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PUBLIC INTEREST AND PRIVATE INTEREST IN THE ADMINISTRATIVE LAW OF UZBEKISTAN

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Annotation

In this research work The "Strategy of actions in five priority directions of development of the Republic of Uzbekistan in 2017-2021" was adopted in accordance with the Decree of the President of the Republic of Uzbekistan dated February 7, 2017 was explored. This politically important act laid the foundation for bringing to a new level legal mechanisms to ensure "public interests", in particular in the field of public administration. On the basis of and in pursuance of this significant act, the "Concept of Administrative Reform in the Republic of Uzbekistan" was adopted. It reflected the concept of a modernized format for protecting public and private interests in the implementation of public administration. In particular, the normative legal act showed the shortcomings of public administration at that time, and the task was set to reform the entire state

power in the field of state administration at the root. These two most important acts played an important role in the transformation of public interests, raising them to the highest priority in the exercise of state power. The objectives of these acts is to radically change the relations of state bodies in the management of the state and society, the welfare of the people, public interests and, ultimately, to put the welfare of man in the first place.

Keywords: public interest, private interest, conflict of interests, administrative law, administrative procedure

In light of the intensive development of New Uzbekistan, a big step has been taken towards ensuring the interests of society, in particular, ensuring the interests and rights of citizens. With the election of the President of the Republic of Uzbekistan Sh.M.Mirziyayev, the views of the modern Uzbek people essentially expanded, new trends in legal mechanisms for protecting public interest appeared.

The “Strategy of actions in five priority directions of development of the Republic of Uzbekistan in 2017-2021” was adopted in accordance with the Decree of the President of the Republic of Uzbekistan dated February 7, 2017.(1) This politically important act laid the foundation for bringing to a new level legal mechanisms to ensure "public interests", in particular in the field of public administration. On the basis of and in pursuance of this significant act, the “Concept of Administrative Reform in the Republic of Uzbekistan” was adopted. It reflected the concept of a modernized format for protecting public and private interests in the implementation of public administration. In particular, the normative legal act showed the shortcomings of public administration at that time, and the task was set to reform the entire state power in the field of state administration at the root. These two most important acts played an important role in the transformation of public interests, raising them to the highest priority in the exercise of state power. The objectives of these acts is to radically change the relations of state bodies in the management of the state and society, the welfare of the people, public interests and,

ultimately, to put the welfare of man in the first place. The principle declared by the President “It is not the people who should serve the state, but the state should serve the people” was embodied in the practical slogan of every state body in the administration.

In substantiating the above arguments, we can cite some facts related to the assignment of "an authoritative place to public interests" in the relationship between the state and the individual. In a short time, at the legislative level, normative legal acts were adopted, such as the laws "On administrative procedures", "On administrative court procedure", corresponding changes were made to many laws e.g., "On additional measures to effectively organize anti-corruption activities", "On measures to create an environment of intolerant attitudes towards corruption, drastically reduce corruption factors in state and public administration, as well as broad public involvement in this process", "On additional measures to ensure transparency and increase the efficiency of public procurement", "On additional measures to ensure the openness of the activities of state bodies and organizations, as well as the effective implementation of public control", "On additional measures to improve the activities of the Cabinet of Ministers", "On additional measures aimed at further improving the system of social support for the population" and this list is not exhaustive.

Today the concepts of "public interest", "private interest", "legitimate private interest" and others are becoming more relevant. In the legislation of Uzbekistan, in the process of development, taking into account these concepts become important needs. But nevertheless, the legislator does not provide the definition, characteristics and correlation of these concepts.

In our opinion, the public interest can be recognized as a significant set of private interests. The totality of quantitative (significant) individual interests translates them into the category of public interest. So, each person has a legitimate private interest in having a good social position in society, high wages, and opportunities for free personal development. In the aggregate, such persons have

similar legitimate interests, therefore, a quantitative indicator will be taken into account - an indefinite number (circle) of persons with an interest.

The concepts of public interest and private interest are mostly found in scientific literature. Scientists give the ratio, definition, signs, essence, etc. to these concepts. In the works of A.G. Malinova, M.V. Pershin, N.A. Sheikenov, E.P. Gubin, S.V. Mikhailov, G.I. Ivanets, V.A.Soloviev and other issues of public and private interest is studied fundamentally.

Yu.A. Tikhomirov explained that the public interest is understood as "the interest of a social community recognized by the state and secured by law, the satisfaction of which serves as a guarantee of its existence and development"(2)

The author N.M.Musaev very correctly notes that private interests are embodied in human rights, the principles of the legal status of an individual - with their help, a person is protected from interference by the state, its arbitrariness, can defend his private property, the rights of participants in market relations and the democratic process. But provided that this statement is reflected in national legislation, then we can judge the practical implementation of this category(3)

Below we discuss how the legislation introduces the concepts of "public" and "private" interest on the way to the development of a democratic society. First of all, I would like to refer to the Constitution of the Republic of Uzbekistan. In the highest in legal force normative legal act of our republic, the conceptual essence of the concepts of public and private interest is established. These concepts are associated with 3 articles that characterize their legal essence. Thus, in article 2 of the Constitution of the Republic of Uzbekistan, public interest is interpreted as “popular interest”. That, it must be said, the popular interest is associated with the "will of the people". Since the state represents the will of the people and the public good. Article 20 defines private interest as “the legitimate interests of others”. It should be noted that the concept of "interests of other persons" along with the state and public interest. And also, in the section “Society and Personality” there is a rule “the interests of citizens, legal entities and the state protected by law,” that the interests

of legal entities are also equated with the interests of citizens and the state. That gives a constitutional guarantee of protection of both the interests of citizens, the state and the interests of legal entities in general.

After the election of President Sh. Mirziyoyev, the country began reforming legislation in favor of social interest. Important laws were adopted to regulate administrative legal relations in the area of public interest. The theoretical foundations of social interest have acquired legal status in several important regulations.

Significant changes have taken place in the history of the administrative law of Uzbekistan. Regulatory legal acts were adopted to regulate the protection of public-private interests in the field of public administration in accordance with the democratic standards of the most developed countries abroad (Germany, France, Japan, etc.). So, on January 8, 2018, the Law of the Republic of Uzbekistan “On Administrative Procedures”(4) was adopted, which directly establishes the legal framework for the relationship of individuals with the state (administrative bodies and officials). Article 16 of this law establishes that “the change in the established administrative practice must be justified by the public interest, be of a general nature and be sustainable”. In this rule, the public interest is referred to as the public interest.

According to article 19 of the Law on Administrative Procedures, administrative documents and administrative actions must comply with the principles of administrative procedures. Failure to comply with the principles of administrative procedures leads to the cancellation or revision of administrative documents and administrative actions. Consequently, failure to comply with administrative procedures, including failure to protect public and legitimate interests, will lead to corresponding legal consequences.

And also in Article 59, the concept of "public interest" is also used as a public interest. It was established that “On its own initiative, an administrative body has the right to cancel or change an administrative act adopted by it in cases where the need

for this is due to changes in legislation, prevention of threats to public interests, detection of inconsistency of an administrative act with legislation and in other cases stipulated by law. Regardless of the confidence of the interested person, an administrative act recognized as not complying with the legislation can be canceled by an administrative body if its preservation poses a threat to public interests ”(5).

To give an example, the Administrative Court considered the administrative case of the applicant Aleksanyan S against the decision of the Yunusabad District Branch of the Extra-Budgetary Pension Fund under the Ministry of Finance of the Republic of Uzbekistan. The court, considering the applicant's complaint, declared the decision of the administrative body invalid, and its actions (inaction) - illegal. In support of its decision, the court referred to the Administrative Procedure Law. According to Article 60 of the Law “On Administrative Procedures”, the cancellation of an administrative act in favor of an interested person can be made without holding a meeting. Cancellation of an administrative act that is contrary to the interests of the interested person is carried out by reconsidering it at a meeting, unless otherwise provided by law. In the event of a dispute, the administrative body committed an unlawful act without holding an assembly. The court also found that the administrative body violated the basic principles of administrative procedures of the Law of the Republic of Uzbekistan "On Administrative Procedures", such as the principle of legality, proportionality, reliability, protection of trust, the ability to be heard.

It should be noted that in the principles of the Law "On administrative procedures" the legal essence of the concepts of public interest was enshrined, and special attention is paid to private interests as a priority human right.

According to the Code of the Republic of Uzbekistan adopted in 2018 on January 25 "On administrative court procedure", Article 2 established that "ensuring the legitimate interests of citizens, as well as enterprises, institutions, organizations (hereinafter - legal entities) in relations with administrative bodies." Here, the interests of legal entities are put on an equal footing with the interests of citizens.

Article 185 establishes that if the rights and legally protected interests of individuals are violated or obstacles are created to the exercise of his rights, freedoms and the realization of legitimate interests, then the interested persons have the right to apply to the court with an application (complaint) to invalidate the decision, illegal actions (inaction) administrative body, self-government body of citizens, their officials. It is also clear here that the legislation indicates the special status of the rights of citizens while protecting the legitimate interests of individuals.

The conclusion of the concept of public interest is interconnected by the concepts of public interest, national interest, and a specific definition can be cited as the interest of a social community recognized by the state and secured by law, the satisfaction of which serves as a guarantee of its existence and development.

I would like to draw your attention to the relationship between the concepts of “public interest” and “private interest”. It should be noted that this issue is somewhat controversial. According to Article 20 of the Constitution, citizens should not infringe upon the legitimate interests, rights and freedoms of others, the state and society in the exercise of their rights and freedoms. This raises a question. To what extent can citizens exercise their rights and freedoms without infringing on the legitimate interests, rights and freedoms of others, the state and society?

The theory of interest in science and in legislation demonstrates the ratio of the general and the particular in the public interest. The point is that public interest does not at all mean the priority of the state or group over the private. It is composed of the interests of individual individuals who are able to unite in groups. According to G. Jellinek, there is not a single legitimate individual interest that has no connection with the general one. It is no accident that in German administrative law the theory of interest is correlated with the construction of subjective public law. The essence of this construction is to recognize the legal ability of an individual to demand a certain behavior of a public subject, defending his interests before him. As a result, each individual becomes an active participant in the administrative legal relationship, independent in relation to the state4. Subjective public law is

manifested in the fact that a legal norm is aimed at achieving the public interest and, at the same time, the interest of an individual citizen. As a result, the legislation establishes the responsibility of the administration in relation to the citizen, and the latter is guaranteed the opportunity to protect his managerial rights.

With this approach, the human rights side of the theory of interests is manifested, the focus of public interest on ensuring the rights of powerless participants in legal relations is emphasized. In its substantiation, G. Jellinek wrote: since in the structure of general interest individual interests are represented as part of the whole, the material expression of subjective public law is that each person manifests itself as a part of the state, that is, has the appropriate capabilities in relation to the bearers of power. The legislator has to not only establish the rights and obligations, but also to ensure their implementation normatively, and the law enforcers must correctly recognize the prevailing interest and guarantee it. An example, a foreigner expelled from the country, of course, has the right to apply to the court with a demand to cancel the act of forced removal. But a simple opportunity in this case is not enough, the modern administrative-legal doctrine insists on a more thorough protection of subjective public law. Additional guarantees are needed: suspension of the execution of the act until the final consideration of the case, consideration of the dispute by an independent instance, qualified legal assistance, etc.

Finally, the recognition of subjective public law, its administrative and procedural support require a new step from the state. There is a need for legal doctrines aimed at organizing the activities of bodies that resolve administrative cases. E.Schmidt-Assmann, must be determined additionally according to the rules of jurisdiction and taking into account the principle of proportionality. The latter, according to the constitution, represents a set of rules, guided by which the power subjects undertake to weigh conflicting interests, determining the dominant one that requires priority protection. This principle is largely based on the practice of the higher courts, it is extremely difficult to fix it normatively, to calculate it as well, but

it is this principle that allows the authorities to act fairly, while remaining within the framework of the law. due to proportionality, the subjects of government of the countries of the continental legal family retain the right to discretion, making life easier for the legislator, freed from "Sisyphean labor" by too scrupulous regulation of their activities.

Here it is necessary to prevent excessive enthusiasm for any legal theory. Each of them, when properly embodied, is good up to certain limits. Thus, R. Werpmann warns that public interest as a criterion characterizing the circumstances of an individual case, and as a dogmatic concept is not "a magic formula for solving legal problems that expels the devil from the legal order." Rather, it should be about an “effective concept” that borders on competence, requires careful definition, and is necessary to balance different interests. It is precisely the multi-stage combination of doctrines that makes it possible to structure the theory of interests into an acceptable management mechanism. In general, its transformation looks as follows: the theory of interests - the consolidation of the fundamental rights and freedoms of the individual in the constitution - the theory of subjective public law as an important part of administrative-legal dogma - the principle of proportionality.

At the first stage, there is an awareness of the public interest of the population of the country; on the second, it is objectified in constitutional and other normative legal acts; on the third, the ability of everyone to defend their rights in relations with the public administration is formulated, which is supported by a procedural and organizational mechanism; finally, the fourth stage is associated with the consolidation of the rules that ensure the proper balance of recognized and guaranteed by the state interests. At each stage (except for the first) there is an administrative and legal component, the basis of which is constitutional principles. The conclusion is as follows: interest is presented as the goal of legal regulation, and organizational and legal means are the tools for its implementation. For continental countries, this idea has been embodied in the principle of proportionality, the

practical implementation of which is aimed at ensuring a balance of interests of various subjects (state, society, person). The interests should be weighed not only by the judiciary, but also by the administrative authorities, especially those applying measures restricting the rights of powerless subjects.

The theory of interests is recognized, but still does not have the necessary doctrinal embodiment that is significant for the legislator. As a result, practice develops faster than legislation. If for the American model of case law such a situation is normal and even indicates that the courts are coping with their law-making function, then this explanation is not suitable for the domestic legal system. The Russian judicial authorities should be guided by the will of the legislator, which has received due formal confirmation. It is in the normative acts that the real public interest must be reflected. The practice of the Constitutional Court of the Russian Federation and the more so of the Supreme Court of the Russian Federation is not able to fill the gap in full, if only because both courts interpret the existing legal norms. Courts react to fait accompli (except in cases of abstract constitutional control). Even more than the judiciary, the executive branch is not equipped to properly perceive the public interest in the absence of accompanying legislation. Their activities are based on the strict implementation of regulatory guidelines. The adopted administrative regulations often do not allow them to deviate from the established procedure for exercising functions, to show independence necessary to fill the gaps formed as a result of the dissonance between regulatory regulation and the positions of the courts.

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