Effective and Reasonable Implementation and Application of the Principle of Ability to Be Heard Under Foreign and National Legislation of the Republic of Uzbekistan

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ABSTRACT
This article examines the concept, meaning and features of the principle of the ability to be heard under foreign and national legislation of the Republic of Uzbekistan. Based on an in-depth analysis of legal literature and practice, the application of the Law of the Republic of Uzbekistan "On Administrative Procedures", scientifically grounded conclusions have been developed to improve legislation in this area.

KEYWORDS: *law, principles, administrative procedures, principle of the ability to be heard, digital administrative procedure, administrative cases, stakeholder, rights and legitimate interests, interpretation, procedural status*

In modern conditions, the effective and reasonable implementation and application of the principle of the opportunity to be heard according to foreign and national legislation of the Republic of Uzbekistan is of great importance.

In the report of President Shavkat Mirziyoyev at the solemn meeting dedicated to the 27th anniversary of the adoption of the Constitution of the Republic of Uzbekistan, it is noted that the rule of law is a strict and unconditional compliance with the Constitution and laws of the country, acts adopted by public authorities and administration, actions of officials of all levels. Our great ancestor Amir Temur emphasized: "A state that is not built on the basis of laws can lose its strength and power, its integrity." Ensuring the supremacy of the Constitution and laws is the most important criterion for building a legal democratic state in our country. And guarantees of peace and progress, the results of all reforms are directly related to this basic principle[1].

Usually, a procedure is understood as a way of ordering activities. Traditionally, administrative procedures are regulatory norms established by legislative acts that determine the basis, conditions for the sequence and procedure for the consideration and resolution of administrative cases, as well as appeal and revision of decisions in administrative cases[2].

The principles of law are important in the implementation and protection of the rights and legitimate

[1] Мирзиёев Ш. Верховенство Конституции и законов – важнейший критерий правового демократического государство и гражданского общества / Доклад Президента Шавката Мирзиёева на торжественном собрании посвященном 27-й годовщине принятия Конституции Республики Узбекистан // mfa.uz /ru/press/news/2019/09/22312/

[2] 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.

interests of subjects of legal relations.

The term "principles" (from Lat. Principium - beginning, fundamental principle), is perceived by all sciences, including jurisprudence. In the legal literature, it is correctly noted that the principles are chosen, essential regularities, interrelationships and relations between the parties to administrative procedures function. They reflect the social role and essence of the functioning of the state apparatus for the implementation of the rights, freedoms and duties of citizens and organizations. Receiving normative and legal consolidation, the principles act as official guidelines for all subjects of administrative and procedural legal relations, that is, they have a legal binding significance for managerial practice, which gives stability to the administrative and power activities of the executive branch.

The law-making process needs scientific and theoretical substantiation. Without scientific understanding of the legislative process in general, the principles of administrative procedures require a constructive interpretation of the rule on the principles of law[3].

The principles of administrative procedures are designed to concretize the constitutional guarantees of the rights of individuals and apply the generally recognized values of the rule of law in the relationship of individuals and legal entities with public authorities. They should not only not interfere with the manifestation of constitutional principles, but also contribute in every way to their disclosure and detailing, thereby forming the foundation of the country's democratic public administration[4].

In the system of basic principles enshrined in Art. 5 of the Law of the Republic of Uzbekistan "On Administrative Procedures", a special and peculiar place is occupied by the principle of being able to be heard. This legislative novelty as an object of legal regulation of administrative procedures is enshrined in the national legal system of the Republic of Uzbekistan.

The principle of being able to be heard is one of the important elements in resolving any dispute[5]. This principle is key for understanding many problems of administrative procedures and clearly reflects the rights of a person to be heard, which is essential to express his opinion on all the circumstances for the adoption of an administrative act. The legal logic in this aspect is that when interested persons apply for a resolution of a dispute, he expects that everything is clear anyway, and that his explanations will be listened to.

In administrative proceedings, the implementation of the “right to be heard” principle plays a special role. It is clearly expressed in an old Latin dictum - “let the other side be heard, too” - audi alteram partem. It should be noted that the content of the principle is more voluminous than its literal interpretation. Interested parties are empowered to present the case as they see it and justify their position on it[6].

The administrative body hears directly the interested person or representatives themselves and gives

[3] Румянцев М.Б. Научное обоснование правотворческого решение // Закон и право 2017 №1. С.23-29. Виноградов Т.П. Алгоритм разработки законопроекта: между искусством и технологий // Государство и право, 2017 №11. С.106-109; Пащенцев Д.А., Алимова Д.Р. Новации правотворчество в условиях цифровизации общественных отношений // Государство и право 2019. №6. С.102-106.

[4] Административное право: Учебный курс / под.ред. Р.А. Подопригоры. Алматы: Налоговый эксперт 2010. С. 262-263

[5] Ibratova F. Problems of a settlement in bankruptcy cases in economic courts //Norwegian Journal of Development of the International Science. – 2019. – №. 28-3.

[6] Шерстюк, В. М. (2020). Сомнения относительно существования принципа «право быть выслушанным и быть услышанным» в гражданском процессуальном праве должны быть развеяны. *Современное право*, (6), 66-70.

them the opportunity to ask questions on the merits of the administrative case.

The ability to be listened to and convince the administrative body of the correctness of its position is a hypothetical feature of the "talisman" of administrative proceedings. In this regard, it should be noted that in the process of developing legal norms, it is necessary to comprehend the theoretical position of the modern legislative process[7].

The right to be heard is one of the key powers around which all the basic procedural doctrines ("good governance", "natural justice", "due process") are built, as well as in many respects the variants of the "philosophy" of administrative procedure. As E. Schmidt-Assmann notes, the role of the principle of democracy, participation is defined differently in different legal orders and largely depends on the understanding of the legitimation of the decisions made. If we proceed from the lack of parliamentary legitimation, the role of the public will inevitably increase. On the contrary, respect for the legitimacy of parliamentary acts sets certain boundaries for participation. Finding balance is not an easy task. However, "in no case can the administrative procedure be conducted in such a way that the competent executive body practically delegates its decision to bodies or interested groups, which, in turn, do not have democratic legitimacy"[8].

«Audi alteram partem», как говорят, безусловно, самый старый установленный принцип в англо-американском административном правеAccording to M. Joshua, conflicts between private and public interests are usually resolved, at least in the first instance, not by ordinary courts, but by administrative authorities. For any system of administrative justice to be acceptable, it is perhaps more important that it is always fair than it is always correct. Before making a decision that may be detrimental to the interests of the subject, the public authority exercising the judicial function should, as a rule, give that party a fair chance to present its point of view. Audi alteram partem is said to be by far the oldest established principle in Anglo-American administrative law[9].

The bearer of the right to be heard is a participant in the administrative procedure who has a legal interest in the consideration of the case[10]. Naturally, as a general rule, we are talking about capable subjects. However, some legal orders demonstrate special respect for the ability of a participant to personally indicate his position on the case, recognizing this, including for persons with limited legal capacity. So, according to Art. 14 of the Finnish Administrative Procedure Law of 2003, if the right of an incapacitated person to be heard is usually exercised by legal representatives (guardians, trustees), then in cases concerning income or property held by such persons, incapacitated participants exercise it independently. According to Art. 29 of the Law of Lithuania "On Public Administration" 1999, an individual with limited legal capacity has the right to be heard at his or her petition or the petition of the guardian. Such norms seem somewhat atypical, but they cannot be denied in a certain sequence of upholding the natural-legal, and therefore, practically inalienable nature of the right to hear the persons participating in the case[11].

The moment of the emergence of this right is also, at first glance, obvious. Based on the logic of the development of a procedural legal relationship, the right to hearing is most fully developed at the

[7] Шагиева Р.В. Принципы современного законотворчество: проблемы теоретического осмысление и практика его осуществление // Государство и право. 2016. №5. 5 с.

[8] Шмидт-Ассманн Э. Кодификация законодательства об административных процедурах: традиции и модели // Ежегодник публичного права — 2017 : Усмотрение и оценочные понятия в административном праве. М., 2017. С. 341—343.

[9] Joshua, J. M. (1991). The right to be heard in EEC Competition Procedures. Fordham Int'l LJ, 15, 16.

[10] Ибратова Ф. Б. Банкротство ликвидируемого субъекта предпринимательства: проблемы и решения //Norwegian Journal of Development of the International Science. – 2021. – №. 58-2.

[11] Ибратова, Ф. Б. (2015). Гражданско-правовые проблемы признания банкротами индивидуальных предпринимателей в Республике Узбекистан. *Вопросы современной юриспруденции*, (5-6 (47)).

stage of consideration of an administrative case. However, curious deviations from the trend are possible here as well. As J. Tsiko notes, the development of the Federal Republic of Germany Law "On Administrative Procedures" in 1976 (hereinafter - ZAP of the Federal Republic of Germany 1976) led, among other things, to the consolidation of the institution of "early public participation" in § 25, dedicated to consulting and information. The relevant norm "... emphasizes the need for action even before the start of the administrative procedure itself. As soon as the state body learns about the intentions of a person or organization to carry out a large project, it must influence the organizer of the project. He, in turn, must inform citizens about his intentions about the project and its consequences. Thus, it should be possible for citizens to speak early on about the planned project, and not when all significant decisions - for example, about the location or the definition of the size of the project - have already been made. This allows a broader understanding of the decision-making process of the government body. Democratic control over state bodies is being simplified, corruption, on the contrary, is getting more complicated"[12].

The right to be heard, as rightly noted by some authors, cannot be equated with the "simple" presentation of evidence by the participants in the procedure: "The explanations of the participant in the process are just evidentiary information, the purpose of the hearing is to give the person the opportunity to present legal objections and justifications in defense of his position"[13].

Finally, hearing in an even stricter form - a meeting, with the keeping of minutes - is necessary when considering especially complex administrative cases, including those with opposite interests of the participants in the procedure[14].

It is noteworthy that some legal orders with particularly deep traditions of participation demonstrate a tolerant (and even inventive) attitude towards sophisticated forms of listening. So, according to T. Tankverell, in the cantons of Switzerland, administrative referendums are widespread, especially on financial issues[15]. However, the Swiss experience is hardly applicable to most other legal orders.

As E. Lopman notes, "... if everyone has the right to familiarize themselves with the draft legal act and the petition, then only interested and affected persons have the right to submit proposals and objections [16]. "Everyone" becomes an affected or interested person from the moment he submits a reasoned proposal or objection ... In relation to the general act, all persons are considered interested"[17].

In connection with the requirement of Art. 9 of the Law of the Republic of Uzbekistan "On Administrative Procedures", the adoption of administrative acts and the performance of administrative actions on the basis of administrative discretion (discretionary power) must comply with the objectives of the administrative body. The norms of the law do not establish as a necessary

[12] Цико Я. Основы законодательства об административных процедурах в Германии // Ежегодник публичного права — 2014: Административное право: сравнительно-правовые подходы. М., 2014. С. 361

[13] Аэдмаа А., Лопман Э., Паррэст Н., Пилвинг И., Вэне Э. Руководство по административному производству. Тарту, 2004. С. 281

[14] Аэдмаа А., Лопман Э., Паррэст Н., Пилвинг И., Вэне Э. Указ. соч. С. 293—295.

[15] Tanquerel T. Chapter 19. Switzerland // Codification of Administrative Procedure. J.-B. Auby (ed.). Bruylant, 2014. P. 307.

[16] Лопман Э. Административный акт и интересы общественных групп: производство в Эстонии // Административная юстиция: к разработке научной концепции в Республике Узбекистан : материалы международной конференции на тему «Развитие административного права и законодательства Республики Узбекистан в условиях модернизации страны», 18 марта 2010 г. / отв. ред. Л. Б. Хван. Ташкент, 2011. С. 232—233.

[17] Давыдов К. В. Право на участие в рассмотрении административного дела как основное право участников административной процедуры: сравнительно-правовой анализ // Актуальные проблемы российского права. 2019. №10 (107).

requirement the recognition of an administrative act as invalid in the context of the absence of the principle of "the right to be heard" when considering an administrative case. Thus, the law does not consistently indicate cases of recognition of an administrative act as inconsistent with the legislation, taking into account the principle under consideration[18]. Therefore, the legality of administrative acts in terms of formal legal norms in accordance with the Law "On Administrative Procedures" of the Republic of Uzbekistan should be verified on the basis of the above statement. More specifically, this includes a statutory check of compliance with the principle of ensuring the right to listen to the form of adoption of an administrative act, etc.

In the event that a higher administrative body or a court finds that when adopting an administrative act, legal norms on administrative proceedings were violated or incorrectly applied, the question arises of the possibility of eliminating these violations[19]. Although Article 59 of the Law of the Republic of Uzbekistan "On Administrative Procedures" provides for the possibility of canceling or changing an administrative act in court, it should be emphasized that the practical implementation of this norm in administrative proceedings is very small. Of course, one can think about the possibility of applying this rule in relation to other errors and shortcomings made during administrative proceedings, for example, in the absence of failure to ensure the right of hearing by the administrative body when adopting an administrative act. Although, the law does not specify such a direct requirement as noted earlier. So, if it is possible to eliminate these shortcomings associated with ensuring the right of the complainant to express his opinion on the circumstances of the case within the framework of the proceedings in the administrative body, then there is no legal interest in canceling the contested administrative act due to violation of formal legal norms[20]. But if it is impossible to eliminate the violation of formal legal norms in the course of administrative proceedings and there is a causal link between this violation and the administrative act, then the act must be declared illegal from a formal legal point of view and canceled.

From the broad sense of the norm, it follows that the right of the interested party in the event of a dispute to be heard by the administrative body, which is empowered to resolve it. Based on Article 19 of this Law, administrative acts and administrative actions must comply with the principles of the possibility to be heard. Since the application of the principle of administrative procedures is directly specified in the Law itself. This is an important feature of this Law. Analysis of the legal nature of the principles shows that inconsistency with the principles of the ability to be heard in the process of implementation of administrative procedures entails the cancellation or revision of administrative acts and administrative actions. This principle is implemented during the meeting of the administrative body. Based on Article 47 of the Law, it should be noted that an administrative case is subject to consideration at a meeting of an administrative body, in cases provided for by law. An administrative case can also be considered at a meeting at the initiative of an interested person. Within the meaning of this Law, the administrative body gives an interested person the opportunity to express their opinion in the process of administrative proceedings. This right is primarily enjoyed by the person concerned. An interested person means a person to whom the adopted administrative act or administrative action is addressed, as well as whose rights and legitimate interests are or may

[18] 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.

[19] Старчик, Е. О. (2018). Проблемы привлечения юридических лиц к административной ответственности. *Вестник студенческого научного общества ГОУ ВПО" Донецкий национальный университет"*, *4*(10-2), 229-234.

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

be affected by the administrative act or administrative action[21].

Here it is also necessary to take into account the principle of priority of the rights of stakeholders. This is one of the striking features of this Law. The bottom line is that all irreparable contradictions and ambiguities of the legislation arising in the court of administrative proceedings are interpreted in favor of the interested parties in the absence of disagreements between these interested parties. An objective question arises, what are the limits of the right to be heard? The answer depends on the respective state and is conditioned by the peculiarities of legal regulation of the existing national legal system in this sphere of relations. So, certain restrictions are possible due to the type of proceedings, the stage of consideration of the administrative case, the specifics of the content, the range of explanations, the duties of the person concerned, etc. in particular, the administrative body is prohibited from burdening interested persons with obligations, denying or granting rights or otherwise restricting their rights only in order to comply with formal rules and requirements.

A systematic and logical interpretation of the principle of being able to be heard shows that it is closely interrelated with the implementation and application of the principle of protection of trust. It is the protection of trust that ensures the legality, reliability and equality of participants in administrative proceedings[22].

Administrative authorities respect the legitimate expectations of stakeholders arising from established administrative practices. Changes in administrative practice must be justified by the public interest, general and sustainable[23].

The circle of participants with the “right to be heard” is specified in Article 22 of the Law under study. Firstly, the person to whom the adopted administrative act or administrative actions are addressed, and secondly, the person whose rights and legitimate interests are or may be affected by the administrative act or administrative actions.

The essence of the modern doctrine of administrative proceedings lies in the fact that the administrative body can attract third parties to participate in administrative proceedings on its own initiative or at the request of an interested person. The implementation of the principle of the right to be heard largely depends on the scope and scope of the responsibilities of interested parties, established by Art. 29 of the Law on Administrative Procedure of the Republic of Uzbekistan. The application of the rule on the principles of the possibility of being heard also extends to persons facilitating the authorization of the administrative body[24]. The procedural status of these persons is established in Article 22 of this Law. In particular, part 1 of Article 27 of the law under consideration, persons assisting in the resolution of an administrative case (witnesses, experts, specialists, translators and others) are involved in administrative proceedings on a voluntary or contractual basis by the administrative body on its own initiative or at the request of interested persons, as well as in cases stipulated by law[25].

Speaking about the principles of the possibility to be heard, it should be noted that individual

[21] Балашов, А. Н. (2017). Активная роль суда как гарантия соблюдения принципа справедливости в административном судопроизводстве. *Актуальные проблемы государства и права*, *1*(2), 86-97.
[22] Ибратова, Ф. Б. (2019). ПРАВОВЫЕ ПРОБЛЕМЫ МИРОВОГО СОГЛАШЕНИЯ ПРИ РАССМОТРЕНИИ ДЕЛ О БАНКРОТСТВЕ В ЭКОНОМИЧЕСКИХ СУДАХ РЕСПУБЛИКИ УЗБЕКИСТАН. In *ПЕРСПЕКТИВЫ РАЗВИТИЯ НАУКИ В СОВРЕМЕННОМ МИРЕ* (pp. 163-170).
[23] Селькова, А. А. (2020). ПРИМЕНЕНИЕ ПРИНЦИПА JURA NOVIT CURIA В АРБИТРАЖЕ. *Российское право: образование, практика, наука*, (3).
[24] 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.
[25] Эсанова З. УЧАСТНИКИ ИСПОЛНИТЕЛЬНОГО ПРОИЗВОДСТВА: ТЕОРЕТИЧЕСКИЕ ПРАВИЛА И АНАЛИТИЧЕСКИЕ РЕЗУЛЬТАТЫ //Review of law sciences. – 2020. – №. 3.

officials of the administrative body are not entitled to take part in administrative proceedings on behalf of the administrative body[26]. In the broadest sense of the word, the exercise of the right to be heard also affects the range of administrative officials who are not entitled to participate in administrative proceedings. This argument is justified by the fact that the circle of officials of the administrative body can also be determined at any stage of the consideration of administrative cases. Here, an important procedural means are recusal[27]. The meaning of our rationale is that the administrative body should pay special attention to the circumstances excluding the possibility of participation in administrative proceedings. If we proceed from this provision of the law, interested persons participating in administrative proceedings have the right, if there is one of the grounds provided for in Article 31 of this Law, to declare in writing a recusal to an official of the administrative body and to persons assisting in the resolution of the administrative case[28]. The challenge must be motivated and can be declared at any stage of the administrative proceedings before the adoption of the administrative act[29]. The logical and law enforcement principle of the possibility of being heard with the circumstance excluding the possibility of participation in administrative proceedings is clearly manifested in the consideration of an administrative case in a meeting of an administrative body. It seems to us that although these norms of the law need special interpretation and research through the legal prism Chapter 3 of administrative proceedings.

In this procedural and legal context, it is possible to note the principle of the possibility to be heard throughout the entire process of administrative proceedings, that is, from the moment of registration of the application to the final adoption of the administrative act on the administrative case considered at the session. The procedural and legal basis for the consideration of an administrative case is the minutes of the meeting of the administrative body[30]. The element of the right to be heard clearly refers to the rights and obligations of interested parties to consider administrative cases in administrative proceedings.

In accordance with Article 24 of this Law, interested persons have the right to get acquainted with the materials of the administrative case, make extracts from them, make copies, declare objections, submit evidence, participate in the examination of evidence, ask questions to other persons participating in administrative proceedings, make statements on administrative proceedings , submit petitions, give oral and written explanations to the administrative body, state their arguments on all issues arising in the course of administrative proceedings, object to statements, motions and arguments of other interested parties, appeal against administrative and procedural acts, as well as administrative actions.

The principle of being able to be heard is closely related to the principle of openness, transparency and clarity of administrative procedures. The essence of the principle of openness lies in the fact that an interested person is given the opportunity to familiarize himself with the materials related to the consideration of his application and to take part in the consideration of such an application personally and (or) through his representatives[31]. In a broad sense, it is about providing an opportunity for an

[26] 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.
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[31] Esenbekova, P., Okyulov, O., Esanova, Z., & Ibratova, F. (2021). Decision of the court of first instance on civil affairs and its content.

interested person to get acquainted, related to the consideration of his application. This means that the interested person can apply to the administrative authorities with a request to familiarize him with the materials, consider his application and the administrative body must provide the interested person with such an opportunity. The interested person should be able to familiarize himself with the materials for considering his application both after the introduction of the administrative act and before that moment. In the latter case, the person concerned has a chance to provide information that may affect the acts of the administrative body at all stages of the administrative proceeding[32]. If necessary, the interested person has the right to make extracts from the documents provided. Implementation of the principle of openness, administrative procedures should provide interested parties with the opportunity to participate in the very process of adopting an act upon its application, provide explanations, etc. This leads to the conclusion that "being heard", in turn, ensures openness and transparency in the consideration of cases in administrative proceedings.

Such a procedure for considering cases on the basis of fundamental principles of administrative procedure makes it possible to protect the rights and interests of an interested person at all stages of administrative proceedings[33].

Based on the rights and obligations of interested parties, enshrined in Article 24 of this Law, the principle of the possibility of being heard is set out in the minutes of the meeting of the administrative proceeding. Since in the minutes of the meeting, in particular, information is indicated on the explanation to interested persons participating in the administrative proceedings, their rights and obligations (clause 7 of part 2 of Article 7 of this law).

Along with this, it indicates the application and petitions of interested persons participating in the administrative proceedings and information on the results of their consideration (clause 9 of part 2 of Article 48 of this Law). Among the essential circumstances for the consideration of an administrative case also includes information about the provision of evidence, written opinions of experts, consultations of specialists and others. This information is also reflected in the minutes of the meeting for the consideration of the administrative case (paragraph 10 of part 2 of Article 48 of this Law). The most important procedural argument for the exercise of the right to be heard is the explanation of the interested parties involved in the administrative proceedings, the testimony of witnesses, the oral explanation of experts on their conclusions, the opinion of experts, the data of the examination of written and material evidence. Interested persons participating in administrative proceedings have the right to apply for the entry into the minutes of the meeting of circumstances that they consider essential[34].

As a result of considering an administrative case, the administrative body adopts an administrative act. It seems to us that only after listening to the interested parties, the adopted administrative acts can be legal, reasonable, fair, clear and understandable[35].

The rationale for this opinion is that the law requires that the administrative act, along with other essential details and requirements, should contain: information about the participants in the

[32] Довлатова, Г. П., Ибратова, Ф. Б., Каращенко, В. В., Макеева, Е. И., Мирославская, М. Д., Пайкович, П. Р., & Харлампенков, Е. И. (2021). Инновации, тенденции и проблемы в области экономики, управления и бизнеса.

[33] Ibratova 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.

[34] Афанасьев, С. Ф. (2012). Право быть выслушанным в суде сквозь призму постановлений Европейского суда по правам человека. *Правовая политика и правовая жизнь*, (4).

[35] Ibratova F. TERMS IN CIVIL LAw AND ThEIR APPLICATION IN LEGAL PROTECTION OF CITIZENS IN ThE REPUBLIC OF UZBEKISTAN.

administrative proceedings; description of the issue resolved by the administrative act (descriptive part); substantiation of the administrative act (motivation part); statement of the adopted decision (operative part), etc.[36]

The implementation and application of the principle of being able to be heard is associated not only with the adoption, but also with the procedure for canceling the administrative act. The law establishes a simplified procedure for canceling an administrative act. The essence of this provision is that the cancellation of an administrative act in favor of an interested person can be carried out without holding a meeting. Cancellation of an administrative act contrary to the interests of the interested person is carried out by revising it at a meeting, unless otherwise provided by law. If the cancellation of an administrative act is carried out in favor of one interested person, but contrary to the interests of another interested person, then the rules provided for in part 2 of Article 60 of this Law shall apply.

The application of the principle of being able to be heard is carried out in accordance with legislative acts, including administrative regulations approved by the Cabinet of Ministers of the Republic of Uzbekistan (Article 84 of the Law of the Republic of Uzbekistan "On Administrative Procedures").

Analysis of foreign experience. Studying the principle of the right to “be heard” based on the legislative experience of foreign countries is of great importance. The principle of the possibility or “right” to be listened to was born in different legal orders at different rates, its scope changes (as well as the system of exclusions from its operation); the ways of legalizing (consolidating) this principle are also different. So, in France, the first decisions of the Council of State, formalizing the corresponding guarantees, began to appear in 1945, the Constitutional Council of France gave them constitutional status in 1990 (the decision on the case on the 1990 finance law), in parallel, efforts were made to include them in the texts certain normative legal acts[37]. Later, France adopted the 2000 Law on the Rights of Citizens in Their Relations with State Bodies. In Switzerland, the Federal Law "On Administrative Procedures" was adopted in 1968, in Sweden the Law "On Administrative Procedure" in 1971, in the Federal Republic of Germany the Law "On Administrative Procedures" in 1976, in Italy the Law on the New Regulation of Administrative Procedures and the right to access administrative documents "1990, in Spain the law" On the legal regime of public administration and general administrative procedure "1992, in the USA the law" On administrative procedure "1946, etc.[38].

At the same time, two basic principles are called the "core" of the above acts: the right to be heard and the right to be considered by an impartial authorized person (body)[39].

In addition, a classic example of this is part 4 of § 43 of the Austrian Administrative Procedure Law: “Each party, in particular, should be given the opportunity to bring and prove all relevant aspects of the case, to ask questions to the witnesses and experts present, and also speak openly on the facts under discussion, which were presented by other participants in the procedure, witnesses and experts, on other submitted petitions and on the results of official statements"[40].

[36] Игнатенко, В. В., Гаврилова, Л. В., & Петров, А. А. (2012). Право быть выслушанным в надзорной стадии административного судопроизводства как предмет экспертного исследования. *Вестник Института законодательства и правовой информации им. ММ Сперанского*, (2), 44-51.
[37] Капитан Д. Принципы административного процесса в России и во Франции // Административные процедуры и контроль в свете европейского опыта / Под ред. Т. Я. Хабриевой и Ж. Марку. - М.: Статут, 2011. С. 222-223.
[38] Морозова О.В. Административные процедуры в РФ США, ФРГ: автореф.дисс.уч.степ.к.ю.н. М.:2010 – 26 с.
[39] 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.
[40]https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005768трасоюза

Of course, this principle is not absolute. Thus, part 2, 3, section 28 of the Federal Republic of Germany Administrative Procedure Law provides that a hearing may be refused if:

1) there is a need to immediately make a decision due to the risk of delaying the procedure or based on the interests of society;

2) the conduct of the hearing could call into question the observance of a reasonable time limit for the adoption of a decision;

3) disagreements with the factual information that the participant in the procedure provided in the petition or explanation cannot be in his favor;

4) the administrative body intends to issue a general order, or

identical administrative acts in large numbers or to issue them using automatic means;

5) enforcement measures must be taken in the administrative procedure;

6) the hearing is not held if this is opposed by the need to comply with the interests of the public[41].

However, sometimes restrictions are formulated so vaguely that the effectiveness of the principle becomes unclear. In particular, according to Part 2 of Art. 34 of the Finnish Administrative Procedure Law, a case may be decided without hearing a party if:

(1) the claim was declared inadmissible or immediately rejected as unfounded;

(2) the matter concerns recruitment or voluntary education or training;

(3) the case concerns the provision of material benefits based on the personal qualities of the applicant;

(4) the hearing may constitute a threat to the objectives pursued by the decision in the case, or the delay in the consideration of the case associated with the hearing of the case is associated with a serious threat to human health, public safety or danger to the environment;

(5) either the claim not involving the other parties has been upheld; or it is clearly clear that there is no need for a hearing for another reason[42].

The rules of the founding acts of the Council of Europe are of great importance. Indeed, it is difficult to overestimate the significance of the Council of Europe Resolution of 28 September 1977 "On the Protection of Citizens in Relations with Administrative Authorities" (Resolution On The Protection Of The Individual In Relation To The Acts Of Administrative Authorities). This act rightly emphasized the tendency towards an increase in the role of public administration and procedures for the adoption of administrative acts. At the same time, a logical conclusion was drawn: in such a situation, it is necessary to strengthen the position of citizens in relations with the authorities, and therefore, to strengthen their procedural rights and guarantees. The resolution proclaimed the following five principles:

1) the right to be heard;

2) the right to access information;

3) the right to legal assistance and representation;

4) substantiation of the administrative act (its reasoning)[43].

[41] https://www.gesetze-im-internet.de/vwvfg/
[42] https://www.finlex.fi/en/laki/kaannokset/2003/en20030434.pdf
[43] https://rm.coe.int/16804dec56

In connection with these features, in most European countries (and now in many other countries of the world), the principle of hearing in an administrative case is "rooted" in specialized legislation on administrative procedures. Naturally, its volume depends on the type of procedural relations: it gets its maximum development in formal procedures (like planning). But even for informal procedures, a certain minimum standard is invariably set.

The Russian Federation does not have a special law on administrative procedures, Georgia adopted the 1999 General Administrative Code, the Republic of Kazakhstan adopted the 2000 Administrative Procedure Law, Latvia 2001 Administrative Procedure Law, and Estonia the law "On Administrative Procedure" 2001, in the Kyrgyz Republic the law "On Administrative Procedures" 2004, in Armenia the law "On the Fundamentals of Administrative Activities and Administrative Proceedings" 2004, in the Republic of Azerbaijan the Law "On Administrative Proceedings" 2005 . entered into force on January 1, 2011, in the Republic of Tajikistan the Code "On Administrative Procedures" 2007, in Ukraine the Code "On Administrative Procedure" 2007, in the Republic of Belarus the law "On the Fundamentals of Administrative Procedures" 2008[44].

The legislation of a number of post-Soviet countries on administrative procedures establishes the inquisitorial, correspondence nature of production, which is traditional for post-Soviet legislation. Moreover, the procedures for considering the case, taking into account the principle, are not regulated at all. And this is not just a gap in the law, but a conceptual defect in the very concept of administrative procedures.

Still, in the post-Soviet space one can find exemplary laws on administrative procedures, with an impeccable (or almost impeccable) legislative technique of procedural principles. Thus, the laws of Azerbaijan, Georgia and the Baltic countries not only formalize procedural guarantees of "good governance" but also try to highlight even more general principles. Chapter II of the law, in the best German traditions, talks about the principle of safeguarding trust, the principle of proportionality, the prohibition of abuse of formal requirements, the “principle of being listened to”, the principle of reliability, and finally, even an attempt was made to determine the procedure for exercising discretionary powers. These regulations are also harmonized with the special provisions of the law. But the question of to what extent the principles of administrative procedures are effective, how authoritative they are for law enforcement officers, remains open.

It should be noted that foreign countries have accumulated some experience of digitalization of administrative procedures. The literature correctly emphasizes that the widespread use of the Internet in the field of public administration, the introduction of electronic communication methods served as the basis for changing German legislation aimed at regulating digitalization processes (from English Digitalization - transfer of all types of information into digital form) of administrative procedures and administrative proceedings[45].

Paragraph 3a of the Federal Republic of Germany Law on Administrative Procedures, according to which electronic document flow between a citizen and an administrative body is allowed in the implementation of administrative procedures, was introduced in 2002 and significantly amended and supplemented in 2013[46]. The condition for the implementation of electronic document flow is the

[44] Административные процедуры \ Е.В.Порохов, А.А.Балтабеков, Д.К.Березницкая. – Алмати: научно-исследовательский институт финансового и налогового права, 2011 – 52 с.

[45] Крамер У., Мицкевич Л.А., Васильева А.Ф. Электронные формы в административном процессе России и Германии // Вестник Санкт-Петербургского университета. Право 4: С. 756-780. https://doi.org / 10.21638/spbu 14. 2019.410

[46] Статья 3 (1) Закона о поддержке электронного управления, а также изменения других предписаний (Gesetzes zur Förderung der elektronischen Verwaltung sowie zur Änderung weiterer Vorschriften) от 5.07.2013 (BGBl. I. S. 2749).

opening by the recipient of an electronic document of appropriate access, which means not only the availability of technical conditions for electronic document flow, but also the desire of the person (citizen) to communicate in electronic form (Kopp, Ramsauer 2019, § 3a. Rn. 7). To open access, it is enough to specify an email address. All public authorities in accordance with paragraph. 1 § 2 of the Federal Republic of Germany Act on the support of e-public administration[47] (also Government-Gesetz - Law on electronic government) are obliged to open access to receive electronic documents signed with an electronic signature. In addition, the obligation to open access to receive electronic documents applies to municipalities (paragraph 2 § 1 of the Law on the Support of Electronic Public Administration). Along with the usual electronic access, the authorities are required to have a mailbox on the De-Mail platform (the regulation of this platform is carried out by De-Mail-Gesetz dated 28.11.2011)[48].

According to the paragraph. 2 § 3a of the Administrative Procedure Act, electronic documents are equated to documents in writing. This requires that such a document be signed with a qualified electronic signature. As an alternative to a qualified electronic signature, the law provides for three more options: 1) filling out an electronic form created by the authorized body (No. 1, clause 4, paragraph 2 § 3a of the Law on Administrative Procedures); 2) sending electronic documents from a mailbox on the De-Mail platform (No. 2 sentence 4 paragraph. 2 § 3a of the Law); 3) the use of other reliable (secure) data transmission channels provided for by the regulatory legal act of the Federal Government, issued in agreement with the Bundesrat, and allowing the identification of the sender and the reliability of the transmitted data, as well as guaranteeing barrier-free access.

In accordance with Section 35a of the Administrative Procedure Law, it is allowed to issue an administrative act in an automated mode if this possibility is provided for by the law, and the issuance of such an administrative act is not related to the exercise of administrative discretion or any other possibility of assessing the circumstances of the case (Berger, 2018, 1260). Thus, administrative acts or other actions, wholly or partly issued or carried out by a non-person, are also qualified as actions of public authorities. In this case, human will ceases to be an essential element of an administrative act, and an automated administrative act does not fully correspond to such a classical doctrinal feature of an administrative act as “regulation”.

Paragraph 35a of the Law on Administrative Procedures opens up the possibility of issuing administrative acts in an automated mode, subject to a number of conditions, but until now there are no legal norms providing for the possibility of issuing an administrative act in an automatic mode. At the same time, in the scientific literature, it is predicted that in the near future the appearance of relevant norms allowing the issuance of administrative acts in an automated mode in such areas as the extension of the validity period of various certificates (identity, persons with disabilities, parking certificates) or social payments for the maintenance of children without the corresponding statement. It is in these areas that the automated administrative act is applied in Estonia and Austria (Martini, Nink 2017, 2). Consequently, at the moment, the practical task is to identify areas of public administration in which it is possible to use an automated administrative act. The introduction of an automated administrative act as a tool for the implementation of public administration functions not only entails the benefits of using artificial intelligence in public administration (simplification and acceleration of administrative procedures, reduction of costs for maintaining the administrative apparatus; reduction in the number of errors, impartiality and objectivity) (Martini, Nink 2017, 1), but also raises a number of questions. First, in what cases and under what conditions is it possible to

[47] Закон о поддержке электронного управления (Gesetz zur Förderung der elektronischen Verwaltung) от 25.07.2013 (BGBl. I. S. 2749). Последние изменения были внесены ст. 1 Первого закона об изменении Закона об электронном правительстве (Erstes Gesetz zur Änd. des E-Government-Gesetzes) от 05.07.2017 (BGBl. I. S. 2206).
[48] BGBl. I. S. 666. — Последние изменения внесены ст. 3 Закона от 18.07.2017 (BGBl. I. S. 2745).

issue an automated administrative act? Second, under what conditions can an automated administrative act be considered the functional equivalent of a decision made by that person? In other words, under what conditions can the decision of the authorized person be replaced by the decision of the automated device? The ban on the issuance of automated administrative acts based on administrative discretion is due to the fact that administrative acts with administrative discretion are subject only to limited judicial control due to the relative uncertainty of the relevant rules on the basis of which such an act was adopted (Pudelka 2017). With a relatively indefinite content of the norms, i.e., with such a content in which two or more different outcomes of the case are possible, their unified application cannot be guaranteed.

Therefore, the decision making in each specific case is left to the authorized person. The more vague the content of the norm, the more important is the "human" law enforcement technique. Confidence in automated technology has not yet reached the level when it could be provided with a solution to multivariate situations. The institution of an automated administrative act is only suitable for simple structured administrative procedures, since it is within the framework of standard situations that computer algorithms are highly efficient (Martini, Nink 2017, 2).

In cases where the issuance of automated administrative acts is permitted in accordance with § 35a of the Administrative Procedure Act, an additional (special) level of control is required. So, paragraph. 1 tbsp. 22 GDPR (Datenschutz-Grundverordnung, DSGVO[49]) establishes a general ban on automated decisions. However the paragraph. 2 of the same article fixes the exceptions in which the paragraph. 1 does not work. We are talking about cases when national or European Union norms allowing the issuance of automated administrative acts provide for adequate "appropriate measures to ensure the rights, freedoms and legitimate interests of persons affected by the decision of the public administration authority". These measures in German law include, for example, the right of the addressee of the act to demand that a specific decision be checked by an authorized person. The paragraph is of particular importance in the area of application of § 35a. 1 § 28 of the same law, which secures the possibility of persons in respect of whom an administrative act affecting the rights of a person is being adopted, to provide explanations based on the circumstances of the case.

Another problem that has not been fully taken into account by the German legislator when introducing the general rule on an automated administrative act should be mentioned - the problem of the relationship of § 35a of the Administrative Procedure Law (general rule) with the existing special rules governing an automated administrative act. For example, § 37 of the Road Traffic Regulations (Stra.enverkehrs-Ordnung, StVO) is special in relation to § 35a of the Administrative Procedure Law, which contains provisions on automatic light devices that regulate traffic (traffic lights), which are, by their legal nature, administrative acts in the form of general orders.

Conclusions and offers. Based on the systematic analysis of the commented article 9 of the Law of the Republic of Uzbekistan "On Administrative Procedures" and the study of the experience of foreign countries, the following conclusions and proposals can be drawn to improve the norm of the current Law of the Republic of Uzbekistan and a deep and detailed study.

First, in the Law it is necessary to give a concept to the principle of the possibility of being heard. The principle of the ability to be heard means that the administrative body at all stages of administrative proceedings, in accordance with legislative acts and regulations, must provide the interested person with the opportunity to express his opinion on all the circumstances that are

[49] Verordnung (EU) 2016/679 des Europäischen Parlaments und des Rates vom 27. April 2016 zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten, zum freien Datenverkehr und zur ufhebung der Richtlinie 95/46/EG (Datenschutz-Grundverordnung). Accessed 16 May, 2019. https:// www.datenschutz-grundverordnung.eu/wp-content/uploads/2016/05/CELEX_32016R0679_DE_TXT.pdf.

important for the adoption of a legal, reasonable, fair, clear and understandable administrative act.

Secondly, a deep and systematic analysis of the current Law "On Administrative Procedures" shows that it fragmentarily and in a general manner enshrines general and special principles for the implementation of administrative procedures, therefore it is necessary to regulate in detail and conceptually, revealing their conceptual apparatus for a precise uniform application of the principle administrative procedures.

Thirdly, it is necessary to discuss the consolidation of the Law "On Administrative Procedures" with the Law "On the Treatment of Individuals and Legal Entities" and regulatory legal acts in the provision of public services and public services, taking into account a comparative analysis of the principles of administrative procedures in foreign countries. In this regard, it is advisable to develop a Concept for the application of administrative procedures, taking into account the law enforcement practice.

Fourthly, it is necessary to discuss the optimal systematization of legislation in the field of legal regulation of the activities of administrative bodies. Most importantly, it is required to bring all normative legal acts related to the administrative procedures of state bodies and their officials in accordance with the Constitution of the Republic of Uzbekistan, where the rights and freedoms of the individual are the highest value of the state.

Fifth, the current Law "On Administrative Procedures" should be supplemented with a provision on information on electronic digital procedures. This makes it possible to determine a simplified and clear procedure for the provision of electronic services, consideration of the application of interested parties in accordance with the requirements of legislative acts. In this regard, in the context of digital reality, it is necessary to find the best options for legal regulation to implement the principles of a single window. It should be noted that administrative procedures are an important tool for the provision of public services in accordance with the principles of a one-stop shop. The digital platform provides interaction by the administrative body of stakeholders using information and communication technologies. Namely, digital technologies, such as the analysis of big data, the Internet of Things and other elements of the digital platform, make it possible to create the preconditions for the further development of a single window already as one of the basic principles of the digital economy. The reference model of digitalization of the administrative procedure should serve as a guideline for improving the consideration of administrative cases at all stages of administrative proceedings, taking into account the application of the principle of its legal regulation.

Sixth, the principles of administrative procedures are the original indisputable full-fledged ones that most characteristically express its essence and the content of the objects regulated by it, predetermining the essence of the procedural norms of administrative law, which establish the implementation and application of the basic principles of its norms.

Seventh, at present there is no special law regulating the application of the principle of implementing the rule of law. In this regard, taking into account a deep analysis of industry-wide and special principles, it is necessary to develop the Law of the Republic of Uzbekistan "On the application of the principles of the implementation of the rule of law." In addition, the current Law of the Republic of Uzbekistan "On Normative Legal Acts" (as amended) dated December 24, 2012 No. ЗРУ-342, it is necessary to consolidate a special chapter "Application of the principles of the implementation of the rule of law."

Eighth, in the administrative regulations it is necessary to establish in detail the order and basis for the application of the principles of the administrative procedure. This will allow the implementation of the provisions of Article 83 of the Law of the Republic of Uzbekistan "On Administrative Procedures", which provides for the competence of the Cabinet of Ministers of the Republic of

Uzbekistan "On the approval of administrative regulations, taking into account the specifics of the activities of administrative bodies to resolve administrative cases, the adoption of administrative and procedural acts, the execution of administrative acts, as well as for the consideration of administrative complaints.

Based on the foregoing, it can be concluded that the implementation and reasonable application of the principle of the possibility of being heard ensures the legal and reasonable resolution of the case in administrative proceedings.

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