



## LEGAL ANALYSIS OF MODERN ADMINISTRATIVE PROCEEDINGS

### (ON THE EXAMPLE OF UZBEKISTAN)

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#### ABSTRACT

*This article analyzes the legal foundations of the organization and functioning of administrative courts operating in the Republic of Uzbekistan. In this article researcher gave scientific standpoints and comments to following legal documents: Decree of the President of the Republic of Uzbekistan "On measures for further reform of the judicial and legal system, strengthening guarantees of reliable protection of citizens' rights and freedoms" (No:PD-4850 dated 21.10.2016), Decree of the President of the Republic of Uzbekistan "On measures to radically improve the structure and increase the efficiency of the judicial system of the Republic of Uzbekistan" (No: PD-4966 dated 21.02.2017). Important aspects of the Decree of the President of the Republic of Uzbekistan "On additional measures to further expand access to justice and improve the efficiency of the courts", adopted on January 16, 2023, concerning administrative courts, were also highlighted. In addition, it is justified how to distinguish the activities of an administrative court from the activities of another court (an administrative court considering cases of administrative offenses).*

#### Introduction.

The judiciary plays a special role in ensuring human rights and freedoms enshrined in the Constitution, promoting the strengthening of law and order in society, as well as ensuring peace and national accord among citizens, improving the legal culture of citizens, as well as improving the effectiveness and improvement of the application of legislation in practice. Therefore, increasing the authority of judicial bodies in society, ensuring the true independence of judges and their activities solely on the basis of laws is one of the most important conditions for building a democratic state based on the rule of law and a strong civil society in our country.

According to professor **M.M.Mamasiddikov** The establishment of administrative courts in Uzbekistan also ensures the implementation of the constitutional norm provided for in part



one of Article 110 of the Constitution of the Republic of Uzbekistan<sup>1</sup>: “The Supreme Court of the Republic of Uzbekistan is the highest judicial authority in the field of civil, criminal, economic and administrative proceedings”.<sup>2</sup> And also professor J.N.Nematov considers that, the demand to reformation of administrative court in Uzbekistan was being formed by the time of soviet-union.<sup>3</sup>

Obviously, specialized courts are one of the most important factors in improving the efficiency of justice, and high-quality consideration and resolution of court cases simultaneously. In turn, the need to create administrative courts in our country is also determined by the following factors:

- criminal law is becoming more and more liberalized, and fines imposed for certain violations are gradually moving from criminal jurisdiction to administrative jurisdiction;
- the predominance of cases of administrative offenses over civil, economic and criminal cases considered in courts;
- the need to create an effective system of judicial protection of the rights and legitimate interests of citizens related to public administration;
- strengthening the rule of law in the activities of public administration bodies and their officials, improving judicial control in this area.

Further and even more significantly, according to article 44 of the Constitution of the Republic of Uzbekistan<sup>4</sup>, “every person is guaranteed the right to judicial protection of their rights and freedoms, by appealing to the court against illegal actions of state bodies, officials, public associations”. In turn, the establishment of administrative courts serves to ensure the effective implementation of these rights enshrined in the basic Constitution.

The official activity carried out by the court to resolve public legal disputes between administrative bodies and private individuals (individuals and legal entities) is considered to be the administrative litigations.

### **Legal analysis.**

**The analysis of presidential decree PD-4850<sup>5</sup>.** With the adoption of the decree of the president of the Republic of Uzbekistan “on measures to further reform the judicial system, strengthen guarantees of reliable protection of rights and freedoms of Citizens”(No. 21.10.2016 PD-4850), the process of formation of administrative courts as a separate court began in our Republic. This served as the first steps for the occurrence of administrative proceedings. In this decree, the Supreme Court of the Republic of Uzbekistan, the Supreme economic Court, the prosecutor general’s office and the Ministry of Justice proposed to establish administrative courts by revising the powers of civil, criminal courts and economic courts until July 1, 2017 on the basis of an in-depth study of advanced foreign experience.

<sup>1</sup> The Constitution of the Republic of Uzbekistan. Online available at: <https://lex.uz/docs/-20596#-39861>

<sup>2</sup> The Constitution of the Republic of Uzbekistan as a source of administrative litigations. (article in uzbek language). Available at: [https://constitution.uz/oz/pages/ma%E2%80%99muriy\\_sud\\_ishlari](https://constitution.uz/oz/pages/ma%E2%80%99muriy_sud_ishlari)

<sup>3</sup> Jurabek, N. RECENT REFORMS AND NEW ADMINISTRATIVE COURT SYSTEM IN UZBEKISTAN: CASE STUDY OF IMPLEMENTATION OF NEW LAWS. *TSUL LEGAL REPORT*, 43.

<sup>4</sup> The Constitution of the Republic of Uzbekistan. Online available at: <https://lex.uz/docs/-20596#-39861>

<sup>5</sup> The decree of the President of the Republic of Uzbekistan “On measures for further reform of the judicial and legal system, strengthening guarantees of reliable protection of citizens’ rights and freedoms”. Available at: <https://lex.uz/ru/docs/-3050491>



With this normative legal act, the development of a draft law “On administrative proceedings”, which regulates the implementation of judicial proceedings for the consideration of administrative cases and disputes arising from mass-legal relations, was defined as an assignment.

**The analysis of presidential Decree PD-4966<sup>6</sup>.** According to the decree of the president of the Republic of Uzbekistan “On measures to radically improve the structure of the judicial system of the Republic of Uzbekistan and improve the efficiency of its activities”(No. 21.02.2017 PD-4966), it was envisaged to ensure reliable judicial protection of the rights, freedoms, legitimate interests of citizens and business entities. It was also stated that, the need to increase the constitutional norm for the implementation of administrative judicial proceedings, in addition to it, the legal culture of the population, necessitates the organization of the system of administrative courts. In accordance with this decree, the proposals, providing for the following changes from June 1, 2017 were prepared by Supreme Court, the Supreme Economic Court and the Ministries of Defense of the Republic of Uzbekistan was approved:

- Unification of the Supreme Court of the Republic of Uzbekistan and the Supreme economic Court, establishment of the Supreme Court of the Republic of Uzbekistan-the only supreme body of judicial power in the field of civil, criminal, administrative and economic judicial proceedings;
- Organization of Administrative Courts of the Republic of Karakalpakstan, regions and Tashkent City, Administrative Courts of the district (city), authorized to consider administrative disputes arising from mass-legal relations, as well as cases of administrative offenses;
- The Organization of the judicial board on administrative cases of the Supreme Court of the Republic of Uzbekistan was approved by the end of the military Board of the Supreme Court of the Republic of Uzbekistan.

So, with this decree (PF-4966) :

The Supreme Court of the Republic of Uzbekistan and the Supreme economic Court of the Republic of Uzbekistan in the field of civil, criminal, administrative and economic judicial proceedings are united into a single supreme body of judicial power — the Supreme Court of the Republic of Uzbekistan;

a new judicial system has been formed, authorized to consider disputes arising from mass-legal relations, as well as cases of administrative offenses;

for the first time, the judicial panel on administrative cases of the Supreme Court of the Republic of Uzbekistan, Administrative Courts of the Republic of Karakalpakstan, regional and Tashkent City Administrative Courts, District (City) Administrative Courts were established, which serve to ensure the implementation of constitutional guarantees of citizens’ right to appeal to the court over illegal actions (inaction) of state bodies and their officials;

consideration of complaints about the actions (inaction) of state bodies and their officials is carried out by civil courts and economic courts in accordance with the codes of civil

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<sup>6</sup> The decree of the President of the Republic of Uzbekistan “On measures to radically improve the structure of the judicial system of the Republic of Uzbekistan and improve the efficiency of its activities”. Available at: <https://lex.uz/docs/3121087>



and economic procedure, and cases of administrative offenses are terminated by criminal courts in accordance with the Code of administrative responsibility, and this category of cases is considered by the newly created administrative courts;

the development of draft laws “On administrative proceedings” and “On administrative procedures” aimed at establishing the procedure for the consideration of administrative cases, strengthening legality in the activities of state bodies, introducing modern procedures for the implementation of the rights and legitimate interests of individuals and legal entities.

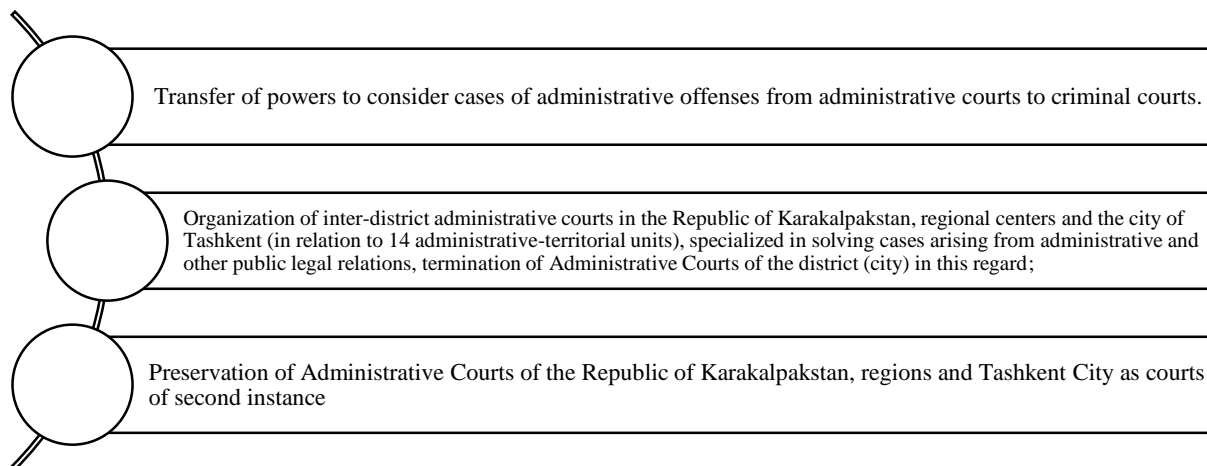
### **The code of The Republic Of Uzbekistan On administrative proceedings<sup>7</sup>.**

With the adoption of the code of administrative proceedings, the procedural legal basis of the administrative judicial proceeding was created. It was established that the code is applied to the procedure for the implementation of administrative proceedings in the consideration and resolution of administrative cases on the protection of violated or disputed rights, freedoms and legitimate interests of citizens and legal entities.

With the adoption of the decree of the president of the Republic of Uzbekistan “on additional measures to further improve the activities of the courts and improve the effectiveness of Justice” (No. 24.07.2020 PD-6034)<sup>8</sup>, changes were made in the activities of the administrative courts. By this decree, it was established that the Supreme Court of the Republic of Uzbekistan, together with the Supreme Council of judges and the judicial community, has developed and implemented a draft law on the basis of legislative initiative, which provides for the implementation of the following organizational and structural changes in the judicial system from January 1, 2021:

### **Graph 1**

#### ***The changes provided by PD-6034***



From the date of January 1, 2021, the above changes were introduced into practice.

<sup>7</sup> The code of The Republic Of Uzbekistan On administrative proceedings. Available at: <https://lex.uz/docs/5695786>

<sup>8</sup> The decree of the president of the Republic of Uzbekistan “On additional measures to further improve the activities of the courts and improve the effectiveness of Justice”. Available at: <https://lex.uz/uz/docs/-4910826>



**The analysis of presidential decree numbered PD-11<sup>9</sup>.** In accordance with the Decree of the President of the Republic of Uzbekistan "On additional measures to further expand access to justice and improve the efficiency of the courts", adopted on January 16, 2023, a number of changes are envisaged in the activities of administrative courts. In particular, based on a critical analysis of law enforcement practice and taking into account advanced foreign experience, the following measures have been taken to improve administrative proceedings:

- + Development of the concept of improving administrative proceedings.
- + improvement of the rules concerning judicial affiliation by correspondence of all disputes between citizens and entrepreneurs with administrative bodies;
- + critically examine the principles of administrative proceedings, introduce principles reflecting the content of public-law relations;
- + a clear definition of the types of claims brought against administrative bodies by including the institution of claims in administrative proceedings;
- + critically examine the system of protecting the trust of citizens and entrepreneurs in the administrative document and clarify the procedure for recovering the damage caused;
- + introduction of the mechanism of extraterritorial judicial affiliation into the activities of administrative courts at the discretion of the applicant.

It also establishes the review of cases considered on appeal or cassation by regional and equivalent courts, in the order of their consideration in these courts. It was also determined that the procedure for reviewing cases reviewed by regional and equivalent courts in the order of audit in the judicial collegiums of the Supreme Court should be put into practice. Prior to this, cases at this stage were considered in the order of repeated cassation.

### **General aspects of administrative proceedings.**

A specific branch of law is formed to achieve a specific goal, a task in the system of relations that it regulates. In fact, the purpose of law is to regulate public relations in society. Based on this, administrative courts also strive to perform a number of tasks in the process of administration of justice. In particular, article 2 of the Ictc defines the tasks of administrative proceedings:

- **ensuring the rule of law and the rights and interests of private individuals.** The question of how this is done can be answered directly guided by the powers of the court, as well as the fact that the interests of individuals and the norms of the rule of law are of paramount importance in the activities of justice carried out by the court.
- **protection of violated or disputed rights, freedoms and legitimate interests of conflicting persons.** The court, as the competent body administering justice, resolves the dispute using all the possibilities available to it, as well as using all means and methods permitted by law. At the same time, it is necessary to take into account the priority of the interests of individuals and legal entities whose rights have been violated.
- **strengthening the rule of law and promoting the prevention of offenses in the field of administrative and other public legal relations.** It is noteworthy that in all cases

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<sup>9</sup> The decree of the President of the Republic of Uzbekistan "On additional measures to further expand the possibilities of achieving justice and increase the effectiveness of the activities of the courts". Available at: <https://lex.uz/uz/docs/-6358976>



considered by administrative courts, administrative bodies- State bodies - act as direct defendants. And the applicants are individuals and legal entities. Thus, on the one hand, the rights of a citizen (and a legal entity) are considered violated by any state body (administrative body). Administrative courts, by eliminating these offenses, fulfill their task of strengthening the rule of law and preventing offenses.

- **formation of a respectful attitude to the law and the court.** This task also provides for the role of administrative courts in improving the legal culture in society. No wonder this task is put on deadline. Therefore, if the rights of citizens (legal entities) are not ensured, justice will not be provided by preventing offenses in society, individuals and legal entities will not have respect for the laws and the court. Therefore, first of all it is desirable to perform the above tasks.

### **Distinctive features of administrative courts with the same name<sup>10</sup>.**

During the review of the main tasks of administrative courts, we saw that the main legislative act regulating the activities of administrative courts is the Code of the Republic of Uzbekistan on Administrative Proceedings. It should be borne in mind that, according to this Code, administrative courts specialize in resolving disputes arising as a result of public law relations. We also mentioned this in the previous paragraph. In accordance with article 3 of the Code of Administrative Offences, the Code of Administrative Offences does not apply to proceedings in cases of administrative offences. However, it should be borne in mind that at present both the court considering public law disputes and the courts considering cases of administrative offenses are called "administrative courts". To clarify the situation and not to be distracted in the future, let's list the differences between both courts:

### **Graph 2**

#### **Comparative analysis of Administrative courts**

<b>Administrative courts</b> <i>(administrative courts viewing public legal disputes)</i>	<b>Administrative courts</b> <i>(courts dealing with cases of administrative offenses)</i>
<ol style="list-style-type: none"><li>1. It is regulated by the Code of Administrative Court Proceedings.</li><li>2. After considering the dispute between the parties, the court will issue a decision.</li><li>3. The applicant and the respondent participate in the administrative case as parties.</li><li>4. According to the results of the case review, the court issues a final document on invalidating the decision that violates the rights and legal interests of individuals, or declaring the behavior illegal.</li></ol>	<ol style="list-style-type: none"><li>1. It is regulated by the <b>Code of Administrative Responsibility</b>;</li><li>2. The offense committed by the offender between the offender and the victim or parties is reviewed and a court decision is issued;</li><li>3. The offender and the victim participate as parties;</li><li>4. Based on the result of the case review, the court issues a final document providing for the imposition of a certain administrative penalty on the offender.</li></ol>

<sup>10</sup> In accordance with the Code of Administrative Responsibility of the Republic of Uzbekistan, judicial review of offenses established by this Code is carried out by administrative courts operating as part of criminal courts. In accordance with the Code of the Republic of Uzbekistan on Administrative Proceedings, disputes arising as a result of public relations are considered by administrative courts.



5. The general age for rights and obligations in administrative courts is **18 years**.

5. According to the Code of Administrative Responsibility, the general age of administrative responsibility is **16 years**.

### Conclusion.

Thus, the establishment of administrative courts marked the beginning of a new stage in the resolution of public law disputes in the Republic of Uzbekistan. This, in turn, serves to establish justice and stabilize the rule of law by ensuring the violated rights and interests of individuals and legal entities whose rights have been violated. A number of legislative acts aimed at the development of the industry, on the one hand, will create a legal framework and streamline the activities of administrative courts, and on the other hand, will serve to further enhance Uzbekistan's position in international rankings for ensuring justice. At the same time, the goal has been achieved by rationally solving the problems of the population.

In addition, in general, the existence of two courts called the administrative court initially caused confusion among citizens, but as a result of the comparative analysis conducted in this article, each of them has ideas about differences.

### References:

1. The Constitution of the Republic of Uzbekistan. Online available at: <https://lex.uz/docs/-20596#-39861>
2. The Constitution of the Republic of Uzbekistan as a source of administrative litigations. (article in uzbek language). Available at: [https://constitution.uz/oz/pages/ma%E2%80%99muriy\\_sud\\_ishlari](https://constitution.uz/oz/pages/ma%E2%80%99muriy_sud_ishlari)
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