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APPLICATIONS OF THE PRINCIPLE OF PROTECTING TRUST: THEORY AND PRACTICE

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Abstract. The article analyzes the features, concept, and legal nature of the principle of “protection of trust” in administrative law, based on the opinions of scholars in this field. It establishes that the principle of protection of trust in the administrative process is a crucial tool for ensuring legal certainty, protecting citizens’ rights, fostering trust in state institutions, and reducing levels of conflict. The legislation of foreign countries and the Republic of Uzbekistan regarding the principle of “protection of trust,” as outlined in laws on administrative procedures or administrative procedural codes, is compared. The article examines the concept of the principle of “protection of trust” and its interpretation in the legislation of various countries, including the United Kingdom, Germany, Spain, Poland, Kazakhstan, Azerbaijan, and Uzbekistan, as well as in the regulatory acts of the European Union. The relationship between the principle of “protection of trust” (legitimate expectations) and the principle of good faith is explored, emphasizing that state bodies and individuals must respect each other’s positions when establishing and shaping their relations. Examples from judicial practice in Uzbekistan and foreign countries regarding the application of the principle of protection of trust (legitimate expectations) by private individuals are also provided. Finally, the article proposes amendments to the Law of the Republic of Uzbekistan “On Administrative Procedures.”

Keywords: principle of protection of trust, principle of legitimate expectations, administrative procedures, principle of good faith, administrative bodies, interested persons

Introduction

Today, ensuring the rights and freedoms of citizens of the Republic of Uzbekistan is the highest priority direction of the state policy of our country. Over the past years, many reforms have been implemented to

ensure the rights and interests of private individuals in relations with government agencies. Democratic legal mechanisms were introduced into national legislation. The result of the reforms was the adoption of the Law of the Republic of Uzbekistan

“On Administrative Procedures” on January 8, 2018. This law proposed new norms and principles to ensure the protection of the rights of individuals from undue influence of government bodies and officials in their activities.

The Law “On Administrative Procedures” contains several very important principles, such as the principles of “proportionality,” “opportunity to be heard,” “protection of trust,” and others. In this article, we will attempt to reveal the concepts, essence, legal nature, and application of the principle of “protection of trust” in public legal relations. The principle of protecting trust is a key element of the administrative process, ensuring the stability and predictability of interactions between government agencies and citizens. This principle implies that citizens have the right to rely on the actions and decisions of government bodies, which, in turn, helps strengthen the rule of law and increase confidence in government institutions.

Materials and methods

To study the principle of “protection of trust” in the administrative process, literature from authors from many developed countries, such as Russia, Germany, Great Britain and others, was used. The source of the article also include the legislative acts adopted in the Republic of Uzbekistan (The Law of the Republic of Uzbekistan “On Administrative Procedures”), the practice of government bodies (activities in the field of public administration), and judicial practice.

To write the article, methods of systematic analysis, synthesis, generalization, and forecasting were used. The tasks set for studying the principle of “protecting trust” were supported by statistical data.

Research results

The principle of protecting trust in the scientific literature and global legislative practice is interpreted in various ways. For example, the principle of “maintaining citizens’ trust in the law and the actions of the state” [1], “protecting the legitimate expectations of citizens” [2], protecting the right to trust [3] [4], etc.

In general, as the authors claim, the principle of “protection of trust” or “protection of legitimate expectations,” as history shows, originated in Roman private law in the form of the institution of “*fides*,” which meant “trust” and was subject to protection in all contractual and non-contractual relationships between subjects of Roman law [5]. There is also an opinion that this principle emerged in the UK as the protecting the legitimate expectations of citizens [6]. Based on two sources, it can be confidently stated that this principle initially appeared in the private legal environment and later found application in public legal relations.

The principle of protecting trust requires government agencies to be clear and consistent in their actions. Citizens must be able to predict the consequences of their actions based on previously made decisions. This creates legal certainty, which is an important aspect for the stable functioning of society. As A.P. Kapustin notes in his work “Administrative Law and the Principle of Trust” (2020), legal certainty helps reduce the level of conflicts between the state and citizens, as conflicts often arise from government bodies in administrative proceedings. What is particularly important is that, in the relationship between government agencies and private individuals, the protection of the rights and interests of the latter is emphasized, especially in the Republic of Uzbekistan.

According to A.W. Bradley, K.D. Ewing and C. Knight, the principle of the protection of legitimate expectations suggests that “in their interactions with public authorities, private individuals should be aware that they can be guided by statements of officials or decisions that have been brought to their attention, and also when it is possible to deviate from these statements” [7]. That is, the principle of protecting trust in certain actions (an administrative act or action) of a government body in European countries is considered from the point of view of the legitimate expectations of private individuals, as stated by the above-mentioned scientists.

The principle of protecting legitimate expectations is recognized as the basis of any legal system [8]. Trust is a key element for establishing sustainable relationships between participants in the legal system. It provides legislative stability, a sense of security and legal certainty. The principles of protection of legitimate expectations and integrity form the basis of the democratic rule of law, serving as important standards in public administration. These principles are reflected in European soft law, including Article 10 of the European Code of Good Administrative Conduct and the European Parliament Resolution of 6 September 2001, which adopted a Code of Good Administrative Conduct [9].

The principle of protection of legitimate expectations in administrative law has been studied in detail in the scientific literature. Among the key works are the works of Soeren J. Schoenberg "Legitimate Expectations in Administrative Law" [10] and Robert Thomas "Legitimate Expectations and Proportionality in Administrative Law" [11]. In Polish literature, this topic is addressed in the study by Joanna Lemanska, "Legitimate expectations in the perspective of national and EU legislation" [12]. However, the problem of protecting legitimate expectations is mainly considered from the position of protecting the interests of private individuals before the state. The issue of protecting the legitimate expectations of public administration in relations with citizens is considered less relevant, since administrative bodies have the power to unilaterally regulate legal relations with private individuals [13].

Initially, the axiological reasons for the protection of legitimate expectations (Vertrauenschutz, conianza legítima, legittimo affidamento) were sought in the principle of good faith in a broader sense (Treu und Glauben, principio de buena fe, principio di buona fede), which, in turn, represents one of the elements legal certainty [14]. The principle of good faith has its roots in private law, as evidenced by § 242 of the German Bürgerliches Gesetzbuch or Article

2.1 of the Swiss Zivilgesetzbuch.

However, it is believed that the principle of good faith is a general principle of law applicable in every branch of law, including public law [15]. The resulting imperative of loyal behavior in legal transactions extends to relationships both between public and private organizations, as well as mutually between government organizations. In the context of public law, this means that public authorities and individuals, when establishing and shaping their relations, must respect each other's positions (Rücksicht zu nehmen) [16].

The close connection between the two principles is sometimes explicitly expressed in legal provisions, as shown in Article 3.1 of the Spanish Administrative Code. The Law on Procedure of 1992 (Ley de Régimen Jurídico y Procedimiento Administrativo Común), which lists among the general principles the obligations of the public of the administration to respect the principle of good faith and reasonable certainty (confidence legítima) [17].

Nowadays, legal scholars usually stop referring to the principle of good faith in their discussions on the protection of legitimate expectations, recognizing that the protection of legitimate expectations follows directly from the concept of the rule of law [10].

Analysis of research results

In the international arena, the principle of protection of confidence is closely related to the concept of "legitimate expectations," first formulated in the case of Schmidt v. Secretary of State for Home Affairs (1969) in Great Britain [18]. This principle requires that public authorities respect the expectations of citizens if they are based on the law, established administrative practice, or direct promises. In Administrator, Transvaal v. Traub (South Africa, 1989), the court obliged government agencies to comply with a fair procedure even if the issue concerns non-essential rights, but only legitimate expectations [19].

The principle of protection of confidence is also reflected in international standards,

such as the International Covenant on Civil and Political Rights (Article 14), which enshrines the right to a fair and impartial trial. The ratification of this pact by Uzbekistan in 1995 strengthened the national legal system by integrating international norms into the practice of protecting citizens' rights.

Examples from the practice of national administrative proceedings:

1) Case No. 5-1901-2201/132 dated March 24, 2022, considered in the Termez Interdistrict Administrative Court [20].

Farm "A" asked the court to invalidate the decision of the N-district khokim dated June 23, 2021, which canceled the earlier decision dated May 12, 2021 to allocate 13.54 hectares of land to the applicant for long-term lease. The applicant claims that the land plot was allocated based on a competition held on May 12, 2021. A long-term land lease agreement was concluded between the applicant and the khokimiyat, which passed state registration. The applicant began to use the site for its intended purpose by planting agricultural crops. The khokimiyat canceled the decision to allocate the site without notifying the applicant, which violated his rights.

The defendant (khokimiyat) explains that, when allocating land for lease, the requirements of the Land Code and other regulations were violated. The competition was held with the participation of only one applicant, which does not meet the established requirements.

Violation of the principle of protection of trust:

According to Article 16 of the Law of the Republic of Uzbekistan "On Administrative Procedures," the trust of bona fide interested parties in administrative acts is protected by law. The applicant (farm) received the land based on the decision of the khokim, registered a long-term lease agreement, and began to use the plot for agricultural activities. The applicant acted in good faith, relying on the legality of the administrative act adopted. However, some time later, the khokimiyat canceled the previously made

decision on the allocation of land without notifying the applicant on the basis of Article 60 of Law 457, and without giving him the opportunity to protect his rights. This created a situation where the applicant's good faith trust in the legality of his land rights was violated by the actions of the khokimiyat.

2) Citizen Alisher Nazarov, one of the heirs of the house and plot belonging to his late father, is challenging the decision of the khokim of the Denov region dated July 30, 2021, canceling the previously issued decision recognizing his property rights. In 2018, the decision of the khokim of the Denov region recognized the ownership of the plot for Nazarov Abdumannob, who is the father of Alisher Nazarov, and on the basis of this decision, the property was registered and divided among the heirs. But in 2021, the prosecutor's office filed a protest, after which the khokim of this region reversed his previous decision, thereby causing another dispute. The main issue concerns the legality of the cancellation of the 2018 decision, as well as violations of the rights of heirs.

In this case, the principle of protecting trust in relation to citizen Abdumannob Nazarov is also violated, since the khokim does not comply with Articles 16, 59 and 60 of Law 457.

The situations presented in the two examples indicate that local government bodies very often violate the principle of "protection of trust" in administrative proceedings. It is necessary to give special attention to the fact that the concept of the principle of protection of trust in Article 16 of Law 457 establishes the protection of the legitimate expectations of private individuals in relation only to an administrative act that was adopted somewhat earlier. At the same time, the cited court decisions on the website public.sud.uz do not contain disputes related to ministries and state committees, or other state bodies of republican significance, nor do they address other transformations of the executive apparatus. Furthermore, the cited disputes regarding this principle are associated with an administrative act, but not

with administrative actions of administrative bodies.

Foreign examples on the principle of protecting legitimate expectations:

1) The case [21], related to the principle of protecting trust in Germany, concerns the accelerated phase-out of nuclear energy in 2011 after the Fukushima disaster. This decision by the German government affected nuclear plant operators such as Vattenfall and RWE, which have already made significant investments relying on the previously set operating schedules of their power plants.

The legal basis is Article 14 (Protection of Property) of the German Basic Law (Grundgesetz). The Constitutional Court confirmed that the property rights of plant operators were violated because the reduction in operating life did not provide compensation for unclaimed volumes of electricity approved in 2002.

Legitimate Expectations Principle: The Court accepted that companies could reasonably expect regulatory policy stability during the legislative period. This expectation was violated when the new law imposed restrictions without adequate compensation.

Amendments to the Atomic Energy Act: The 13th Amendment in 2011 established new fixed operating lives for nuclear power plants, making it impossible to use the remaining electricity quotas. The Constitutional Court ruled that the amendment violated the rights of companies and ordered the government to introduce new provisions for compensation by June 2018. However, subsequent changes (such as the 16th Amendment) did not meet the requirements of the Constitution.

The Constitutional Court ruled that accelerating the phase-out of nuclear energy was legitimate in the interests of public safety (Article 2(2)(1) and 20a of the Basic Law). However, investors have the right to compensation for unclaimed volumes of electricity and invested funds. This decision illustrates the balance between the public

interest and the protection of legitimate business expectations.

In this case, we can highlight that in German administrative law, the legitimate expectations of individuals are protected not only in relation to administrative acts, but also with regard to government actions that cause material damage to energy companies, even if the government's decision is legal and in the public interest.

2) In 1956, the Berlin Higher Administrative Court (Oberverwaltungsgericht) applied the principle of Vertrauensschutz (Protection of Trust) in a case concerning social benefits [22]. The citizen had received a promise of benefits, but it later turned out that this decision was illegal. The court accepted that the applicant's expectations regarding the continuation of the payment were legitimate, since they were based on a specific public promise from the state authorities.

Decision:

The court ruled that an illegal administrative act could not be revoked if:

1. It was relied upon in good faith.
2. The cancellation of the act would cause significant damage to the citizen.
3. The public interest in repealing the act is not significant enough to outweigh the harm from violating expectations.

Basis in law: This approach was later codified in Article 48(2) of the German Administrative Procedure Act (Verwaltungsverfahrensgesetz), which limits the revocation of unlawful administrative acts if they have given rise to a reasonable expectation in the citizen, unless the interests of the public clearly outweigh the interests of the defense trust.

The principle also applies in situations where legislation or policy changes. For example, if the legislator previously provided tax benefits for a certain period (for example, 5 years), their early termination may be considered unconstitutional, since it violates investor confidence in the stability of legal regulation.

This case shows that the protection of trust in the actions of government bodies,

provided that the citizen was based on legitimate expectations, must be justified by administrative practice. Consequently, this situation influenced the change in legislation in favor of the interested party.

Conclusion

Although the principle of protecting the legitimate expectations of individuals appeared in private legal relations, its application in the public legal environment today requires a thorough study of its essence and an explanation of its practical implementation by legislators. This is particularly important because the understanding of this principle remains insufficient in our country.

Based on the above, it is essential to introduce a legal definition of the principle of good faith for administrative bodies into the legislation of the Republic of Uzbekistan. Every action in administrative proceedings, whether private or public, is based on trust between the parties. Protecting the reasonable expectations (trust) of participants in proceedings is of particular importance in two situations: first, at the stage of negotiations preceding the adoption of an administrative act (action or inaction); and second, at the

stage of its execution, when unforeseen circumstances arise that significantly alter the conditions of the administrative act. Changes in administrative acts must take into account the reasonable expectations of the partner regarding the sustainability of the relationship.

Based on the analysis of the application of the principle of legitimate expectations (protection of trust) in the practical examples above and the norms in the Law of the Republic of Uzbekistan "On Administrative Procedures," we can conclude that the principle of "protection of trust" is aimed only at an administrative act, although Article 52 of administrative action (inaction) is a form of administrative act. But within the meaning of the norm established in Article 16, the protection of legitimate expectations in relation to the actions (inactions) of an administrative body, as in other countries, must be protected. In this regard, it is necessary to amend Article 16 by adding the norm "The trust of interested parties in promises and statements of authorized administrative bodies in connection with the subsequent adoption or non-adoption of the relevant administrative act is protected by law".

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