит сўзлар: Ўзбекистонда маъмурий ҳуқуқнинг қисқача тарихий ривожланши, Ўзбекистонда маъмурий ҳуқуқнинг ривожланшишни асосий йўналишлари, суд амалиётдорида қонунлари шарҳлаш, моддий маъмурий ҳуқуқнинг ижобий йўналишлари, ижобий маъмурий ҳуқуқнинг қисмий йўналишлари.
Judicial review over administrative acts in Uzbekistan, Russia and other post-Soviet countries has its common history where it was mainly refused under Soviet regime until 1960s [1]. Later, there was a big change in 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 unlawful actions by officials that infringe the rights of citizens” played a significant role in introducing judicial review over administrative acts in Soviet law. However, after the collapse of the Soviet Union, legal thinking and practice of judicial review over administrative acts has not changed substantially in many post-Soviet countries, which is causing problems in the accomplishment of the right to access the courts, fair court procedure in court trials of administrative cases.

This article argues that the legal problems of judicial review over administrative acts are occurring mainly because of existing problems in legal education, perception and interpretation of law in modern Uzbekistan’s Administrative Law.

**Continuity, changes and problems in judicial review.** The Constitution and laws of the Republic of the Uzbekistan guarantee rights and freedom for citizens and private entrepreneurs in relation to the administration. For instance, the Constitution of Uzbekistan (December 8, 1992) in Article 44 guarantees to everyone the right to appeal to courts over administrative acts (right to access the courts) [2].

Decree of the President of the Republic of Uzbekistan dated February 7, 2017 “On the Strategy for Action on the Further Development of the Republic of Uzbekistan” marked the beginning of a new stage in the development of not only the judicial and legal system, but also administrative law [3]. In particular, one of the important directions of ensuring the rule of law and further reforming the judicial-legal system was determined to strengthen the true independence of the judiciary and guarantee reliable protection of the rights and freedom of citizens, improving administrative legislation.

On June 1, 2017, the Presidential Decree of the Republic of Uzbekistan proposed 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 [4].

The relevant changes were made to the Constitution of the Republic of Uzbekistan [5], the Law of the Republic of Uzbekistan “On Courts”, the Civil Procedure and Economic Procedural Codes of the Republic of Uzbekistan [6], providing for the formation of administrative courts.

In addition, at the beginning of 2018, the Law “On Administrative Procedures” (hereinafter referred to as LAP [7]) and the Code of Administrative Litigation of the Republic of Uzbekistan (hereafter referred to as CAL [8]) were adopted [9], which, without exaggeration, basically meet international standards [10].

The above reforms and changes in legislation created the basis for a major breakthrough of administrative law in the Republic of Uzbekistan. A lot of scientific discussions and proposals on the development of administrative law have not yet seen their practical implementation [11]. The reforms of legislation carried out in a short period have brought these long-awaited ideas to life.

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

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”[12]. The reason for that is that the judges are bound by statutes (for example, Article 15 CAL of Uzbekistan) and they must observe enacted laws [13]. 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” [14]. 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 [15]. 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 16]. 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 [17].

One more reason for textual positivism in Uzbekistan – and in some ways for Russia [18] too – 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 [19].

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 President of Uzbekistan is not surprising. These decrees aim to further improve the system of legal education and introduces new methods of analytical legal education as well as case study [20].

Moreover, some international donors, such as GIZ (Germany) and JICA (Japan) are active in legal assistance in the field of administrative law and are trying to help to develop some reforms in the sphere of administrative law in Uzbekistan [21]. Legal assistance is not only targeting the understanding of administrative litigation, but also administrative procedure and administrative law in general. Also, GIZ (Germany) and JICA (Japan) had given legal assistance in the sphere of administrative procedure [22]
which inspired the Ministry of Justice of Uzbekistan to draft a law “On Administrative procedure” which was successfully passed in parliament on January 8, 2018.

**Administrative law theory.** As the most important impediment, we have to mention about absence or less development of administrative justice legal theory as well as administrative law theory, in general. Administrative law is still one of the less researched fields in Uzbekistan’s legal scholarship [23]. Moreover, there are a few scholars and little research in the field of administrative law [24]. Unsurprisingly, Soviet administrative law theory still dominates in modern Uzbekistan. For example, Alimov and Solovyova [25] illustrate administrative law as the law regarding the *gosudarstvennoye upravleniye* – state management (government, ruling) [26]. However, if you pay closer attention, this is originally a Soviet-like thinking of administrative law [27]. Uzbekistan adopted its new Constitution in 1992, which massively varies from Soviet type Constitutions. The Constitution of Uzbekistan requires the introduction and development of a new concept of understanding regarding administrative law, which is first of all the task of scholars of administrative law. Modern administrative law should be based on the Constitution of Uzbekistan and its modern concepts such as rule of law, democracy, separation of powers and protection of citizens’ rights and freedom.

Notably, it should also be mentioned that a new concept on understanding of administrative law started to develop in a new textbook that was published recently by prominent Uzbek administrative law scholars such as Khammedov, Khvan, Tsay with the cooperation of GIZ (Germany) [28].

However, there are many scholars and practical lawyers either not familiar with or who do not accept the new concept [29]. For instance, some scholars still confuse administrative litigation with administrative offence cases, as it was in the case of Soviet administrative law [30]. In this regard, Khvan criticizes confusing administrative litigation with administrative offence cases even in legislative acts and decisions emanating from the Supreme Court [31].

Fortunately, some international donors, such as GIZ and JICA are still active in providing legal assistance in the field of administrative law and are trying to help to develop some reforms in the sphere of administrative law in Uzbekistan.

**Conclusion.** 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 [32].

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 initiated by the government gives hope for the future development of administrative law theory 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.

References:
2. “Everyone shall be entitled to legally defend his 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 see, http://gov.uz/en/constitution/#a1836 (accessed on 10.03.2014). In this article the term “administrative litigation” is used to indicate judicial review over administrative acts guaranteed by article 44 of Uzbekistan’s Constitution.


18. For example, see for case study in Russian law faculties in: Административное право: практикум/ под ред. Ю.Н.Старшова; Избранные труды. – М.: Инфотропик Медиа, 2011 г. c.

Also see, A. Н. Вереницкий, А.Г. Карацион, Ю.В. Тай. Пути совершенствования правотворческой деятельности Высшего Арбитражного Суда РФ. Вестник ВАС РФ. 6 (247) июнь 2013 г. – С. 42-43.


26. However, there is a new textbook on administrative law that explains administrative law differently. The new textbook states that the essence of the administrative law consists in establishment and maintenance of a public order in various fields and spheres of public management which is the same as Soviet administrative law. However, it also states that the essence of the administrative law consists also in providing proper protection of the rights and legitimate interests of individuals (См.: Хамедов И.А., Хван Л.Б., Цай И.М. Административное право Республики Узбекистан. Общая часть: Учебник. — Ташкент: KONSAUDITINFORM-NASHR, 2012 г. — С. 24).

Also, Khvan points that the main target of administrative law is the realization of public power in manner of protection of citizens from its abuse (См.:Л.Б.Хван. Судебный административный контроль в Республике Узбекистан: проблемы понимания и перспективность в ее правовой системе. Административное судопроизводство – Сер.: Юбилей, конференции, форумы. – Вып.7. – Воронеж: Издательство Воронежского государственного университета, 2013. – С. 951).

27. “It is possible to characterize the Soviet administrative law, in the most general view, as an field of the law that the regulations (norms) of which govern the public relations establishing during the organization and implementation of the Soviet state management – one of the main types of the state activities.” Гл.1 – Лазарев Б.М «Советское административное право. Учебник / Под ред. П.Т.Васильченко. — М.: Юрия лит., 1990. — С.3.


