

Legal Problems of the Concepts Legality, Justification and Justice by Judicial Acts

Feruza Ibratova

Associate Professor of the Tashkent State, University of Law, Ph.D

Abstract:

The article deals with the issues of legality, validity and fairness of judicial acts in civil proceedings. It is concluded that a court decision is legal if it is made with strict observance of the rules of procedural law and in full compliance with the rules of substantive law.

Key words: decision, determination, ruling, judicial act, civil cases.

INTRODUCTION

According to article 15 of the Constitution of the Republic of Uzbekistan, the unconditional supremacy of the Constitution and laws of the Republic of Uzbekistan is recognized in the Republic of Uzbekistan¹. The state, its bodies, officials, public associations, citizens act in accordance with the Constitution and laws.

Everyone is guaranteed judicial protection of his rights and freedoms, the right to appeal in court against illegal actions of state bodies, officials, and public associations.

In accordance with Article 6 of the Civil Procedure Code of the Republic of Uzbekistan, on the considered and resolved issue, the court makes a decision, determination, resolution and order².

It should be noted that the decisions, rulings and rulings of the court must be lawful, reasonable and fair. Failure to comply with these requirements for judicial acts may lead to the cancellation or amendment of these acts by a higher court³.

An important requirement for judicial acts is its legality. The court adopts judicial acts in which it decides whether to apply the norm of substantive law or refuse to apply it, regardless of the circumstances required in the case, but in any case, it must find out and interpret the content of the legal norm and apply it to the court case⁴. At all stages of civil proceedings, it is necessary to firmly and strictly observe the procedural norms, in any case, he must find out and interpret the content of the legal norm and apply it to the court case. At all stages of civil proceedings, it is necessary to firmly and strictly observe procedural and material norms, in case of violation or misapplication of the norm, they are grounds for canceling or changing a judicial act in a higher court (Article 3991 of the Code of Civil Procedure of the Republic of Uzbekistan).

Any normative legal acts concerning and affecting human rights and freedoms cannot be applied if

¹ Конституция Республики Узбекистан. Ведомости палат Олий Мажлиса Республики Узбекистан, 2011 г., №12/1, ст. 343. <https://lex.uz/docs/35869>

² Гражданский процессуальный кодекс Республики Узбекистан. <https://lex.uz/docs/3517334#3520852>

³ Барышова, М. В., Белый, В. С., Глущенко, В. М., Ибратова, Ф. Б., Новиков, А. Н., & Пронькин, Н. Н. (2019). Социальное предпринимательство: научные исследования и практика.

⁴ Burkhankhodzhaeva H., Ibratova F. LEGAL ISSUES OF BANKRUPTCY OF A CITY FORMING AND RELATED ENTERPRISES //Norwegian Journal of Development of the International Science. – 2021. – №. 63-2. – С. 16-20.

they are not officially published for general information. Thus, civil cases are subject to resolution in accordance with the legislation of the Republic of Uzbekistan⁵. The court has the right to apply other normative acts, if this does not contradict the Constitution and other laws of the Republic of Uzbekistan. Because, in the absence of a rule of law regulating disputed relations, a civil court has the right to apply the rules of law regulating similar relations, in the absence of such rules, it can resolve the dispute based on the general principles and meaning of laws (part 2 of article 14 of the Code of Civil Procedure of the Republic of Uzbekistan) ... The court also applies the law of a foreign state in accordance with an international treaty of the Republic of Uzbekistan. After all, the legality of a decision means compliance by the courts of generally recognized principles and norms, international treaties of the country⁶. Therefore, if an international treaty of the Republic of Uzbekistan establishes rules other than the legislation of the Republic of Uzbekistan on civil proceedings, the provisions of the international treaty are applied (part 3 of article 14 of the Civil Procedure Code of the Republic of Uzbekistan).

This principle is primarily enshrined in international covenants and agreements: the Universal Declaration of Human Rights, adopted by the United Nations on December 10, 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on November 4, 1950, the International Covenant on Civil and Political Rights, adopted by the General The UN Assembly on December 1, 1966 and the International Covenant on Economic, Social and Cultural Rights, as well as other treaties related to human rights, as well as other treaties that enshrine norms related to human rights.

The resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 24, 2019 No. 12 "On the court decision" explains the requirements for the legality of the decision. In particular, it is indicated that, in accordance with Article 14 of the Civil Procedure Code of the Republic of Uzbekistan, a court decision must be based on the law. The application of other acts of legislation is allowed only if they do not contradict the Constitution and the law of the Republic of Uzbekistan. In the event that there are no norms governing a disputable relationship in a law or other legislative act, the court makes a decision based on the norms of the law or other legislative act regulating similar relations (analogy of the law), and in the absence of such norms, resolves the dispute based on general principles and meaning laws (analogy of law)⁷.

The next requirement for a decision is its validity. According to Article 249 of the Civil Procedural Code of the Republic of Uzbekistan, the court decision should be based only on the evidence that was examined in the court session. Clause 4 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 24, 2019 No. 12 "On the decision of the court" provides the following clarification about the validity of the decision: the requirements of the law on their relevance and admissibility, or circumstances recognized by the court as well-known, not requiring proof, as well as exhaustive conclusions arising from the established facts (Articles 73-75 of the Code of Civil Procedure of the Republic of Uzbekistan). In the case of collecting evidence by sending a letter of order, the court has the right to substantiate decisions taking into account this evidence only if they were obtained in compliance with the requirements of Article 104 of the Code of Civil Procedure of the Republic of Uzbekistan, read out in court, presented to the persons participating in the case, and evaluated in conjunction with other evidence in the case.

⁵ Ibratova F., Narzullaev O. LEGAL NATURE OF LEGAL RELATIONSHIP IN BANKRUPTCY //Norwegian Journal of Development of the International Science. – 2021. – №. 64. – С. 24-26.

⁶ Ibratova, F. B., Kirillova, E. A., Smoleń, R., Bondarenko, N. G., Shebzuhova, T. A., & Vartumyan, A. A. (2017). Special features of modern legal systems: cases and collisions.

⁷ Постановлении Пленума Верховного суда Республики Узбекистан от 24 мая 2019 года №12 «О решении суда». <https://lex.uz/docs/4396488>

As D.Yu. Khabibullaev notes, motivation is not identical to the requirements of justification, since justification is considered when the conclusions indicated by the court in the decision must be based on evidence, on the assessment of evidence and the interpretation of the law by the court when resolving and qualifying the disputed legal relations by the court⁸.

According to Sh. Shorakhmetov, the court's decision should be recognized as reasonable, which fully and comprehensively reflects the results of the court's work on the study and assessment of all evidence in the case, determines the reasons why some evidence was accepted by the court, others rejected⁹. Z.N. Esanova argues that the validity and legality of a judicial act depends on the level of motivation. The reasoning lies in the fact that the logical, mental activity of the court reflects the requirement of legality and validity in a particular judicial act, which is appropriate only if the requirements clearly reflect the algorithm of thinking. This algorithm of forensic thinking is based on the application of the law, assessment, evidence, as a quality in drawing up a judicial act with motivation¹⁰.

The validity of a court decision is interconnected with its legality. If the first requirement for a court decision, that is, its legality, is like the legal side of the decision, then validity is its factual side.

Indeed, the proper application of substantive law requires the identification of facts of legal significance. The decision of the court is considered justified if the persons participating in the case indicate all the factual data, according to which the court establishes the presence or absence of circumstances substantiating their claims and objections and which are important in order to correctly resolve a particular case¹¹.

The facts that constitute the subject of proof to prove are relevant to the case and are ultimately determined by the application of the relevant substantive law¹². If the facts of legal significance in the case have not been established, the decision is considered unfounded, and the decision of the higher court must indicate evidence confirming the facts that have been established¹³. Failure to prove the facts testifies to the groundlessness of the decision.

Circumstances recognized by a court decision are considered proven if they are properly confirmed and proven in an appropriate manner.

If the defendant recognizes the claim, the court is limited to the reasoning part of the decision only by the statement that the claim was recognized and the recognition was accepted by the court¹⁴.

⁸Ibratova F., Khabibullaev D. LEGAL ISSUES OF SIGNS OF BANKRUPTCY AND THE REALIZATION OF THE RIGHTS OF WORKERS IN CASES OF BANKRUPTCY OF EMPLOYERS UNDER THE LAWS OF THE REPUBLIC OF UZBEKISTAN //Znanstvena Misel. – 2019. – №. 11-2. – С. 55-61; Хабибуллаев Д.Ю. Фуқаролик процессуал ҳуқуқи (савол ва жавоблар). Ўқув қўлланма. – Тошкент: ТДЮИ. 2014. – 215 Б.

⁹ Шоракметов Ш. Ўзбекистон Республикасининг фуқаролик процессуал кодексига Шарҳ. – Тошкент.: ТДЮИ, 2010. – 96 Б.

¹⁰ Есенбекова, Ф. Т., Эсанова, З. Н., & Ибратова, Ф. Б. (2021). ПРАВОВЫЕ ОСОБЕННОСТИ УТВЕРЖДЕНИЯ МИРОВОГО СОГЛАШЕНИЯ ЭКОНОМИЧЕСКИМ СУДОМ В УЗБЕКИСТАНЕ. In *НАУКА И СОВРЕМЕННОЕ ОБРАЗОВАНИЕ: АКТУАЛЬНЫЕ ВОПРОСЫ, ДОСТИЖЕНИЯ И ИННОВАЦИИ* (pp. 156-158).

¹¹ Ibratova F., Esenbekova F. GENESIS AND EVOLUTION OF LEGISLATION ON CONCEPTUAL PROCEDURES IN THE REPUBLIC OF UZBEKISTAN //Polish Journal of Science. – 2021. – №. 38-2. – С. 20-24.

¹² Esenbekova, F. T. (2019). Esenbekova FT, Okyulov O., Ruzinazarov Sh., Ibratova FB Features of the approval of the world agreement by the economic court: practice and theory. *Editorial team*, 10(39), 90.

¹³ Ibratova F., Narzullaev O. LEGAL NATURE OF LEGAL RELATIONSHIP IN BANKRUPTCY //Norwegian Journal of Development of the International Science. – 2021. – №. 64. – С. 24-26.

¹⁴ Okyulov O. et al. GENERAL PROVISIONS ON INVALIDITY OF TRANSACTIONS IN BANKRUPTCY PROCEDUR //Norwegian Journal of Development of the International Science. – 2021. – №. 68. – С. 18-21.

The next requirement for a court decision is its fairness. It should be noted that the civil procedural legislation does not specify what should be understood as a fair decision. The resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated May 24, 2019 No. 12 "On the court's decision" also does not provide any explanations on the meaning of the fairness of the court's decision. However, this requirement for a decision, in particular, when meeting the requirements of the parties in civil cases for the recovery of moral damage, material damage or other property, is especially noticeable, for example, the respondent's compliance with economic opportunities and other working conditions¹⁵.

The concept of "justice" has long been studied by scientists. In particular, Sh.N. Ruzinazarov believes that the concept of "justice" should be understood, firstly, not the use of benefits and privileges when applying to the court for the protection of their rights and legitimate interests; secondly, the proceedings should be carried out on the basis of equality of arms and adversarial nature; thirdly, the right to appeal against a court decision and its execution¹⁶.

According to Sh. Shorakhmetov, the requirements for the concept of justice may differ depending on the specific circumstances of the case, the jurisdiction of the dispute (civil, economic, criminal)¹⁷. Regarding the objection to the use of the concept of "fairness" from legal proceedings, E. Egamberdiev argues that justice in judicial practice, which reduces to subjectivity, uncertainty and the complexity of understanding, is difficult to consider as a sufficient reason to exclude this concept from judicial practice"¹⁸.

In the legal literature, opinions have been expressed about the manifestation of reasonableness and fairness in determining the amount of moral damage. In particular, O. Okyulov notes that the concept of rationality is revealed in this case from the expediency of interpreting the amount of compensation from the point of view of the property status of the offender, as far as it corresponds to his capabilities; and fairness in determining the amount of compensation, its proportionality to the amount of non-pecuniary damage, its consequences and its ability to perform the function of compensation in relation to the victim¹⁹. According to M. Mamasiddikov, the interests of different strata of the population, their interaction with the interests of society are decided by the legislative bodies. The court is not such a body. However, the court is the body that enforces the rule of law. In this case, the court has the right to determine the legal relationship within the powers granted to it to carry out judicial and law enforcement activities in compliance with the requirements of justice²⁰. Article 249 of the Code of Civil Procedure of the Republic of Uzbekistan does not contain definitions such as legality, validity and fairness of a court decision. In this connection, it is proposed to supplement Article 249 of the Code of Civil Procedure of the Republic of Uzbekistan with parts 3, 4, 5 and state in the following edition:

“The decision of the court is legal if it is made in strict compliance with the rules of procedural law and in full compliance with the rules of substantive law applicable to this legal relationship or on the

¹⁵ Atalykova G., Ibratova F., Esanova Z. LEGAL ISSUES ON REVOKING ADOPTION: THEORY AND PRACTICE //Norwegian Journal of Development of the International Science. – 2021. – №. 60-3. – С. 10-13.

¹⁶ Рузиназаров Ш. ЧАСТНАЯ И ПУБЛИЧНО-ПРАВОВАЯ ПРИРОДА СУДЕБНОГО АКТА: ЦИФРОВЫЕ ШТРИХИ И НОВЫЕ ОРИЕНТИРЫ ИНФОРМАЦИОННЫХ СИСТЕМ //Review of law sciences. – 2020. – Т. 3. – №. Спецвыпуск.

¹⁷ Шорахметов Ш. Ўзбекистон Республикасининг фуқаролик процессуал кодексига Шарҳ. – Тошкент.: ТДЮИ, 2010. – Б.150.

¹⁸ Эгамбердиев Э. Фуқаролик суд ишларини юритиш турлари . – Тошкент: 1997. – Б.13.

¹⁹ Оқюлов О. Интеллектуал мулк ҳуқуқий мақомининг назарий и амалий муаммолари / Сўзбоши, масъул муҳаррир акад. Ҳ.Р.Раҳмонкулов. – Тошкент.: ТДЮУ, – 2004. – Б.307-308.

²⁰ Мамасиддиков М.М. Меҳнатга оид ҳуқуқий муносабатлардан келиб чиқадиган низоли ишларни судда қўришининг процессуал хусусиятлари. Монография. – Тошкент.: ТДЮИ. 2005. – Б.18.

basis of the application, if necessary, of analogy of law or analogy of law.

The decision of the court is justified if it reflects the facts that are significant for the case, confirmed by the evidence examined by the court, satisfying the requirements of the law on their relevance and admissibility.

The decision of the court is fair if it is taken on the basis of equality before the law and the court of citizens regardless of their social status, form of ownership, organizational and legal form on the basis of competition and equality of the parties".

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