

Important Aspects of Improving the Law on Administrative Procedures

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Annotation: In the article, the concept of administrative procedures, the issues of improving the Law of the Republic of Uzbekistan "On Administrative Procedures" based on the experience of foreign countries, changing the concept of "administrative document" to "administrative act", existing legislation in changing, canceling or invalidating an administrative document problems and their solutions were revealed. The implementation of these suggestions will help to eliminate legal gaps in the legislation and to establish uniform legal mechanisms, to make fair administrative decisions, to prevent unnecessary spending of time and money by citizens, and to save state resources.

Key words: Administrative procedures, administrative document, administrative act, principles of administrative procedures, legality of administrative document, original administrative document, amendment of administrative document, annulment or annulment of administrative document.

Effective administrative reforms play an important role in the development of every country. In turn, in the Republic of Uzbekistan, the improvement of administrative procedures plays an important role in the development of state administration and economy.

The need and important aspects of improving the legislation "On Administrative Procedures", the legislation of national and foreign countries regulating relations related to the amendment, annulment or invalidation of an administrative document, relations in the field of administrative dispute resolution, administrative relations as a sign of the rule of law are effective mechanisms of resolution.

Article 2 of the updated Constitution of the Republic of Uzbekistan states that state bodies and officials are responsible to society and citizens, Article 20 states that the legal measures used by state bodies against people should be based on the principle of proportionality and be sufficient to achieve the goals stipulated by laws, Article 54 states that the state is a person and it is guaranteed to ensure the rights and freedoms of the citizen enshrined in the Constitution and laws¹.

In order to consistently continue these tasks and administrative reforms, further development of the administrative justice system, establishment of effective judicial control over the activities of state bodies and officials, and the establishment of effective judicial control over the activities of state bodies and officials with the Decree No. Tasks such as complete elimination of factors

¹See: The Constitution of the Republic of Uzbekistan, <https://lex.uz/docs/6451070>.

preventing direct appeal to the courts, improvement of the efficiency of dispute resolution at the pre-trial stage were also defined².

After all, every person enters into relations with various state bodies and organizations to one degree or another in his daily life. In this case, the organization is approached in person or electronically.

The Law of the Republic of Uzbekistan “On Administrative Procedures” was adopted in January 2018 in order to legally regulate these processes, prevent bureaucratic procedures, and free citizens from unnecessary distractions³.

Administrative procedures are procedural rules that regulate the administrative and legal activities of administrative bodies. The law serves to ensure the rule of law, the rights and legal interests of individuals and legal entities in relations with administrative bodies.

According to Julie Ponce, a professor at the University of Barcelona, “administrative processes should be recognized by the official as an important tool aimed at independently reviewing a specific administrative case and guaranteeing fair decisions”⁴.

According to M.Efremov, “administrative procedures represent the order of actions of the authorities regulated by normative legal documents in the process of state management, their purpose is to implement the material norms of administrative law”⁵.

Administrative legislation is a powerful regulator of public administration relations, which is constantly updated. Its main goal is to increase the efficiency of executive authorities, to ensure that the results of administrative decisions are understandable and transparent to the public⁶. The analysis of the law enforcement practice and the results of the study of the experiences of advanced foreign countries showed that a number of important mechanisms are not available in our legislation in the field of administrative procedures, there are some shortcomings in the reliable provision of legal protection of individuals and legal entities, which causes problematic situations in the application of the

Law. In order to eliminate these legal gaps, it is proposed to improve the Law “On Administrative Procedures” (hereinafter referred to as the Law) taking into account the following”.

First, the areas covered by the Act are not fully covered. This creates problems in the application of the Law.

For this reason, it is necessary to determine the application of the Law to tax, customs procedures, state control and inspection, pension provision of citizens and military registration and conscription, urban planning, allocation and confiscation of land plots. The reason is that these relations are also administrative relations.

In most foreign countries, these areas are included in administrative relations. In particular, according to the opinion of the Russian scientist A.A. Demin, the importance of following the established administrative procedures, including the administrative procedures used in the field of tax and customs law, serves to save state resources and use them as efficiently as possible⁷.

Second, principles are important in legislation regulating administrative relations. Failure to comply with it may even result in the annulment of the administrative decision.

²See: Ўзбекистон Республикаси Президентининг 11.09.2023 йилдаги “Ўзбекистон – 2030” стратегияси тўғрисида”ги ПФ-158-сон Фармон, <https://lex.uz/docs/6600413>.

³See: Law of the Republic of Uzbekistan on Administrative procedures, <https://lex.uz/docs/3492199>.

⁴Juli Ponce Solé. “Good Administration and administrative procedures”. Vol. 12. P. 2–3.

⁵М.О.Ефремов Административные процедуры как форма реализации компетенции органов публичной власти во взаимоотношениях с частными лицами: Дис. канд. юрид. наук. М., 2005. С. 15-16.

⁶П.П.Кабытов, О.Е.Стародубова Ученые обсуждают проект Кодекса Российской Федерации об административных правонарушениях // Журнал российского права. 2016. № 3. С. 167–173).

⁷ А.А.Демин «Административное право Российской Федерации»: Курс лекций: Учеб. пособие / А.А. Демин; Рос. ун-т дружбы народов. Юрид. фак. - М. : Зерцало-М, 2002. – 221 с.).

Therefore, it is appropriate to revise these principles from the point of view of creating convenience for individuals and legal entities and ensuring that their rights are protected.

Based on the experience of foreign countries, it is necessary to include the principles of "prohibition of arbitrariness", "prohibition of abuse of power", "refusal of the application of law" into the Law.

The principle of prohibition of abuse of rights prevents administrative bodies from adopting documents on issues that are not within their competence. In some cases, there are cases of local governments making various decisions that are not within their authority.

The principle of non-arbitrariness prohibits administrative bodies from making decisions without proper justification.

The principle of inadmissibility of refusal to apply the law stipulates that it is not allowed to refuse to apply the existing norms of the current legal documents.

For example, in some cases, tax and customs benefits are unjustifiably not applied to entrepreneurs. This principle prevents such situations.

Such a principle is contained in Article 16 of the Law of the Republic of Azerbaijan "On Administrative Proceedings"⁸.

Third, issues such as depriving a person of a certain right (the right to drive vehicles, the right to hunt), administrative expulsion of foreign citizens and stateless persons from the territory of the Republic of Uzbekistan, as defined in the Code of Administrative Responsibility, are transferred from this Code to the Law "On Administrative Procedures". should be transferred.

Fourth, most applications and complaints related to administrative procedures by administrative bodies are considered on the basis of the Law "On Appeals of Individuals and Legal Entities". This leads to various deadlines being violated in the consideration of appeals by administrative bodies.

Therefore, the Law "On Administrative Procedures" should clearly define (separate) different requirements and mechanisms from the Law "On Appeals of Individuals and Legal Entities".

Articles 63-65 of the Administrative-Procedural Code of the Republic of Kazakhstan define the requirements for receiving, considering and applying appeals⁹. With this Code, the Law "On the Procedure for Reviewing Appeals of Individuals and Legal Entities" was repealed¹⁰.

Fifth, the law stipulates that the administrative document be accepted in written form. But in practice, administrative documents are accepted not only in written form, but also in oral, electronic and sign form.

The Decree No. PF-158 of the President of the Republic of Uzbekistan dated September 11, 2023 on the "Uzbekistan - 2030" strategy also stipulated the full application of the principles of administrative procedures to signs and signals regulating traffic¹¹.

In the legislation of the USA, Germany, Japan, France, Switzerland, Azerbaijan, Finland, Hungary, Estonia, Kazakhstan, it is established that an administrative document can be accepted in the form of electronic, oral, signs, gestures along with the written form.

⁸ Закон «Об административном производстве» Республики Азербайджан, от 21.10.2005 г., // <https://www.constcourt.gov.az/ru/legislation/25>

⁹ Административный процедурно-процессуальный кодекс Республики Казахстан // https://adilet.zan.kz/rus/docs/K2000000350/350_1.htm.

¹⁰ Қаранг: Закон «О порядке рассмотрения обращений физических и юридических лиц» Республики Казахстан // https://online.zakon.kz/Document/?doc_id=30086115.

¹¹ See: Ўзбекистон Республикаси Президентининг 11.09.2023 йилдаги "Ўзбекистон – 2030" стратегияси тұғрисида"ғи ПФ-158-сон Фармон, <https://lex.uz/docs/6600413>.

Therefore, it is proposed to specify in the Law that together with the written acceptance of the administrative document, they can be accepted electronically or verbally, as well as by means of signs, gestures and signals or by means of automatic means.

Sixth, the concept of "administrative document" in the Law should be changed to "administrative act" based on the experience of developed countries and problems in practice. The reason is that the administrative document is accepted not only in the form of a document, but also with signs and gestures. In the laws of Kazakhstan, Kyrgyzstan, Tajikistan, Azerbaijan, Estonia, "administrative document" is called "administrative act" and there are separate sections devoted to the issue of administrative acts.

Seventh, in the Administrative-Procedural Code of the Republic of Kazakhstan, the rights and obligations of witnesses, experts, specialists, translators are clearly defined in separate articles¹².

However, when using "interpreters" and "experts" in administrative proceedings in our national law, their concept and mechanisms of "requesting evidence" are not defined. Therefore, it is necessary to specify these mechanisms in our national legislation.

Eighth, the concept of "initial administrative act" should be included in the Law. The reason is that the initial administrative act is the preliminary decision issued by the commissions and other bodies to determine the specific situation of the case, and these decisions are the basis for the final decision by the administrative body.

(The initial administrative act will not be important for the short-term resolution of the administrative case and will focus on the resolution of organizational issues)

Ninth, when an administrative complaint is submitted directly to a higher administrative body, the Law does not specify the mechanism for this body to request the complained administrative document from the administrative body that committed the complained administrative action. Therefore, it is necessary to specify this mechanism.

Tenth, the Law does not specify the form of acceptance of the procedural document, the procedure for formalization, the requirements for the procedural document, and the implementation mechanisms. Therefore, it is necessary to define these mechanisms.

The procedural document is accepted in written form or in electronic form in the cases stipulated by law.

The procedural document takes effect from the moment of its adoption and is immediately brought to the attention of the participants of administrative proceedings in accordance with the rules of appropriate notification.

Eleventh, the institution of general representative should be included in the law. This will make it easier for residents and administrative bodies to consider collective appeals. This practice is contained in the German Administrative Procedure Act.

Twelfth, it is necessary to include in the Law the procedure for resolving administrative complaints before the court by the administrative body itself or its superior body or another competent body. This issue exists in the legislation of Kazakhstan and Kyrgyzstan.

The introduction of this procedure into practice allows to review the correctness of the administrative document, prevents unnecessary rush of the population to the court, and reduces the workload of the courts.

Thirteenth, Germany's Law on Administrative Procedure contains a provision that provides for a valid procedure rule and defines the legal consequences of a violation of the procedure.

¹² Административный Процедурно-процессуальный кодекс Республики казахстан //

https://adilet.zan.kz/rus/docs/K2000000350/350_1.htm

Therefore, the introduction of an article on the application of "appropriate administrative procedure" into the Law¹³.

Fourteenth, to establish in the Law that the applicant has the right to withdraw his application at any time. The reason is that the appeal is a personal right of every person.

This issue is contained in Articles 64, 94 of the Code of Kazakhstan¹⁴.

Fifteenth, introduction of a norm on the obligation to listen to and give the opportunity to express their opinion to the interested parties who may inappropriately encroach on the rights of the administrative body before the adoption of the administrative document.

Sixteenth, to fill in the types of administrative work that must be considered at the meeting in the Law (specify their list), to determine whether the meeting can be held in videoconference mode.

The legislation of the Republic of Kazakhstan provides for participation in the review of administrative cases via video conference¹⁵.

Seventeenth, the Law specifies requirements for the legality of an administrative document, by whom and in what order the administrative document is considered legal, and what documents are considered illegal.

Eighteenth, the Law specifies "validity of an administrative document" (enforcement of a document), "invalidity of an administrative document" (which type of administrative document is considered invalid, invalid by itself, declared invalid by an authorized body or court) designation.

Nineteenth, "revision of the administrative document", determining the rights to cancel or change the administrative document when a complaint is received about the document he accepted.

Twentieth, the Law does not specify how many days it is necessary to consider an appeal to explain an administrative document or to correct errors and mistakes in the record. Therefore, in Article 56, it is necessary to define a specific period of time (for example, 5 days) for the clarification of the administrative document or the correction of errors in the record.

Twenty-first, the Law stipulates the mechanism of enforcement in the event of the need for compulsory enforcement of monetary demands as a result of an administrative document, the document of an administrative body on imposing a monetary demand on the addressee is considered an executive document, and enforcement is carried out by state enforcers on the basis of the Law "On Enforcement of Court Documents and Documents of Other Bodies" implementation should be determined.

These requirements are stipulated in Article 82 of the Law of the Republic of Azerbaijan "On Conducting Administrative Affairs"¹⁶ ҳамда Қирғизистон Республикаси "Маъмурий тартибатоилилар түғрисида"ги Қонуни 84-85 моддаларида мавжуд¹⁷.

Twenty-second, the Law should stipulate that the administrative body has no right to apply more severe measures if the implementation of the administrative document can be achieved with lighter measures. The establishment of this mechanism obliges administrative bodies to adopt lighter administrative decisions in legislation.

¹³ Закон об административных процедурах Федеративной Республики Германия // Сборник законодательных актов по административным процедурам – 500 стр (2013 г.). Алматы., Verwaltungsverfahrensgesetz (VwVfG).

¹⁴ Административный Процедурно-процессуальный кодекс Республики Казахстан // https://adilet.zan.kz/rus/docs/K2000000350/350_1.htm.

¹⁵ Административный Процедурно-процессуальный кодекс Республики Казахстан // https://adilet.zan.kz/rus/docs/K2000000350/350_1.htm.

¹⁶ Закон Республики Азербайджан «Об административном производстве» 21.10.2005 г., Сборник законодательных актов по административным процедурам – 500 стр (2013 г.). Алматы.

¹⁷ Закон Республики Кыргызстан «Об основах административной деятельности и административных процедурах» 31.07.2005 г., <http://cbd.minjust.gov.kg/act/view/ru-ru/111254?cl=ru-ru>.

This practice is contained in Article 83 of the Law of the Republic of Azerbaijan "On Administrative Proceedings". According to experts, it is supported effectively¹⁸.

Twenty-third, the Law stipulates that the term of voluntary execution of an administrative document shall not be less than five calendar days. In our opinion, it is appropriate to change this period to ten calendar days in order to provide convenience to the population and to provide enough time for voluntary execution.

For example, Article 38 of the Law of the Republic of Azerbaijan "On Administrative Proceedings" defines ten calendar days after the expiration of the deadline for filing an administrative complaint or properly informing about a decision on an administrative complaint¹⁹.

Twenty-fourth, the Law defines only the general grounds for canceling, changing or invalidating an administrative document, and the cancellation mechanisms are not fully defined.

In particular, in Article 59 of the Law²⁰:

- although it is established that an illegal administrative document can be canceled retroactively, by specifying the exact moment of its cancellation or destruction, the procedure for cancellation is not specified;
- it is established that an administrative document deemed not to be in accordance with the law may be revoked by the administrative body if its preservation threatens the public interest. although it is defined, it is not defined what grounds "are considered to be a threat to the public interest";
- although compensation for property damage caused or unavoidable due to the belief in the legal force of an administrative document is specified for the interested person, it is not specified in what order and by whom the property damage will be compensated;
- a very short norm regarding invalidity of an administrative document is defined and its mechanisms are not disclosed.

Conclusion. The introduction of these important amendments and additions to the Law of the Republic of Uzbekistan "On Administrative Procedures" is aimed at expanding the participation of citizens in public administration, increasing the openness, transparency and accountability of public administration bodies, effectively organizing the interaction of administrative bodies and interested parties, changing administrative documents, serves to determine the only legal grounds for annulment and annulment, to reliably protect the rights of individuals and legal entities

These mechanisms are universal in nature for all administrative relations, and the improvement of procedures and their strict observance by all citizens serve as an indicator of developed civil society and the rule of law.

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