

Correlation between Administration and Business

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Abstract

The article notes that one of the main strategic directions of the economic policy of the state is the full support of entrepreneurial activity, the creation of the necessary legal framework for administration to ensure economic independence and equality of entrepreneurs. It indicates the leading role of administration in providing these tasks. It is argued that the administration and the state of business in the country are interconnected phenomena. The article analyzes the state of legal regulation of relations between the state and business from the theoretical and practical side. The reader's attention is drawn to the ways of state influence on business entities in order to protect the interests of business in the country. It is noted about the special role of administrative law in achieving a balance of public (state) and private interests (business). The authors reveal in detail the permission as a method of administrative and legal regulation of entrepreneurship in the country and give legal examples, statistics, judicial practice and public opinion on this matter, as well as reveal the licensing system of the Republic of Uzbekistan in the field of entrepreneurship. It is noted that the merit of the legislation on administrative procedures in the legal regulation of relations between the state and business. The topic under study is consolidated by the analysis of leading scientists in the field of administrative law, the experience of leading foreign countries, as well as the results of a survey of entrepreneurs regarding the implementation of the Law on Administrative Procedures. The topic under study is consolidated by the analysis of leading scientists in the field of administrative law, the experience of leading foreign countries, as well as the results of a survey of entrepreneurs regarding the implementation of the Law on Administrative Procedures.

Keywords: Administrative Law, Administration, Entrepreneurial Activity, Investments, Protection of Interests, Administrative Procedures, Uzbekistan

For a long time, there has been an opinion in the public mind that for the successful implementation of entrepreneurship, it is enough to know the norms of civil law and have the skills to apply them, properly organize a business, establish interaction with partners, produce goods at a qualitative level, provide services and perform work. At the same time, no less important, and in some cases even more significant factor is not taken into account, the regulatory impact of the norms of

public law on the development of entrepreneurship, which mediate many aspects of the relationship between the state and business.¹

Currently, the state has a number of very significant and effective tools through which it can directly or indirectly influence the scope of the rights and obligations of business representatives. An analysis of the relationship between the state and business representatives' shows that the state exerts unilateral direct power influence through the following administrative tools:

- Financial instruments (for example, a ban on financial transactions in cash);
- Administrative acts of administrative authorities, which can be appealed to the administrative court;
- By-laws adopted by administrative authorities, i.e. by the system of executive authorities or public administration;²
- Adoption of an administrative act aimed at a specific subject and resolving one situation;
- Licensing system (for example, issuance of licenses and permits, state registration, accreditation, certification, standardization).

These administrative instruments are established exclusively by a unilateral decision of state bodies and in many cases may not coincide with the position and private interests of entrepreneurs. This is due to the fact that in the process of administration the state should proceed from the national, and not the private interests of individual entrepreneurs. However, under any circumstances, the state should strive to maintain a balance between the interests of society and business. Of course, there are also cases of direct interaction between government agencies and business - the drafting of administrative contracts. As an example, one can refer to public-private partnership agreements, which have not yet become widespread in Uzbekistan compared to direct state influence. All of the above methods of state influence on business are examples of administration carried out in the field of entrepreneurial activity.

Currently, Uzbekistan is undergoing a process of rethinking administrative law in relation to fundamentally new economic realities associated with the deepening of

¹ AllahRakha, N. (2024). Cybercrime and the Legal and Ethical Challenges of Emerging Technologies. *International Journal of Law and Policy*, 2(5), 28–36. <https://doi.org/10.59022/ijlp.191>

² These acts, unlike administrative acts, cannot be appealed in administrative courts, their appeal is allowed only in the Constitutional Court of the Republic of Uzbekistan, and such a right for citizens and legal entities, which include entrepreneurs, is not provided for in the Law on the Constitutional Court. In this regard, we consider it appropriate to provide for the right to appeal the by-laws of the executive authorities (administrative bodies) to the Constitutional Court and to the indicated persons, which will become a practical implementation of the requirements of Art. 35 of the Constitution of the Republic of Uzbekistan.

market reforms in the economy aimed at further liberalizing entrepreneurial activity, which, in turn, requires very serious changes in the administration carried out by the state.³ It is no coincidence that the modern administrative law of the Republic of Uzbekistan, as many researchers note, is one of the rapidly developing branches of the legal system of Uzbekistan.⁴

The process of “transition” of administrative law from negative to positive has sharply raised its prestige and necessity, in particular, the fundamental development and widespread introduction into the practice of the management process of the institute of administrative procedures. This circumstance is determined by the fact that earlier administrative law was mainly understood as its protective function: administrative punishment and administrative coercion. Now administrative law is called upon to ensure the process of public administration aimed at meeting the needs of citizens and entrepreneurs, i.e. the state is perceived as an apparatus that provides public services to its population.

The main purpose of the considered branch of law is difficult to overestimate. It is not by chance that it is noted that “a special role in achieving a balance of public and private interests belongs to administrative law, since it is it that is called upon to regulate social relations that arise between the individual and the state, ensuring the realization of the rights and freedoms of citizens in the field of public administration and their protection.” In other words, administrative law is designed to regulate management processes in the state, i.e. executive and administrative activities of the state administration (even in the very name of this branch of law there is an indication of the word “administration, administration”). The role of administrative law in the regulation of public administration is manifested, first of all, in the creation of a theoretical and organizational and legal basis for the executive and administrative activities of the state, aimed at protecting individuals and businesses from the arbitrariness of the state.

All branches of law, including administrative law, use three methods of legal influence on social relations inherent in the very nature of law: prescription, prohibition, permission. In the first case, we are talking about the imposition of a direct legal obligation to perform this or that action under the conditions provided for by the legal norm, i.e. do it this way and not otherwise. The second method is based on the prohibition to perform certain actions under the conditions provided for in the rules of law. And, finally, permission, a legal permission to perform certain actions at one’s own discretion under the conditions provided for by the legal norm. These methods of

³ Trends in the development of public law in modern Uzbekistan: debatable issues of constitutional and administrative law. Collection of materials of the Republican Scientific and Practical Symposium with International Participation (Tashkent, May 28-29, 2019) and the International Scientific and Practical Forum on Administrative Law (Speyer, June 6-7, 2019) / Tashkent State University of Law. - Tashkent, 2021. - p.164

⁴ AllahRakha, N. (2024). Constitutional Safeguards for Digital Rights and Privacy. *International Journal of Law and Policy*, 2(4), 31–43. <https://doi.org/10.59022/ijlp.172>

legal regulation of public relations are used by administrative law, taking into account the characteristics of industries and areas of management. For example, administrative-legal regulation in the administrative-political sphere is characterized by instructions emanating from a state body or an official. The other side is obliged to obey this order (compliance with the rules of military registration, behavior in public places, etc.).

When regulating the norms of administrative law of the branches of the economy, the basis of which in the new economic conditions is entrepreneurial activity, the content of the legally authoritative prescriptions inherent in the social relations regulated by this branch of law is diverse. Thus, the one-sidedness and obligatory expression of the will of the bodies exercising state administration are characteristic not only for direct instructions and prohibitions established by administrative law. They are also characteristic of permissions, which give business entities the right to independently choose the rules of conduct. However, the commission of permitted actions must be carried out strictly within the framework of the general rule established by the norms of administrative law.⁵

Permission as a method of administrative and legal regulation of public relations in the sphere of business in the scientific literature is very often denoted by the term “permission”. The same term is used in the current legislation. In particular, Art. 3 of the Law of the Republic of Uzbekistan “On licensing, permitting and notification procedures.”⁶ Contains the concept of a permit document. This is a document issued by an authorized body in the form of a permit, approval, conclusion, as well as in other forms provided for by law, giving the right to carry out certain activities (actions) subject to mandatory compliance with permit requirements and conditions.

In Section II of Appendix No. 4 to the Law of the Republic of Uzbekistan “On Licensing, Permitting and Notification Procedures”, out of 111 permit documents (procedures), more than half are designated as permits to engage in certain types of business activities.⁷ These are, for example: permits for the right to use subsoil plots; for export, import and transit of goods controlled by the state veterinary service; for the re-equipment of motor vehicles; for the right to conduct mining operations. Permits are also required for the export of items and products, the export of which is carried out by decision of the President of the Republic and the Government; the right to distribute television and radio products of foreign media in the territory of the Republic of Uzbekistan, etc. For other types of permit documents, Appendix No. 4 to the Law of the Republic of Uzbekistan “On Licensing, Permitting and Notification Procedures” uses the terms “agreement”, “certificate”, “approval”, “conclusion”, etc.

⁵ AllahRakha, N. (2024). Legal analysis of the law of the republic of Uzbekistan" on payments and payment system". *TSUL Legal Report International electronic scientific journal*, 5(1), 38-55.

⁶ (National Legislation Database, 07/15/2021, No. 03/21/701/0674; 04/21/2022, No. 03/22/765/0332, 05/25/2022, No. 03/22/771/0448). See: [URL-address: <https://lex.uz/ru/docs/6120660>]

⁷ See: [URL-address: <https://lex.uz/ru/docs/5511900>]

The most important factor in the effective interaction between administration and business in the process of regulating relations in the field of licensing, permitting and notification procedures are administrative procedures. The legal regulation of relations between the state and business through administrative procedures is one of the most important features of the rule of law. The principles of the rule of law require a clear and predictable behavior of administrative bodies, which must be fair and transparent for participants in administrative proceedings. This shows the constitutional and legal significance of administrative procedures.

Authorities should use the state power given to them exclusively in the interests of society and the individual. As E. Büdenbender rightly notes, “a citizen must rely on the fact that the decision of a state body will not be unexpected for him, like “a bolt from the blue. A citizen should be able to put his arguments and objections in order already during the administrative procedure, and the state body must comply with the rules of procedure and cannot behave. According to L.B. Khvan, the “Law “On Administrative Procedures” allows in a different algorithm to establish rules for the adoption of individual acts, procedures for performing administrative actions to implement prohibitions, permits, orders, as well as other control, supervisory, registration and coordinating powers. This is, first of all, an algorithm for balancing public and private interests, interaction on the principles of the rule of law, the principles of proportionality, proportionality, legal certainty and the “right to be heard”. This is not so much the meaning of the idea of the development of civil society as the idea of governance.⁸

The modern practice of the developed countries of the world shows that public-power activities are carried out on the basis of the law. It should be noted that the legislative regulation of administrative procedures is recognized as indisputable in many developed countries of the world (Japan, USA, Germany, Holland, etc.). Administrative procedures have received the same regulation in a number of neighboring countries (Armenia, Kazakhstan, Kyrgyzstan, Estonia, etc.). Laws on administrative procedures in world practice contain various models and principles of administrative procedures. The Republic of Uzbekistan until a certain time did not have uniform rules fixed by law regulating the procedure, stages and rules for the adoption of legal acts of an individual nature. This gap in legislative regulation was mainly filled by individual acts of various legal forces: departmental instructions, regulations, etc. In fact, the legal regulation of administrative and procedural activities was carried out mainly by the administrative bodies themselves.⁹

⁸ AllahRakha, N. (2024). Addressing Barriers to Cross-Border Collection of E-Evidence in Criminal Investigations. *International Journal of Law and Policy*, 2(6), 1–9. <https://doi.org/10.59022/ijlp.193>

⁹ S. S. Gulyamov, E. Egamberdiev and A. Naeem. (2024). "Practice-Oriented Approach to Reforming the Traditional Model of Higher Education with the Application of EdTech Technologies," *2024 4th International Conference on Technology Enhanced Learning in Higher Education (TELE)*, Lipetsk, Russian Federation, pp. 340-343, doi: 10.1109/TELE62556.2024.10605684

The existing state of affairs was aggravated by the fact that there was no effective mechanism for the access of interested persons to administrative and procedural activities and information about it. The normative material regulating the public-legal activities of state administration bodies did not contain uniform administrative procedures governing the relationship between administrative bodies (their officials) and applicants. In practice, departmental regulations and instructions in these matters gave rise to a wide range of official discretion (discretionary powers), bureaucratic red tape and the secrecy of decisions made. The situation improved markedly with the adoption on January 8, 2018 of the Law of the Republic of Uzbekistan on administrative procedures, the development process of which continued for quite a long time (2005-2017).¹⁰

It is designed to regulate issues of administrative procedures, ensure the functioning of executive bodies within the legal framework, positively influence the activities of executive bodies and law enforcement practice. In fact, today the Law on Administrative Procedures is a fundamental act that officials must be guided by when adopting administrative acts against citizens and business representatives. Therefore, only with its rigorous application in practice, citizens and entrepreneurs will really feel that their rights and legitimate interests are reliably protected by the state. However, this, unfortunately, did not happen.

The results of a survey of entrepreneurs on the implementation of the Law on Administrative Procedures, conducted by the Center for International Legal Studies and Comparative Public Law at the University of World Economy and Diplomacy, together with specialists from the Chamber of Commerce and Industry with the participation of UNDP and the support of the British Embassy, within the framework of the project “Assistance in the modernization of lawmaking and Rulemaking/Phase 2” showed that **“this legislative act remains progressive, unfortunately, only on paper.** In practice, the old procedures are used. And even the judicial system has not yet put a hard limit on systematic violations of the law. In 2019, administrative courts invalidated only 24 administrative decisions and actions on the basis of the LAP (Law on Administrative Procedures - *author's note*), while the total number of disputes they considered was about 4,000.”¹¹

In addition, a survey conducted within the framework of a UNDP project and covering entrepreneurs from 141 companies in Tashkent and Namangan region showed that the failure to apply the Law on Administrative Procedures in 2019 reduced the trust of businesses in state structures and negatively affected their desire to invest and create new jobs in 2020. In many respects, the results of these surveys were the result of the fact that government bodies continue to adopt administrative acts that do not comply with the norms of the legislation on administrative procedures and cause serious damage to the rights and legitimate interests of citizens and business

¹⁰ (National database of legislation, 01/09/2018, No. 03/18/457/0525; 01/07/2020, No. 03/20/600/0023) See: [URL-address: <https://lex.uz/docs/6114000>]

¹¹ LAP: a law that is not enforced See: <https://www.gazeta.uz/ru/2020/06/08/legislation/#!>

entities. This practice is contrary to the goals of state policy to stimulate entrepreneurial activity and create an attractive investment climate in Uzbekistan.

For the sake of fairness, we note that at present a lot of work is being done in the country to overcome serious problems, both to eliminate the shortcomings of the current version of the Law on Administrative Procedures, and its practical implementation. Thus, the expert group of the Ministry of Justice prepared a new version of the said legislative act, which was adopted by the Legislative Chamber and is being approved by the Senate of the Oliy Majlis (Parliament) of the Republic of Uzbekistan. Measures are being taken to retrain civil servants and judges, reference and methodological materials are being developed.¹²

Serious organizational and legal measures necessary for the introduction of administrative procedures into the practice of state bodies are provided for by Decree of the President of the Republic of Uzbekistan dated May 19, 2020 No. PD-5997 “On measures for further improvement of activities of the bodies and institutions of justice in the implementation of state legal policy.” In particular, the Ministry of Justice of the Republic of Uzbekistan has been entrusted with the task of continuously improving the sphere of administrative procedures based on advanced foreign experience and modern development trends, and the Office for Improving and Monitoring Administrative Procedures has been established in the structure of its central office.¹³

As you know, the most important priority of the state economic policy in a market economy is to improve the investment climate and business environment. The main goal of such a policy, which has been enshrined in many guiding documents (decrees and resolutions of the President, resolutions of the Government of the Republic of Uzbekistan), is the creation of the most favorable conditions for entrepreneurial activity, including transparent and understandable procedures for licensing permits and notification procedures. The very nature of market relations requires transparent and stable rules of the game and reliable guarantees against arbitrary power.

The principles of the possibility of being heard, the priority of the rights of interested parties, the prohibition of arbitrariness, the inadmissibility of bureaucratic formalism, the prohibition of arbitrariness, and the protection of trust, envisaged by the Law on Administrative Procedures, according to the legislator’s intention, should have in practice significantly changed the attitude of business to administration. Since these principles did not become for law enforcers (all administrative bodies, courts) according to this guide when adopting certain administrative acts, this did not have

¹² In 2021, with the support of UNDP, a Manual on the Application of the PAP for Civil Servants was written. A scientific and practical commentary to the LAP has been prepared. // How to breathe strength into laws / <https://www.gazeta.uz/ru/2021/02/26/laws-and-practice/>

¹³ (National Legislation Database, 05/20/2020, No. 06/20/5997/0634; 04/30/2021, No. 06/21/6218/0398; 07/24/2021, No. 06/21/6269/0704 , December 21, 2021, No. 06/21/36/1175; March 18, 2022, No. 06/22/89/0227; April 21, 2022, No. 06/22/113/0330) [URL address: <https://lex.uz/docs/5527815>]

almost any positive impact on the investment climate and business environment after the adoption of the Law on Administrative Procedures in 2019.

At the same time, a survey of business entities conducted by UNDP at the end of 2019 “revealed a linear relationship between statistically significant indicators of the perception of administrative practice by business entities in the light of the fundamental principles of the LAP and their propensity to invest. For example, an increase in the measure of trust in the legitimate purpose of administrative intervention by one point on a scale from 1 to 5, on average, increases the propensity to invest in 2020 by 8%.” Thus, unconditional observance of the principles of administrative procedure is one of the most important factors in the proper correlation of administration and business in order to improve the investment climate and business environment in the country.¹⁴

As the period after the adoption of the Law on Administrative Procedures showed, its application in practice faced very serious problems, as evidenced by studies conducted by the UWED Center for International Legal Research and Comparative Public Law in 2019 as part of the control and analytical activities of the Senate. They showed that the legal services of administrative departments and khokimiyats (administration of provinces) are not retrained, not trained to apply the LAP, and even poorly aware of the new law.¹⁵ And the conclusion that “the law does not work not because of some fatal internal defects, but simply because some officials do not know how or even do not want to apply it” is quite fair. Under these conditions, it should not be surprising that the practice of administration carried out by the entire system of executive authorities does not meet the requirements of the Law on Administrative Procedures and needs to be fundamentally changed. This remark can equally be addressed to the courts, whose law enforcement activities are subject to the same above-mentioned problems.¹⁶

Conclusion

The socio-economic and political-legal transformations carried out in Uzbekistan, the change in the place and role of the state in the life of society, the recognition of the priority of human and civil rights and freedoms as the most important constitutional obligation of the state put forward a number of new and urgent problems in the development of administrative law that require their adequate resolution. The content and strategy of administrative and legal regulation were significantly influenced by the transition to market relations in the economy and the tasks of expanding and deepening the processes of their liberalization at the present stage.

¹⁴ LAP: pending law / <https://www.gazeta.uz/ru/2021/04/20/administrative-procedures/>

¹⁵ How to breathe strength into laws / <https://www.gazeta.uz/ru/2021/02/26/laws-and-practice/>

¹⁶ Juraeva, A., & Soyipov, K. (2022). Chinese International Commercial Courts: Overview and Potential Questions Around It. *Hasanuddin Law Review*, 8(1), 1-17

One of the main strategic directions of the economic policy of the state is the full support of entrepreneurial activity, the creation of the necessary legal framework for administration to ensure economic independence and equality of entrepreneurs. Under these conditions, a qualitative improvement in public law regulation and control is required on the basis of a systematically developed administration mechanism that reliably protects the rights of citizens and entrepreneurs. Administration and the state of business in the country are interconnected phenomena. The lack of effective administrative mechanisms based on transparent, predictable licensing procedures for permitting and notification procedures undermines the confidence of entrepreneurs in the protection of their rights and legitimate interests from administrative arbitrariness and in no way contributes to the activation of investment business and the creation of new jobs.

Serious work carried out by the expert community under the auspices of the Ministry of Justice of the Republic of Uzbekistan on the development of a new version of the Law on Administrative Procedures provides for the elimination of a number of shortcomings and shortcomings of its current version, which will significantly increase the validity of administrative decisions and ensure the expediency and reasonableness of any administrative impact on business entities. However, as practice has shown, even the most ideal Law on Administrative Procedures will not bring the desired result if the inertia of law enforcers to its unconditional execution is not overcome.

The implementation of measures to improve the legislation on administrative procedures will allow: significantly reducing the opportunities for arbitrariness, abuse, corruption and other negative phenomena in the state apparatus; increase the effectiveness of protecting the rights and legitimate interests of citizens and legal entities; ensure the expediency and reasonableness of any administrative action; create conditions for impartiality and impartiality in making an administrative decision; ensure transparency of the administrative process. One of the most important measures for the practical implementation of the Law on Administrative Procedures, of course, is the total retraining of legal services of administrative bodies on the application of this legislative act, which should have been carried out two years ago. However, this work must be carried out as soon as possible.

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