ANALYSIS OF THE NEW LEGISLATION OF THE REPUBLIC OF UZBEKISTAN ON ALTERNATIVE RESOLUTION OF DISPUTES ARISING FROM ADMINISTRATIVE AND PUBLIC LEGAL RELATIONS

АНАЛИЗ НОВОГО ЗАКОНОДАТЕЛЬСТВА РЕСПУБЛИКИ УЗБЕКИСТАН ОБ АЛЬТЕРНАТИВНОМ РАЗРЕШЕНИИ СПОРОВ, ВОЗНИКАЮЩИХ ИЗ АДМИНИСТРАТИВНЫХ И ПУБЛИЧНЫХ ПРАВООТНОШЕНИЙ

МАЪМУРИЙ ВА ОММАВИЙ ҲУҚУҚИЙ МУНОСАБАТЛАРДАН КЕЛИБ ЧИҚАДИГАН НИЗОЛАРНИ МУҚОБИЛ ҲАЛ ЭТИШДА ЎЗБЕКИСТОН РЕСПУБЛИКАСИНИНГ ЯНГИ ҚОНУНЧИЛИГИ ТАҲЛИЛИ

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Annotation: *this article analyzes the legislation of the Republic of Uzbekistan on the use of procedural rules in resolving administrative disputes in court.*

Аннотация: *в данной статье проводится анализ законодательства Республики Узбекистан о применении процессуальных норм при разрешении административных споров в суде.*

Аннотация: *ушбу мақолада маъмурий ва оммавий-ҳуқуқий муносабатлардан келиб чиқадиган низоларни Ўзбекистон Республикаси қонунчилигига кўра муқобил усулда ҳал этиш таҳлил қилинган.*

Key words: *legislation, decree, alternative dispute resolution, agreement settlement, mediation, judge-mediator, mediator, administrative, civil, economic court process*

Ключевые слова: *законодательство, постановление, альтернативное разрешение споров, мировое соглашение, медиация, судья-посредник, посредник, административный, гражданский, хозяйственный судебный процесс.*

Калит сўзлар: *қонунчилик, фармон, қарор, муқобил усулда ҳал этиш, келишув битими, медиация, судья-медиатор, маъмурий, иқтисодий, фуқаролик суд процесси*

The decree of the President of the Republic of Uzbekistan dated January 28, 2022 No. PF-60 "On the development strategy of Uzbekistan for 2022-2026" aims to establish effective judicial control over the activities of state bodies and officials and to increase the level of access to justice for citizens and business entities, and to resolve disputes It was decided to create the necessary organizational and legal conditions for the wide use of alternative methods of communication, to further expand the scope of the institution of reconciliation[10].

Also, according to paragraph 2 of the decision of the President of the Republic of Uzbekistan dated January 29, 2022 No. PQ-107 "On measures to ensure the effective protection of the rights of citizens and business entities in relations with state bodies and to

[10] УП-60-сон 28.01.2022. О Стратегии развития Нового Узбекистана на 2022-2026 годы (lex.uz) Цель-14.

further increase the public's trust in the courts", the conduct of administrative court cases is international in order to improve based on the standards, the goal was to introduce mechanisms for reaching reconciliation between the parties in cases arising from public-legal relations[11].

On April 26, 2023, the Law of the Republic of Uzbekistan "On Amendments and Additions to Certain Legislative Documents of the Republic of Uzbekistan in Connection with Taking Additional Measures to Ensure the Effective Protection of the Rights of Citizens and Business Entities in Relations with State Bodies" the opportunity arose[12].

In the development of the draft law, it is aimed to ensure effective protection of the rights of citizens and business entities by administrative courts in relations with state bodies, and to turn administrative courts into real defenders of citizens by improving the conduct of administrative court cases based on international standards.

The ability of this draft law to resolve administrative disputes through amicable procedures, to develop the rules for the conclusion of a settlement agreement in the resolution of such disputes, and to apply mechanisms for reaching conciliation in cases considered on the basis of complaints by citizens or entrepreneurs, has been studied from the experience of countries such as Azerbaijan, Estonia, and Kazakhstan[13].

According to Article 6 of the Law, amendments and additions to the Code of Administrative Court Proceedings of the Republic of Uzbekistan are determined, and within the framework of Chapter 15^1 of the Code, Article 126^1 on the agreement of the parties, on the form and content of the agreement, Article 126^2 on the approval of the agreement Article 126^3 on consideration of the issue, Article 126^4 on the court ruling on approving the settlement agreement, and Article 126^5 on the refusal to approve the settlement agreement are established.

From the content of the new provisions introduced into this code on the settlement agreement, it is established that the parties can resolve the dispute in full or in part by concluding a settlement agreement based on the principles of voluntariness, cooperation and equal rights, at all stages of administrative court proceedings and in the process of executing court documents. Also, it is confirmed by the law that the agreement of the parties can only be implemented if the agreement of the parties is related to their rights and obligations as the subjects of public legal relations in dispute, and it can be implemented if the parties are allowed to make mutual concessions.

In addition, this new law defines the requirements for the form and content of the settlement agreement, the rules for considering the issue of approval of the settlement agreement and formalizing its results.

[11] ПП-107-сон 29.01.2022. О мерах по дальнейшему обеспечению эффективной защиты прав граждан и субъектов предпринимательства во взаимоотношениях с государственными органами, а также повышению доверия населения к судам (lex.uz)

[12] ЗРУ-833-сон 26.04.2023. О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан в связи с принятием дополнительных мер по обеспечению эффективной защиты прав граждан и субъектов предпринимательства во взаимоотношениях с государственными органами (lex.uz)

[13] Explanatory letter of the Supreme Court of the Republic of Uzbekistan to the draft law of the Republic of Uzbekistan

Also, the general rules of conducting administrative court proceedings are enriched with the provisions on the conclusion of a settlement agreement, in particular, the law to the code:

- failure to conclude an agreement on behalf of the applicant by the prosecutor, representative;

- approval of the settlement agreement by the court is the basis for the termination of proceedings;

- non-execution of the court ruling on the approval of the settlement agreement is the reason for the imposition of a court fine;

- if there is a ruling of the administrative court on approving a settlement agreement between the same persons, on the same subject and on the same grounds, the judge refuses to accept the application (complaint) for proceedings;

- the appellate court cancels the decision of the first instance court, if a settlement agreement was concluded between the parties and it was approved by the appellate court;

- changes and additions were made that the cassation instance court annuls the decision of the first instance court, the decision of the appellate instance court, if a settlement agreement was concluded between the parties and it was approved by the cassation instance court.

Also, according to these changes and additions to the legislation, the way to the conclusion of an agreement on the cases provided for in clauses 1, 3, 4 and 5 of the first part of Article 27 of the Criminal Code of the Republic of Uzbekistan, as well as on cases that provide for the conditions related to the rights and legal interests of third parties it is determined not to be placed.

From this we can see that the categories of disputes in which conciliation procedures are not applied in disputes arising from administrative and public legal relations are clearly defined in the legislation.

Of course, the introduction of alternative methods of administrative dispute resolution in the legislation is a great achievement for legislation, justice and society. However, in order to ensure the validity of these norms, in other words, it is necessary to further develop the legislation and further improve the practical rules. Because, as we said before, in order to develop the alternative resolution of disputes, we need to develop a number of developing rules for the court hearing of disputes, otherwise these rules on the reconciliation of the parties will remain as passive procedural law rules in economic and civil courts.

Also, with Law No. 833, a new paragraph 11 was added to Article 140 of the Administrative Code of Uzbekistan regarding the actions of the judge to prepare the case for trial, and it is established that the judge shall take measures to reconcile the parties during the preparation of the case for trial no later than five days from the date of receipt of the application (complaint).

However, the question arises, what can be the actions of the judge to take measures to reconcile the parties?

In the first place, of course, in order to show that the judge has fulfilled the requirements of the law in the traditional way, in the ruling on assigning the case to the court hearing, he should state to the parties that according to Article 126[1] of the Code, the parties can resolve the dispute in full or in part by concluding a settlement agreement at all stages of administrative

court proceedings and in the process of executing the court document. Possible but this is nothing more than the usual procedural formality.

Secondly, the judge in his decision may suggest to the parties that the dispute can be settled by agreement, while studying the case documents, he can study whether the legal documents on the settlement of the dispute gave the respondent administrative discretion (discretionary authority) or not. After all, the law stipulates that the agreement of the Parties is allowed only when the defendant has administrative discretion (discretionary authority). If the judge has found that the defendant has discretion on the subject of the dispute during the investigation of the case, can the judge continue the measures to reconcile the parties even after the five-day period stipulated in Article 140 and explain this to the parties during the trial? If so, what will be the judge's next steps in conciliating the parties?

In this regard, the legislation should be further improved. After all, the provision regarding the judge's taking measures to reconcile the parties, included in Article 140 of the Code, is included in Chapter 17 (preparation of the case for trial) of the Code.

According to the new law No. 833, an amendment was also made to the provisions of the Code regarding court proceedings in connection with the application of settlement procedures in resolving disputes in court. It is only when a party applies to the court for assistance in resolving the dispute by agreement that the court can adjourn the trial.

However, the new legislation or any other legislation of the Republic of Uzbekistan does not specify that after the parties have agreed to the agreement, the judge has the right to continue the measures to reconcile the parties in any form, and there is no procedural practice for this.

We can see this deficiency in the procedural legislation in the procedural legislation related to civil and economic affairs. In our opinion, this deficiency in procedural legislation reduces the use of alternative dispute resolution in court.

By this, we mean the need to develop procedural rules related to the agreement of the parties, which will be conducted by the court after the trial or before the trial.

Because, according to the legislation of the Republic of Uzbekistan, the economic, civil, and administrative procedural rules do not specify the rules for helping the court conclude a settlement agreement after the parties agree to reconciliation. In such a case, usually in court practice, the court is satisfied with postponing the trial and giving time to the parties so that the parties can mutually implement the settlement agreement. However, the court does not conduct the procedure of conciliation of the parties. In this case, the parties act independently of each other.

However, in foreign practice, the actions of the judge to reconcile the parties regarding the dispute are clearly defined, the judge hearing the case at the court first evaluates the possibility of reconciling the parties with the case situation and legal grounds, and if it is possible to reconcile the parties in the case, he sends the case to the judge engaged in mediation, and the mediator-judge agrees on the case on the basis of the principles of procedure, helps the parties reach an agreement on the most favorable terms and informs the main judge who hears the case about the outcome of the case. If the parties fail to reach an

agreement, the case will be returned to the main judge for a substantive hearing and will keep confidential the information about the parties that was disclosed during the settlement process.

Also, in many developed countries, there is a separate training system for judges involved in mediation.

According to the judge M. Shtender, a judge who hears a case in mediation should have a special education in mediation, and should have mastered the knowledge of psychology well. Also, in his opinion, the success of mediation depends on the knowledge, experience, and good understanding of human psychology of the judge-mediator. For this reason, there is a separate training system for mediator-judge in Germany[14].

If the judge who hears the dispute in mediation and the judge who hears the content of the case are separated from each other, the specialization of the judge and the judge-mediator, impartiality, confidentiality of the mediation is ensured.

For this reason, it is necessary to put into practice the formation of separate judges or mediators who will conduct the process of reconciliation of the parties according to the procedures for settling the case in mediation.

At the same time, it is necessary to introduce cooperation meetings between the parties on reconciliation procedures, which are conducted in the spirit of friendship and cooperation, which are different from the usual court sessions.

Also, it is necessary to develop the practice of passing disputes through mandatory settlement procedures when applying the agreement procedures between the parties. This will lead to a reduction in court cases and build the ability of the administrative body to resolve disputes internally.

In the Republic of Uzbekistan (civil, economic, administrative) the legislation on the application of the rules of the agreement procedure was developed separately for each area and the application of the rules of other legislation is not envisaged.

For example, according to Article 173 of the German Code of Administrative Procedure, if this law does not contain rules for the conduct of court proceedings, the provisions of the Law on the Organization of the Court and the Code of Civil Procedure can be used in the conduct of administrative court proceedings[15].

Although the German Code of Administrative Court Proceedings stipulates that it is possible to use conciliation procedures at the stage of resolving administrative disputes in court, this code does not specify the procedural rules for conducting conciliation procedures in court resolution of disputes. In this regard, the German Code of Administrative Procedure provides for the application of the rules of civil procedure[16].

[14] The lecture of the retired judge of the Berlin City Administrative Court, Manfred Stendr, seminar training on "Current issues in administrative court proceedings" held in cooperation with the German International Cooperation Organization (GIZ) and the Higher School of Judges, 18.02.2023.

[15] Йорг Пуделька, Сборник законадательных актов по административному судапроизводству 3-е издание, Москва 2018 г. 272 с.

[16] https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html

Also, the activity of a mediator-judge in this country is regulated by the law Mediation Act (MediationsG) (amended by the tenth regulation on the adjustment of jurisdiction of August 31, 2015)[17].

In our opinion, the establishment of such general procedural rules in the legislation of the states creates convenience in the application of the legislation. In part, this can be attributed to the fact that disputes in foreign countries are heard in courts of general jurisdiction. However, we can see from the German judicial system that, while administrative disputes are resolved in a separate court jurisdiction, the administrative-procedure code provides for the application of civil procedural rules in certain matters.

If we compare the provisions of economic, civil, administrative procedural laws existing in our national legislation regarding the conclusion of a settlement agreement, we can see that they exactly repeat each other. For this reason, it is necessary to generalize the various legislations on this issue into one legislation.

[17] https://www.wipo.int/wipolex/ru/text/462231