



## 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.

**Аннотация:** мазкур мақолада Ўзбекистонда маъмурий ҳуқуқнинг қисқача тарихий ривожланиши очиб берилган. Шунингдек, маъмурий ҳуқуқ соҳасида амалга оширилган ислоҳотлар таҳлил қилинган. Хусусан, маъмурий судлар тизимининг жорий этилиши, “Маъмурий тартиб-таомиллар тўғрисида”ги Қонун ва Маъмурий суд ишларини юритиш тўғрисидаги кодекснинг қабул қилиниши келтириб ўтилган. Бундан ташқари, Ўзбекистонда асосан маъмурий жавобгарлик (ҳуқуқбузарлик) доирасида чекланган маъмурий ҳуқуқ назарияси ривожланишининг асосий йўналишлари очиб берилган. Мақолада ривожланган давлатлар маъмурий ҳуқуқ назарияси ривожланишида суд амалиёти ва суд амалиётида қонунларни шарҳлаш катта ўринга эга эканлиги тўғрисидаги мушоҳада келтирилган. Шундан келиб чиқиб, Ўзбекистонда маъмурий ҳуқуқ назариясини ривожлантириши юзасидан таклиф-тавсиялар келтириб ўтилган. Хусусан, назария ва суд амалиёти ўртасидаги ўзаро алоқадорликни сақлаш борасида маъмурий ҳуқуқ соҳасидаги суд қарорларини мунтазам таҳлил қилиб бориш, маъмурий судлар қарорларини ўрганиш асосида кейс-стади усули ёрдамида юридик кадрларни тайёрлаш, моддий маъмурий ҳуқуқни ривожлантиришининг муҳимлиги, ижобий маъмурий ҳуқуқнинг янги йўналишларини ишлаб чиқиш зарурлиги таъкидланган.

**Калит сўзлар:** Ўзбекистонда маъмурий ҳуқуқнинг тарихий ривожланиши, Ўзбекистонда маъмурий ҳуқуқ назарияси ривожланишининг асосий йўналишлари, суд амалиётида қонунларни шарҳлаш, кейс-стади усули ёрдамида юридик кадрларни тайёрлаш.

**Аннотация:** в данной статье раскрывается краткое историческое развитие административного права в Узбекистане. Дан анализ некоторым реформам в сфере административного права. В частности, внедрение системы административных судов, принятие Закона «Об административных процедурах» и Кодекса об административном судопроизводстве. Кроме того, в данной статье раскрываются основные направления развития теории административного права в Узбекистане, которые, в основном, до сих пор ограничивались административными правонарушениями. В статье приводятся тезисы о том, что в

развитых зарубежных странах в развитии теории административного права большую роль играет судебная практика и развитие толкования законов в судебной практике. Исходя из этого, даны рекомендации по развитию теории административного права в Узбекистане. В частности, подчеркнута необходимость поддержания взаимосвязи теории и судебной практики путем постоянного анализа судебных решений в сфере административного права, важность подготовки юридических кадров по методике кейс-стади на основании изучения решений административных судов, важность развития материального административного права, разработки новых направлений позитивного административного права.

**Ключевые слова:** историческое развитие административного права в Узбекистане, основные направления развития теории административного права, развитие толкования законов в судебной практике, подготовка юридических кадров по методике кейс-стади.

**Introduction.** 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 practise 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 Khamedov, 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.

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21. In this regard GIZ (Germany) assisting to publishing some books introducing the new concept of administrative law. See, «Административная юстиция: к разработке научной концепции в Республике Узбекистан». Ташкент: Издательство «ABU MATBUOT-KONSALT», 2011.; См.: Хамедов И.А., Хван Л.Б., Цай И.М. Административное право Республики Узбекистан. Общая часть: Учебник. – Ташкент: KONSAUDITINFORM-NASHR, 2012 г.; См.: Сборник законодательных актов по административному судопроизводству: 3-е издание – М.: Инфотропик Медиа, 2018.; См.: Сборник законов об административных процедурах. 2-е издание. – М.: Инфотропик Медиа, 2016 г.

22. For the legal assistance of JICA (Japan) in the sphere of administrative law refer to: Қаранг: Тадбиркорлар учун маъмурий тартиб-қоидалар тўғрисида брошюра/ Ф.Хидоятлов, Х.Мелиев, Ш.Саидов ва бошқ. – Т.: «Sharq», 2011. 23-бет.; Тадбиркорлик соҳасида маъмурий тартиб-қоидалар бўйича қўлланма/ Ф.Хидоятлов [ва бошқ.] ЎЗР Адлия вазирлиги, Япония Халқаро Ҳамкорлик агентлиги (JICA). – Т.: «Sharq», 2011. – Б. 132.; See, *Administrative Law Reform in Uzbekistan Experiences and Problems from the Legal Viewpoint – Collection of Seminar Papers*. JICA, JSPS. Nagoya University, Tashkent State Institute of Law. 2008.

23. Хамедов И.А. Вопросы развития административного права и правосудия в Республике Узбекистан. // Административная юстиция: зарубежный опыт и перспективы реформирования в Республике Казахстан: Мат-лы II-й междунар. шк. (науч.-практ. семинара) административного права, Астана, 25 ноября 2011 г. – Астана: ГУ “Институт законодательства Республики Казахстан”, 2012. – С. 74. (Khamedov I.A. Issues of development of administrative law and justice in the Republic of Uzbekistan. // *Administrative justice: foreign experience and prospects for reform in the Republic of Kazakhstan: Materials of the 2-nd International. school (scientific practical seminar)*

of administrative law, Astana, November 25, 2011 - Astana: State Institution "Institute of Legislation of the Republic of Kazakhstan", 2012. – P. 74.)

24. 市橋克哉「ウズベキスタンにおける行政法改革」法政論集225号(2008年) 321頁以下。(Ichihashi Katsuya. Administrative law reform in Uzbekistan.//Nagoya University Journal of Law and politics № 225 (2018) – P. 321)

25. "The administrative law governs the public relations establishing in the course of the organization and implementation of public administration". See, Гл.1 Соловьева Л.И «Административное право Республики Узбекистан» /Авт.коллектив: Х.Р.Алимов, Л.И.Соловьева и др. – Т.: Адолат.1998. – С. 3.

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-процессуального законодательства. – 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.Василенкова. – М.: Юрид.лит., 1990. – С.3.

28. См.: Хамедов И.А., Хван Л.Б., Цай И.М. Административное право Республики Узбекистан. Общая часть: Учебник. – Ташкент: KONSAUDITINFORM-NASHR, 2012 г. (See: I. Khamedov, L. B. Khvan, I. M. Tsai Administrative law of the Republic of Uzbekistan. General part: Textbook. – Tashkent: KONSAUDITINFORM-NASHR, 2012)

29. Л.Б.Хван. Судебный административный контроль в Республике Узбекистан: проблемы понимания и перспективность в ее правовой системе. Административное судопроизводство-процессуального законодательства. – Сер.:Юбилей,конференции,форумы. – Вып.7. – Воронеж: Издательство Воронежского государственного университета, 2013. – С. 941. (See: L. B. Khvan. Judicial administrative control in the Republic of Uzbekistan: problems of understanding and prospects in its legal system.//Administrative court procedure law. -S.: Anniversaries, conferences, forums. - Issue 7. –Voronezh: Voronezh State University Publishing House, 2013. – P. 941).

30. As a result of such thinking, Isakov and Hakimov suggest introducing administrative judge (tribunal) within criminal courts that hears administrative offence cases. Х.М.Исаков. О гарантиях судебной защиты прав и свобод человека. – Ташкент: 2011. – С. 70-71; Гуломжон Ҳақимов. Ўзбекистонда маъмурий юстицияни ривожлантиришнинг муаммолари. Монография. – Т.:ГДЮИ наширишти, 2009. – Б. 99—100. См.: «Актуальные вопросы повышения эффективности административного судопроизводства»./Авт.коллектив: Исаков Х-М и др. – Т.: Адолат.2010. – С.15.

31. Л.Б.Хван. Административная юстиция в современной правовой системе Республики Узбекистан: постановка вопроса. «Административная юстиция: к разработке научной концепции в Республике Узбекистан». Ташкент: Издательство «ABU MATBUOT-KONSALT», 2011. – С.62-63. ( L.B.Khvan. Administrative justice in the modern legal system of the Republic of Uzbekistan: posing the question. // "Administrative justice: to the development of a scientific concept in the Republic of Uzbekistan". Tashkent: Publishing house "ABU MATBUOT-KONSALT", 2011. – P. 62-63.)

32. 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, Л.Б.Хван. Административная юстиция в современной правовой системе Республики Узбекистан: постановка вопроса. «Административная юстиция: к разработке научной концепции в Республике Узбекистан». – Ташкент: Издательство « ABU MATBUOT-KONSALT», 2011. – С.67. (See: L.B. Khvan. Administrative justice in the modern legal system of the Republic of Uzbekistan: posing the question. // "Administrative justice: to the development of a scientific concept in the Republic of Uzbekistan". – Tashkent: Publishing house "ABU MATBUOT-KONSALT", 2011. – P.67).