THE HISTORY OF THE DEVELOPMENT OF ADMINISTRATIVE JUSTICE ON PROTECTION OF ENTREPRENEURS RIGHTS IN THE TERRITORY OF UZBEKISTAN BEFORE INDEPENDENCE

Madrimov Khushnud Kuvandikovich,
Independent researcher of the Tashkent State University of Law,
kh.madrimov@gmail.com

Abstract: *This article analyzes the history of the development of administrative disputes on protection of entrepreneurs rights in the territory of Uzbekistan before independence. At the same time, it separately studies the emergence of institutions similar to administrative justice in the Middle Ages and during the existence of regional kingdoms (the Khanates), as well as the processes of formation of administrative justice elements during the Soviet period. Besides, the article studies the processes of emergence of administrative justice in continental law and common law systems.*

Keywords: *kaziy (the judge), mazalim (a judge who heard administrative cases in history), people's court, bourgeois element, administrative justice, administrative dispute.*

In the long historical period that has passed since the emergence of the state, issues of limiting the powers of power, the development of mechanisms to combat the abuses of an official have become relevant.

In the primitive communal system, people unite into a social structure called the state in order to overcome their fear and be protected in general, and this structure gives it part of its rights so that it can serve citizens.

Later, various abuses of people begin to be committed by these state bodies themselves, and in them the need for protection from state officials arises.

Therefore, as a result of various revolutions in history, citizens achieve the restriction of the rights of the state in the person of the king or Khan and the recognition of human rights.
And the Institute of administrative Justicia arose as a mechanism that protects the rights of people from the officials of the state in which they made up.

The history of the administrative Constitution on the protection of the rights of entrepreneurs on the territory of Uzbekistan should be studied within the following three periods:

- the emergence of institutions that until Soviet times were similar to the institutions of the administrative Justicia;
- formation of elements of administrative Justicia in Soviet times;
- development of administrative Justicia during Independence.

It should be noted that from the VIII to the beginning of the XX century, Sharia norms in the daily life and public administration of the population of Central Asia were the main source of law, and elements of administrative justices were also formed directly in connection with Islamic law.

A characteristic feature of the elements of the administrative Justicia in this area was such that the governing and judicial authorities were not clearly separated from each other, and they were represented by state laws, religious norms
and the rules of tradition were used together.

Therefore, judicial activity was also carried out on behalf of the Khan or Emir (head of State), who at one time was the head of the executive branch.
Prior to the Soviet period, Uzbekistan had its own initial manifestations of legal institutions that resolved disputes of private individuals with power, as researchers say,
first of all, the activities of Gazi, Mazalim, biy will be shown.

In particular, the judiciary was carried out mainly by the Kazi Institute, and it dealt with most conflict issues in the daily lives of the population.

The activities of the veterans, the requirements for them are in the works of Burhoniddin Margilaniy "Hidoya", Nizamulmulk" Politburo" and in the "Timur's trappings"it is revealed in detail

Lawyer scientist Z.Muqimov touched on the era of Amir Timur and wrote that "as for judicial practice, Sharia cases were resolved by the judge of Islam, secular affairs and cases arising from the rights of custom, by the judge of adlos, by the judge of legal disputes between sipohiy soldiers."

At this point, Z.Muqimov, referring to the Spanish ambassador Rui González, points out that during the reign of Amir Timur, some veterans settled important cases and conflicts, others engaged in financial affairs, and some engaged in the activities of viceroys in lands and cities, and there were also specialized veterans.

The Bukhara Emir of 1785-1800, Shahmurad, carried out judicial reforms that determined that every Muslim, even a slave, would appeal to his judge and have the right to prosecute his master, who did something illegal. According to this reform, a Supreme Court of forty lawyers was created, which was headed by the Emir himself.

It is seen that the veterans resolved disputes about the activities of the Viceroys, cases between the lower and upper categories, and that during the reign of Amir Timur and Shahmurad, the veterans also considered mass disputes in the current understanding.

On the example of another historical and Legal Institute in movarounnahr-Mazalim, the elements of the administrative Justicia are more clearly visible.

In particular, the consideration of the disputes of citizens with state officials, priests and other persons of great authority was a challenge for the veterans, and there was a need for separate convictions.

Because these persons had the opportunity to influence the stake in the legal resolution of the case. Therefore, mass disputes in our current understanding were considered by the Institute of Mazalim, and usually the Khan, the emir or the king himself, the ministers and the respected sharia scholars performed this task.

The appointment to the post of Mazalim was the prerogative of the head of state, who, in addition to the above task, also had the functions of resolving military conflicts, controlling management offices.

Historian scientists have shown that the Institute of Mazalim appeared in Movarounnahr in the era of Zoroastrianism and carried out the task of conviction until the Soviet era.

The Institute of Mazalim is a specific view of the administrative Justicia in Movarounnahr, a scientist who studied the history of this topic S.Ibragimov substantiated with specific examples. In Particular, S.Ibragimov argued that Mazalim, on his initiative, had the authority to issue witnesses, to receive explanations from them, to conduct investigations on the case and to find evidence as reliable, indicating that this – similar to the Inquisition-investigation function of specialized administrative courts.

This circumstance corresponds to the principle of active participation of the court, which is a characteristic feature of the consideration of disputes in the Administrative Court.

In addition, the works of medieval thinkers also put forward philosophical ideas on the relationship between a private person and officials of the state. In particular, the lawyer scientist L.B.Hwan referring to the requirements for justice and officials in the works of both Saadi Sherozi "Bostan" and Khoja Samandar Termizi "program al-muluk", the administrative Justicia substantiated that it is not alien to our legal system.

The above analyzes provide an opportunity to draw conclusions about the existence of sufficient historical conditions for its initial manifestations and further development, although on the territory of Uzbekistan there is no administrative institution of Justicia in our current understanding up to Tsarist Russia.

After the invasion of Tsarist Russia, there were also partial changes in the judicial system in these regions, and on the territory of the Turkestan governorate general, all-chimperian courts, regional courts, military-field courts for Russian citizens were established.

In the Khiva Khanate and Bukhara emirate, the qazi and biy courts elected for the local population (people's court in the Turkestan Governor-General's office) were kept and considered issues related to family and civil law.

Land claims and disputes of local residents, cases in which one of the parties to the dispute in general has the authority, are resolved in the courts of the Empire, which can be considered a public dispute. But, since judicial reforms in Tsarist Russia continued during this period, and England's experience of rejecting local traditions in India did not work, the judicial system in the Empire was not fully introduced.

In Tsarist Russia, the competence of the first Department of the Senate and such quasisudlov offices as "gubernskie prisutstviya", which in the 19th century was considered the Institute of administrative Justicia, was practically not applied to the territory of Uzbekistan.

Although administrative courts were established in Russia by the Provisional Government in May 1917, the next major historical events followed, the regulation governing the activities of these courts did not come into force not only on the territory of Uzbekistan, but on the scale of the Empire as a whole.

Although efforts were made to restore administrative Justicia in the early years of the Soviet era, in general for this period, this institution was not recognized as an element of the bourgeois system.

In particular, in 1918, the right of citizens to appeal to the court, dissatisfied with the activities of state bodies, was recognized, offices such as the Bureau of complaints, judicial commissions on land and other issues were created, attempts were made to develop its elements, and not a purely administrative institution of Justicia.

But after the strengthening of the Soviet system and the beginning of the full functioning of the Administrative-Command methods, the system could not accept the issue of appeal to the court over state bodies for itself.

The main thing is that there was a dispute between a state and a private person – contrary to the priority idea of the Soviet system to build communism without any conflict.

In Particular, A.V.According to Chumakova, "in the 20s of the XX century, the principle inherent in the polisian state was enshrined in Soviet law that it was not allowed to appeal to the court over the decision and behavior of the administrative body, according to this principle, all controversial issues arising from the attitude of "power-subordination" could only be resolved in an administrative

Even after World War II, Soviet science was dominated by reflections on not recognizing the Institute of administrative Justicia, but on treating it as a yacht element.

Under the influence of relatively positive changes in the life of society after the Stalin era, there were also some shifts in the recognition of the rights of private individuals.

By this time, issues related to the Institute of administrative Justicia had become the subject of controversy not only among scientists,

at the same time, their recognition in the legislation began.

In particular, according to the decree of the Presidium of the Supreme Soviet of the former Union of June 21, 1961 "on the further restriction of the application of fines imposed in the administrative order", private individuals could appeal the decision of the administrative body to the court.

Unfortunately, it was not the development of these changes in the framework of independent administrative law that was subsequently chosen, but the way of their general reflection in civil procedural law.

That is, in civil procedural legislation, adopted in 1961-1963, cases arising from administrative-legal relations are defined as a type of civil litigation.

The roots of the confusion that has existed so far in the concepts of administrative dispute, administrative offense and civil (economic) dispute both among practitioners and in scientific circles on the post-Soviet territory go back to these times.

In particular, after the administrative Justicia was regulated within the framework of civil litigation, the ideology of the absence of conflict in society was largely rejected by the fact that the administrative dispute was of a claim nature.

In addition, administrative work refers to public disputes that make up the content of administrative justices that remain, with the main focus on administrative offenses. The reasons for this also go back to the essence of the political regime, since the Soviet authorities understood the protection of the state system as the main task of the court, and not the protection of the right of a private person. At the same time, by the 70s of the XX century V.F.Sirenko, A.T.Banner, V.T.Scientists such as Kvitkin have put forward the idea that there may be a conflict between a public and private person, and this, like every society, is a characteristic feature for Soviet society.

This process also has its influence on Soviet legislation,

Article 58 of the former Union Constitution of 1977 established the right of citizens to appeal to the court over the actions of state and public bodies, officials.

But over the next ten years, this norm has become declarative in nature. Only, during the perestroika period, a separate law was adopted that established the procedure for implementing this norm on June 30, 1987, the scope of its application was expanded by the law of November 2, 1989, and on July 27, 1990, the resolution of the plenum of the Supreme Court of the USSR No. 7 was issued.

As a result of the collapse of the former Union in 1991, the Institute of administrative Justicia, which is now-like the entire state system-now the legal basis of which is being created, was also forced to resume the path of development in each independent state in different manifestations.

At this point, it is necessary to highlight one aspect-the beginning of the Soviet era
In 1917, administrative courts were established, and at the end of it, a law was adopted on this issue, which was supposed to be the point at which these events would develop administrative justices.

However, the fact that the system has changed under the influence of subsequent large historical events has lowered the importance of these points of development.

Ultimately, J.Nematov noted, in Soviet administrative law, the Institute of Administrative Proceedings of modern meaning-content was not destined to find its full-fledged development.

But, many years later, at present, it can be concluded that just as no phenomenon in history has disappeared without a trace, the above two events fulfilled the role of a kind of experience in the development of the Institute of administrative Justicia on the territory of later Independent States.

REFERENCES

1. Mukimov Z. Uzbekiston davlat va tarikhi.T. Adolat, 2003. P. 171.
2.Mukimov Z. Uzbekiston davlat va xukuqi tarikhi.T. Adolat, 2003. P. 172.
3. Nematov J. (1). Monograph – T.: Top Image Media, 2022. – P. 12.
4.Chumakova O.V. Administrative and legal disputes in the field of registration of legal entities. Autoref. dis. ... cand. jurid. sciences'. Moscow, 2008. p. 15.
5.Ibragimov S.I. Administrative justice in Central Asian states: problems of formation and development: Diss. .Dr. yurid. sciences'. Moscow, 2013. pp. 188-189.