TOSHKENT DAVLAT YURIDIK UNIVERSITETI HUZURIDAGI ILMIY DARAJALAR BERUVCHI DSc.07/30.12.2019.Yu.22.02 RAQAMLI ILMIY KENGASH

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

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O‘ZBEKISTON RESPUBLIKASIDA TADBIRKORLIK SUBYEKTLARINING HUQUQLARI VA QONUNIY MANFAATLARINI HIMOYA QILISH BILAN BOG‘LIQ MA’MURIY NIZOLARNI SUDDA KO‘RISHNI TAKOMILLASHTIRISH

12.00.02 – Konstitutsiyaviy huquq. Ma’muriy huquq.
Moliya va bojxona huquqi

Yuridik fanlar bo‘yicha falsafa doktori (PhD) dissertatsiyasi AVTOREFERATI

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KIRISH (DISSERTATSIYA ANNOTATSIYASI)

Dissertatsiya mavzusining dolzarbligi va zarurati. Dunyoda so‘nggi yillarda huquq ustuvorligi darajasi pasayib bormoqda. Xususan, Jahon odil sudlov loyihasi (World Juctice Project) tashkilotining 2023-yilgi hisobotiga ko‘ra, “2016-yildan buyon qonun ustuvorligi retsessiyasi davom etib, 78 foiz davlatda pasayish kuzatilgan”[1]. Yana bir nufuzli tashkilot – Economist Intelligence Unitning 2022-yilgi hisobotida ham “o‘rganilgan 167 ta davlatning yarmidan ko‘pida demokratiya darajasi pasaygani yoki turg‘unligi ta’kidlangan. Ayniqsa, so‘nggi yetti yilda davlat organlari vakolatlarini cheklash ko‘rsatkichi 74 foiz mamlakatda tushib ketgani”[2] – ijro idoralari ustidan boshqa nazorat turlari bilan birga sud nazorati ham susayganini anglatadi va bu tadqiqot mavzusining xalqaro miqyosda ham dolzarbligini ko‘rsatadi. 2024-yilda ham ushbu salbiy tendensiya davom etgan. Shu bilan birga, mazkur hisobotda 2016-yildan boshlab huquq ustuvorligini mustahkamlab kelayotgan va uzoq muddatli istiqbolda ushbu global tendensiyalarga eng ko‘p qarshi tura oladigan beshta davlatdan biri sifatida O‘zbekiston qayd etilgan. Bu esa ma’muriy sud ish yurituvi sohasidagi islohotlarimizni mantiqiy davom ettirib, ilg‘or tajriba va standartlarni izchil joriy qilishni taqozo etadi.

Jahonda sud, kvazisudlov idoralari kabi huquqiy institutlar rolini oshirish, ayniqsa ijro idoralari ustidan sud nazoratini kuchaytirish, ma’muriy sudlar va ma’muriy organlar vakolatlarini aniqlashtirish masalalari bo‘yicha tadqiqotlar olib borishga alohida e’tibor qaratilmoqda. Jumladan, sudning faol ishtiroki, sudga taalluqlilik, isbotlash majburiyati, ma’muriy da’vo, sudning qarori bilan bog‘liq turli masalalar tadqiqotning muhim yo‘nalishlari sifatida o‘rganilmoqda[3].

Mamlakatimizda tadbirkorlar ishtirokidagi ma’muriy nizolar bo‘yicha statistika bu masalani alohida o‘rganish zarurligini ko‘rsatmoqda. Jumladan, ma’muriy sudda ko‘rilgan jami ommaviy nizolar soni 2024-yilda (15 369 ta) 2020-yilga (15 066 ta) nisbatan 2 foizga ko‘paygan bo‘lsa, tadbirkor arizasi bo‘yicha ko‘rilgan ishlar 2020-yildagi 1 391 tadan 2024-yilda 4 757 taga, ya’ni 3,4 barobarga (3 366 taga) oshgan[4]. Keyingi 6 yillik amaliyot tahlili ko‘rsatdiki, ma’muriy sud ish yurituvi to‘liq joriy etilmagani bilan bog‘liq muammolar yuzaga chiqmoqda. Xususan, ma’muriy nizo tushunchasi ishlab chiqilmagani, taalluqlilikda ma’muriy nizoning o‘ziga xosliklari inobatga olinmagani, ma’muriy sud ish yurituvi prinsiplari va ishtirokchilari doirasi, da’vo instituti to‘liq belgilanmagani sababli tadbirkorlar ishtirokidagi ommaviy nizolar ma’muriy sud bilan birga iqtisodiy sudda ko‘rilmoqda. Aslida, ma’muriy sud yangi institut bo‘lib, muammolar yuzaga kelishi prognoz qilingan holat edi. Mazkur holat 2016-2017-yillarda chuqur ilmiy ishlangan, amaliyot va nazariya chegarasidagi muammolar yechimini ko‘rsatadigan tadqiqotlar bo‘lmagani bilan ham izohlanadi. Yuqoridagi holatlar inobatga olinib, O‘zbekiston Respublikasi Prezidenti Sh.M.Mirziyoevning 2021-yil 6-noyabrdagi nutqida “ma’muriy sudlar faoliyatini takomillashtirish haqida topshiriq berildi”[5]. “O‘zbekiston – 2030” strategiyasida[6]

[1] worldjucticeproject.org/news/wjp-rule-law-index-2023-global-press-release.
[2] eiu.com/n/compaigns/democracy-index-2022/.
[3] Ushbu tadqiqotlar dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatida berilgan.
[4] stat.sud.uz/assets/uploads/administrative/pdf/adm-2024-full.pdf.
[5] president.uz/uz/lists/view/4743.
[6] Qonunchilik ma’lumotlari milliy bazasi, lex.uz/docs/6600413.

davlat organlari ustidan samarali sud nazoratini o‘rnatish ustuvor maqsad etib belgilangani ham mavzu dolzarbligini oshiradi. Yana bir jihat – sovet davrida va undan keyin ham tadbirkor ishtirokidagi ma’muriy nizo kam o‘rganilgan. Chunki, rejali iqtisodiyotda sof tadbirkorning o‘zi bo‘lmagan va faqat bozor munosabatlari kirib kelgandan keyin ularning huquqini ma’muriy organdan himoyalash masalasi dolzarb bo‘lishni boshlagan.

O‘zbekiston Respublikasi Konstitutsiyasi, Ma’muriy sud ishlarini yuritish to‘g‘risidagi kodeksi, O‘zbekiston Respublikasi Prezidentining 2016-yil 21-oktyabrdagi “Sud-huquq tizimini yanada isloh qilish, fuqarolarning huquq va erkinliklarini ishonchli himoya qilish kafolatlarini kuchaytirish chora-tadbirlari to‘g‘risida”gi PF–4850-sonli, 2023-yil 16-yanvardagi “Odil sudlovga erishish imkoniyatlarini yanada kengaytirish va sudlar faoliyati samaradorligini oshirishga doir qo‘shimcha chora-tadbirlar to‘g‘risida”gi PF–11-sonli farmonlari, 2022-yil 29-yanvardagi “Davlat organlari bilan munosabatlarda fuqarolar va tadbirkorlik subyektlari huquqlarining samarali himoya etilishini ta’minlash hamda aholining sudlarga bo‘lgan ishonchini yanada oshirish chora-tadbirlari to‘g‘risida”gi PQ–107-sonli, 2025-yil 30-yanvardagi “Fuqarolar va tadbirkorlik subyektlarining huquqlarini sud orqali himoya qilishning zamonaviy mexanizmlarini joriy etish bo‘yicha qo‘shimcha chora-tadbirlar to‘g‘risida”gi PQ–33-sonli qarorlari va mavzuga oid boshqa qonunchilik hujjatlarini hayotga tatbiq etishga dissertatsiya ishi muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishi ustuvor yo‘nalishlariga mosligi. Dissertatsiya respublika fan va texnologiyalari rivojlanishining I. “Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy, ma’naviy-ma’rifiy rivojlantirishda innovatsion g‘oyalar tizimini shakllantirish va ularni amalga oshirish yo‘llari” ustuvor yo‘nalishi asosida bajarilgan.

Muammoning o‘rganilganlik darajasi. Tadbirkorlar ishtirokidagi ma’muriy nizolarni sudda ko‘rish masalalari milliy olimlarimiz tomonidan kam tadqiq etilgan. Mavjud tahlillar asosan umumiy yondashuvga asoslangan.

O‘zbekistonlik olimlar E.T.Xojiyev, G‘.T.Xakimov, J.N.Nematov, L.B.Xvan, A.A.Li, I.A.Xamedov, I.M.Say, Sh.I.Shayzakov, D.R.Artikov, M.U.Eshimbetov va Sh.B.Bakaev ma’muriy yustitsiyaning turli jihatlarini ilmiy tadqiq qilgan. Xususan, E.T.Xojiyev ma’muriy jarayon, ma’muriy ish yuritish, G‘.T.Xakimov, I.A.Xamedov, I.M.Say ma’muriy yustitsiyani rivojlantirish, ma’muriy protsess, J.N.Nematov ma’muriy akt, ma’muriy nizo taalluqliligi, L.B.Xvan ma’muriy akt, ma’muriy yustitsiya tarixi va prinsiplari, A.A.Li ruxsat etish tartib-taomillari, Sh.I.Shayzakov ma’muriy sud ish yurituvida prokuror ishtiroki, D.R.Artikov idoraviy normativ-huquqiy hujjatlarga oid ishlarni sudda ko‘rish, M.U.Eshimbetov ma’muriy organ qaroridan kelib chiqadigan ishlarni sudda ko‘rish, Sh.B.Bakaev ma’muriy sudlar ishining tashkiliy-huquqiy masalalarini o‘rgangan.

MDHda mavzuning ayrim jihatlari Ye.B.Luparev, Yu.N.Starilov, A.B.Zelensov, V.V.Skitovich, N.G.Kiper, A.N.Artamonov, N.V.Suxareva, O.V.Chumakova, I.M.Divin, S.Karimov, A.B.Gabbasov, S.I.Ibragimov va boshqa olimlar tomonidan o‘rganilgan bo‘lsa, xorijiy davlatlarda Y.Pudelka, L.Broker, V.Raymers, Y.Deppe, P.Kvosta, K.Xinterberger, F.Xufen, K.Dreksel, M.P.Sinx, J-M.Ponte, Yu.Paujayte-Kulvinskene, V.Kruminya, R.Melnik va boshqalar tadqiqotlar olib borgan.

Lekin, O‘zbekistonda ma’muriy sud tashkil etilgandan keyingi davrdagi ilmiy muammolar, qonunchilik va amaliyot tadbirkorlar ishtirokidagi ma’muriy nizolarni ko‘rib chiqishni takomillashtirish, mazkur nizolarni ko‘rib chiqish jarayoniga ilg‘or xorijiy tajribani samarali joriy etish nuqtayi nazaridan monografik tadqiqot ishi sifatida o‘rganilmagan.

Dissertatsiya ishining dissertatsiya bajarilgan oliy ta’lim muassasasining ilmiy-tadqiqot ishlari rejalari bilan bog‘liqligi. Dissertatsiya ishi Toshkent davlat yuridik universiteti ilmiy-tadqiqot ishlari rejasining “Demokratik islohotlarni chuqurlashtirish sharoitida davlat boshqaruvini yanada erkinlashtirishning asosiy yo‘nalishlari” mavzusidagi fundamental loyihasi (2021-2023-yy.) doirasida bajarilgan.

Tadqiqotning maqsadi O‘zbekistonda tadbirkorlar huquqlari va qonuniy manfaatlarini himoya qilishga oid ma’muriy nizolarni sudda ko‘rishni takomillashtirish bo‘yicha taklif va tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

tadbirkorlar huquqlari va qonuniy manfaatlarini himoya qilishga oid ma’muriy nizolar tushunchasi va o‘ziga xos belgilarini tahlil qilish;

ushbu ma’muriy nizolarni sudda ko‘rishning rivojlanish tarixini o‘rganish;

sudning faol ishtiroki prinsipini ma’muriy sud ish yurituvining o‘ziga xos prinsipi sifatida tadqiq etish;

tadbirkorlar huquqlari va qonuniy manfaatlarini himoya qilishga oid ma’muriy nizolar sudga taalluqliligining huquqiy asoslarini tahlil qilish;

isbotlash majburiyatining ilmiy-amaliy jihatlarini tadqiq etish;

sudning hal qiluv qarori va uni ijroga qaratish masalalarini o‘rganish;

tadbirkorlik subyektlariga nisbatan huquqiy ta’sir choralarini sud orqali qo‘llash tartibini tahlil qilish;

amaliyotda keng tarqalgan, xususan yer va soliqqa oid ma’muriy nizolarni sudda ko‘rish bilan bog‘liq ayrim muammolar va ularni hal qilish yo‘llarini tadqiq etish;

tadbirkorlar huquqlarini himoya qilishning sud tartibini takomillashtirish istiqbollari bo‘yicha takliflarni ishlab chiqish;

ma’muriy sud ish yurituvini takomillashtirishning ayrim masalalari, jumladan sudlovga taalluqlilik, ma’muriy sudda zararni qoplash, isbotlash, sudning faol ishtiroki prinsipini joriy etish bilan bog‘liq ilmiy-amaliy taklif va tavsiyalarni ishlab chiqish.

Tadqiqotning obyekti tadbirkorlik subyektlarining huquqlari va qonuniy manfaatlarini himoya qilishga oid ma’muriy nizolarni sudda ko‘rish bilan bog‘liq huquqiy munosabatlar tizimi hisoblanadi.

Tadqiqotning predmetini tadbirkorlik subyektlarining huquqlari va qonuniy manfaatlarini himoya qilishga oid ma’muriy nizolarni sudda ko‘rish bilan bog‘liq normativ-huquqiy hujjatlar, huquqni qo‘llash amaliyoti, ilmiy-nazariy qarashlar va huquqiy kategoriyalar tashkil etadi.

Tadqiqotning usullari. Tadqiqot jarayonida tarixiy, formal yuridik, tizimli va kompleks yondashuv, qiyosiy-huquqiy, mantiqiy tahlil, induksiya, deduksiya, sotsiologik so‘rov o‘tkazish, statistikani tahlil qilish, sud amaliyotini o‘rganish va ilmiy prognozlash usullaridan foydalanildi.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

tadbirkorning ma’muriy akt noqonuniyligi va unga sababiy bog‘lanishdagi zararni undirish haqidagi talablarini keltirib chiqargan asos ayni bir qaror (harakat, harakatsizlik) ekanligi sababli ushbu ikkita talabni ma’muriy sudda birgalikda ko‘rish zarurligi asoslantirib berilgan;

tadbirkorlik subyektiga nisbatan ommaviy munosabatlardan kelib chiqadigan talablar bo‘yicha so‘zsiz undiriladigan ijro hujjati ustidan shikoyat qilishga doir ishlar ma’muriy sudga taalluqli ekanligi asoslangan;

ma’muriy sud ish yurituvini sudning faol ishtiroki prinsipi asosida amalga oshirish lozimligi asoslantirib berilgan;

ma’muriy sud ish yurituvida isbotlashning o‘ziga xosligidan, jumladan taraflarning imkoniyati teng bo‘lmaganligidan kelib chiqib, isbotlash majburiyati qaror qabul qilgan ma’muriy organga yuklatilishi asoslantirilgan;

ma’muriy sud ish yurituviga oid qonunchilikni takomillashtirish konsepsiyasini ishlab chiqib, unda ma’muriy nizo taalluqliligini yanada aniqlashtirish va ma’muriy da’vo turlarini belgilash shartligi asoslangan;

tadbirkorlik subyektiga nisbatan soliq organi qarori ustidan to‘g‘ridan-to‘g‘ri sudga shikoyat qilish bo‘yicha cheklovni bekor qilish lozimligi asoslantirilgan.

Tadqiqotning amaliy natijalarini quyidagilar tashkil qiladi:

sudning faol ishtiroki prinsipi mazmunini kengaytirib, sud taraflarga kamchiliklarni bartaraf etish, o‘z talablarini aniqlashtirish va boshqa materiallarni taqdim etishda ko‘maklashishi zarurligi asoslantirilgan;

ma’muriy organ va tadbirkor o‘rtasidagi ommaviy nizolarning mazmuni ularning barchasini iqtisodiy sudda emas, balki ma’muriy sudda ko‘rishni taqozo etishi yer, soliq va bojxona nizolari bilan asoslantirib berilgan;

ham ma’muriy, ham iqtisodiy sudga taalluqli, o‘zaro bog‘liq bir nechta talabni birlashtirish va barchasini ma’muriy sudda ko‘rish taklifi tayyorlangan;

tadbirkorlarga qo‘llanadigan huquqiy ta’sir choralarini iqtisodiy suddan ma’muriy sudga, ayrimlarini ma’muriy organga o‘tkazish asoslangan;

ma’muriy aktni haqiqiy emas deb topish da’vosi bilan birga, uni bekor qilishga oid shikoyatni ham ma’muriy sudda ko‘rish zarurligi asoslangan;

tadbirkorlar ishtirokidagi ma’muriy nizolarda ma’muriy organ ham da’vogar bo‘lishi mumkinligi haqida taklif ishlab chiqilgan;

barcha dalillar o‘rganilgandan keyin ham, muayyan holatni isbotlash imkoni bo‘lmasa, isbotlanmaganlikning salbiy oqibati bu holatni isbotlash majburiyati yuklatilgan tarafda bo‘lishi haqida taklif tayyorlangan;

tadqiqot doirasidagi takliflarning amalga oshirilishi ma’muriy va iqtisodiy sudlar tuzilmasida jiddiy o‘zgartirishlarga olib kelishi, keyinchalik kvazisudlov tizimiga ham ta’sir etishi ko‘rsatib berilgan;

Ma’muriy sud ishlarini yuritish to‘g‘risidagi kodeks (keyingi o‘rinlarda – MSIYutK) 11, 26, 27, 28, 40, 67, 185, Iqtisodiy protsessual kodeks (keyingi o‘rinlarda – IPK) 25, Yer kodeksi 36, Soliq kodeksi 14-moddasiga o‘zgartirish va qo‘shimchalar kiritish lozimligi asoslantirilgan.

Tadqiqot natijalari ishonchliligi. Ilmiy ishda foydalanilgan metod, ilmiy-nazariy yondashuv, statistika va sud amaliyotidan misollar rasmiy manbalardan olingani,

belgilangan talablarga ko‘ra havola qilingani, milliy qonunchilik va xorijiy tajriba qiyosiy o‘rganilgani, amaliyot tahlili, sotsiologik so‘rov asosida nazariy xulosa va takliflar tayyorlangani, dissertatsiya dastlabki natijalari amaliyotga joriy qilingani va vakolatli davlat idoralari tomonidan tasdiqlangani, xulosa, taklif va tavsiyalar aprobatsiyadan o‘tkazilib, natijalari yetakchi milliy, chet el nashrlarida e’lon qilingani tadqiqot xulosalarining ishonchliligini tasdiqlaydi.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqotning ilmiy ahamiyati ilmiy-nazariy xulosa, taklif va tavsiyalardan ma’muriy huquq sohasida tadqiqotlarni olib borish, “Ma’muriy huquq”, “Ma’muriy sud ish yurituvi” va “Tadbirkorlik huquqi” kabi fanlarni o‘qitish hamda metodik tavsiyalar tayyorlash uchun foydalanish mumkinligida namoyon bo‘ladi.

Tadqiqotning amaliy ahamiyati shundaki, mavzuni o‘rganish yakunida tayyorlangan amaliy taklif va tavsiyalardan qonunchilikni takomillashtirish, sud, boshqa davlat organlari va advokatura amaliyotida foydalanish mumkin.

Tadqiqot natijalari joriy qilinishi. Mavzuni o‘rganish asosida:

ma’muriy sud ma’muriy aktni noqonuniy deb topish bilan birga unga sababiy bog‘lanishdagi zararni undirish masalasini ham hal qilishi haqidagi taklif MSIYutK 27-moddasini uchinchi va to‘rtinchi, 158-moddasini yettinchi qism bilan to‘ldirishda inobatga olingan (Qonunchilik palatasining 2023-yil 2-maydagi 04/2-10/1794-sonli dalolatnomasi). Ushbu taklif tadbirkorlarni ovora qilmasdan ikkita talabni bir sudda hal qilish uchun huquqiy asos bo‘lgan;

tadbirkorlik subyektiga nisbatan ommaviy munosabatlardan kelib chiqadigan talablar bo‘yicha so‘zsiz undiriladigan ijro hujjati ustidan shikoyat qilishga doir ishlar ma’muriy sudga taalluqli ekanligi haqidagi taklif MSIYutK 27-moddasi 1-qismini 8-band bilan to‘ldirishda inobatga olingan (Parlament tadqiqotlari institutining 2024-yil 26-sentyabrdagi 01/q-08-54-sonli, Oliy sudning 2024-yil 23-sentyabrdagi 08/737-24-sonli dalolatnomalari). Mazkur taklif sudga taalluqlilikni ma’muriy nizoning mazmunidan kelib chiqqan holda belgilashga xizmat qilgan;

ma’muriy sud ish yurituvini sudning faol ishtiroki prinsipi asosida amalga oshirish haqidagi taklif MSIYutK 11-moddasining yangi tahririni ishlab chiqishda inobatga olingan (Parlament tadqiqotlari institutining 2024-yil 26-sentyabrdagi 01/q-08-54-sonli, Oliy sudning 2024-yil 23-sentyabrdagi 08/737-24-sonli dalolatnomalari). Ushbu taklifni amalga oshirish natijasida ma’muriy sud ish yurituvining o‘z mazmuniga ko‘ra yangi, asosiy prinsiplaridan biri joriy etilgan;

isbotlash majburiyatini ma’muriy organga yuklatish haqidagi taklif MSIYutK 67-moddasi uchinchi qismining yangi tahririni ishlab chiqishda inobatga olingan (Qonunchilik palatasining 2023-yil 2-maydagi 04/2-10/1794-sonli dalolatnomasi). Mazkur taklif ma’muriy sud ish yurituvida teng bo‘lmagan taraflar o‘rtasida isbotlash yukini to‘g‘ri taqsimlashga xizmat qilgan;

ma’muriy sud ish yurituviga oid qonunchilikni takomillashtirish konsepsiyasini ishlab chiqib, unda ma’muriy nizo taalluqliligini yanada aniqlashtirish va ma’muriy da’vo turlarini belgilash haqidagi taklifdan O‘zbekiston Respublikasi Prezidentining 2023-yil 16-yanvardagi PF–11-sonli Farmoni 2-ilovasi 5-bandini ishlab chiqishda foydalanilgan (Oliy sudning 2023-yil 25-yanvardagi 08/43-23-sonli dalolatnomasi). Ushbu taklifni amalga oshirish fuqarolik, iqtisodiy protsessual sud ish yurituvidan farq qiladigan ma’muriy sud ish yurituvining yanada takomillashuviga xizmat qilgan;

tadbirkorlik subyektiga nisbatan soliq organi qarori ustidan to‘g‘ridan-to‘g‘ri sudga shikoyat qilish bo‘yicha cheklovni bekor qilishga doir taklif Soliq kodeksi 231-moddasiga o‘zgartirish kiritishda inobatga olingan (Parlament tadqiqotlari institutining 2024-yil 26-sentyabrdagi 01/q-08-54-sonli dalolatnomasi). Mazkur taklif tadbirkorlik subyektlarining sud himoyasidan foydalanish imkoniyatini kengaytirgan.

Tadqiqot natijalarining aprobatsiyasi: Tadqiqot natijalari 7 ta ilmiy anjumanda, xususan 2 ta xalqaro va 5 ta respublika anjumanlarida muhokamadan o‘tkazilgan.

Tadqiqot natijalarining e’lon qilinganligi: Tadqiqot mavzusi bo‘yicha jami 8 ta ilmiy ish, jumladan Oliy attestatsiya komissiyasining dissertatsiya asosiy ilmiy natijalarini e’lon qilish tavsiya etilgan nashrlarida 7 ta maqola (6 ta respublika va 1 ta xorijiy jurnallarda) chop etilgan.

Dissertatsiyaning tuzilishi va hajmi: Dissertatsiya tuzilishi kirish, 9 paragrafdan iborat uch bob, xulosa, foydalanilgan adabiyotlar ro‘yxati va ilovalardan iborat. Dissertatsiyaning hajmi 158 betni tashkil etadi.

DISSERTATSIYANING ASOSIY MAZMUNI

Kirish qismida mavzuning dolzarbligi, zarurati, fan va texnologiyalar rivojlanishi ustuvor yo‘nalishlariga mosligi, amaliy va nazariy muammolar, milliy va xorijiy olimlar tomonidan o‘rganilganligi, tadqiqot dissertatsiya bajarilayotgan oliy ta’lim muassasasi ilmiy-tadqiqot rejalari bilan bog‘liqligi, tadqiqotning maqsad va vazifalari, obyekti va predmeti, usullari, ilmiy yangiligi va amaliy natijasi, tadqiqot natijalarining ishonchliligi, ilmiy va amaliy ahamiyati, joriy etilganligi, aprobatsiyasi, natijalar e’lon qilinganligi, dissertatsiya tuzilishi va hajmi yoritilgan.

Dissertatsiyaning **“Tadbirkorlik subyektlarining huquqlari va qonuniy manfaatlarini himoya qilishga oid ma’muriy nizolar: ilmiy-nazariy tahlil”** deb nomlangan birinchi bobida tadbirkorlar ishtirokidagi ma’muriy nizo tushunchasi, belgilari, ularni sudda ko‘rishning tarixi, sudning faol ishtiroki prinsipi o‘rganilgan, ilmiy yondashuvlar tahlil etilgan (Y.Pudelka, J-M.Pont’e, F.Xufen, Ye.B.Luparev, A.B.Zelensov, N.G.Kiper, N.V.Suxareva, I.M.Divin, J.N.Nematov, G‘.T.Xakimov, E.T.Xojiyev, Sh.I.Shayzakov va boshqalar).

Dissertant olimlar fikrlari va qonunchilikni o‘rganib, **tadbirkorlar huquqini himoya qilishga oid ma’muriy nizo** deganda o‘zaro teng bo‘lmagan ishtirokchilar, ya’ni tadbirkorlar va ma’muriy organlar, hokimiyat vakolatiga ega boshqa subyektlar o‘rtasida ularning qarori (mansabdor shaxs harakati, harakatsizligi), hokimiyat vakolatini boshqacha amalga oshirishi oqibatida yuzaga keladigan, ma’muriy va boshqa ommaviy munosabatlardan kelib chiqadigan nizoni tushunish haqidagi mualliflik fikrini bildiradi.

Ushbu tushuncha asosida **tadbirkorlar ishtirokidagi ma’muriy nizoning qator belgilari** mavjudligi e’tirof etildi. Xususan, **subyektlarga doir belgi** – nizoda taraf sifatida tadbirkor va ma’muriy organ ishtirok etadi; **munosabatning xarakteriga doir belgi** – teng bo‘lmagan ishtirokchilar munosabati vertikal xarakterga ega bo‘ladi; **sohaga doir belgi** – nizo boshqaruv sohasida ma’muriy organ o‘z vakolatini amalga oshirishi oqibatida yuzaga keladi; **shikoyat predmetiga doir belgi** – odatda, individual ma’muriy akt, mansabdor shaxs harakati, harakatsizligi predmet bo‘ladi.

Mazkur barcha belgilarning aynan bir holatda bir vaqtda bo‘lishi eng asosiy talab bo‘lib, bitta belgining o‘zi yetarli emas.

Tadqiqotchi **tadbirkorlar huquqini himoya qilishga oid ma’muriy nizoning turlari** bo‘yicha olimlar fikrlarini tadqiq etib (Ye.B.Luparev, O.V.Chumakova, D.I.Zaxarova, J.N.Nematov), milliy qonunchilik tahlili asosida ularni quyidagicha tasniflashni taklif qiladi:

– tadbirkorlar huquqiga doir individual ma’muriy aktlar (mansabdor shaxs harakati, harakatsizligi) yuzasidan kelib chiqadigan nizolar;

– idoraviy normativ-huquqiy hujjat qabul qiladigan organning tadbirkorlar huquqiga oid qarorlari bo‘yicha kelib chiqadigan nizolar;

– ma’muriy organlarning investitsiya shartnomasi bilan bog‘liq qarorlari va harakatlariga (harakatsizligiga) doir investitsiya nizolari;

– raqobat munosabatidan kelib chiqadigan ommaviy xarakterdagi nizolar;

– ma’muriy organ va tadbirkorlar o‘rtasidagi ma’muriy va ommaviy huquqiy munosabatlardan kelib chiqadigan boshqa nizolar.

Shuningdek, yer, soliq, bojxona, standart, intellektual mulk, ekologiya va boshqaruv sohalarida ma’muriy organ o‘z vazifalarini amalga oshirishi natijasida xususiy shaxs bilan yuzaga keladigan nizolar tadbirkorlikka oid ma’muriy nizolarning alohida turlari sifatida ko‘rsatiladi.

Shu o‘rinda, muallif ma’muriy nizo va ma’muriy huquqbuzarlikning farqi bo‘yicha munozaraga kirishadi. Xususan, Ye.B.Luparev, O.V.Chumakova, D.I.Zaxarovaning ma’muriy huquqbuzarlik ma’muriy nizo ekani haqidagi fikriga qo‘shilmasdan, J.N.Nematovning ma’muriy huquqbuzarlikni jinoyat huquqiga yaqinroq turishi haqidagi yondashuvini qo‘llab-quvvatlaydi.

Dissertant hozirgi O‘zbekiston hududida tadbirkorlar ishtirokidagi **ma’muriy nizolarni sudda ko‘rish tarixini quyidagi uch davr** doirasida o‘rganish taklifini ilgari surgan:

– sovet davriga qadar ushbu ma’muriy nizolarni sudda ko‘rish institutiga o‘xshash bo‘lgan institutlarning yuzaga kelishi bosqichi;

– sovet davrida ma’muriy nizolarni sudda ko‘rish instituti ayrim elementlarining shakllanishi bosqichi;

– mustaqillik davrida ma’muriy nizolarni sudda ko‘rish institutining rivojlanishi bosqichi (xususan, 2017 yildan keyingi davr).

Sovet davriga qadar O‘zbekiston hududida hozirgi tushunchamizdagi ma’muriy nizolarni sudda ko‘rish instituti bo‘lmasada, uning dastlabki ko‘rinishlari **qozi, mazalim, biylar** misolida ko‘rsatib berilgan. Xususan, davlat amaldorlari qoziga salbiy ta’sir qilish imkoniyatiga ega bo‘lganligi uchun, ommaviy nizolar mazalim tomonidan ko‘rib chiqilgan.

Z.U.Muqimov, F.A.Muxitdinova, L.B.Xvan, Sh.I.Shayzakov kabi milliy olimlar, S.I.Ibragimov, R.S.Odinaev kabi tojikistonlik olimlar ishlari o‘rganilib, qozi, mazalim, biy institutlari ma’muriy sud ish yurituvining Markaziy Osiyo hududidagi o‘ziga xos ko‘rinishlari ekanligi yoritib berilgan.

Sovet davrining boshida 1917-yil mayda ma’muriy sudlar tashkil etilgan bo‘lsada, uning nizomi kuchga kirmagan. Bunda, davlat va xususiy shaxs o‘rtasida nizo mavjudligini tan olish sovet tuzumining kommunizm qurish g‘oyasiga zidligi sababli ma’muriy sud rivojlanmagan. Buni nemis olimi Y.Pudelka ham Germaniya

Demokratik Respublikasi misolida aytib o‘tgan. XX asr 60-yillarida ma’muriy shikoyat qilish institutini mustaqil ma’muriy huquq emas, balki fuqarolik protsessual qonunchiligi doirasida umumiy aks ettirish yo‘li davom ettirilgan. Shu asr 70-yillarida A.T.Bonner, V.T.Kvitkin, L.A.Nikolaeva, V.F.Sirenko kabi olimlar tomonidan davlat va xususiy shaxs o‘rtasida ham konflikt bo‘lishi haqida fikrlar ilgari surilib, 1977-yildagi sobiq Ittifoq Konstitutsiyasida fuqaroning davlat organi ustidan sudga shikoyat qilish huquqi belgilangan. Lekin, amaliy qadamlar tashlanmagan. Qayta qurish davriga kelib, 1987-yil 30-iyun va 1989-yil 2-noyabrda bu normani amalga oshiradigan qonunlar qabul qilingan bo‘lsada, keyinchalik Ittifoqning qulashi ushbu rivojlanish nuqtalarining ahamiyatini tushirib yuborgan.

O‘zbekiston mustaqilligi davrida bu nizolarni sudda ko‘rish tarixi **ikki bosqichga**, ya’ni **1991-2016-yillardagi** xo‘jalik sudi tizimidagi va **2017-yildan keyingi** ma’muriy sud tizimidagi bosqichlarga ajratib o‘rganilgan.

Jumladan, xo‘jalik sudlari ma’muriy sud tuzilgungacha O‘zbekistonda tadbirkorlar ishtirokidagi ma’muriy sud ish yurituvining yaxlit tizimini tashkil etgan. Uning ildizi sovet davriga borib taqaladi. Xususan, 1979-yilda sud tizimiga kirmaydigan davlat arbitrajiga boshqaruv organlari qarorini nazorat qilish, 1988-yilda davlat korxonalari, 1990-yilda kooperativ kabi boshqa tadbirkorlarning bunday qarorlardan norozilik haqidagi shikoyatini ko‘rib chiqish vakolati berilgan. Bozor munosabatlari kirib kelgani sayin, davlat arbitraji o‘rniga arbitraj sudi tashkil etilib, tadbirkorlarning o‘zaro nizolari va davlat organi bilan nizolarini ko‘rib chiqqan.

O‘zbekistonda ham 1991-yil 20-noyabrda “Hakamlik sudi va xo‘jalik nizolarini hal etish tartibi to‘g‘risida”gi Qonun qabul qilinib, ma’muriy sud ish yurituvining rivojiga xizmat qilgan. Tadbirkorlikka oid nizolarni hal qilishda xo‘jalik sudining o‘rni bu sohada katta nazariy va amaliy tajribaga ega olim F.H.Otaxonovning ilmiy ishlarida chuqur tadqiq etilgan.

2017-yildan bugungi kunga qadar tadbirkorlarning ma’muriy nizolari ham iqtisodiy sud, ham ma’muriy sud tizimida ko‘rib kelinmoqda.

Tadqiqotchi 2010-yildan hozirgacha qonunchilik bo‘yicha turli xil ishchi guruh (komissiya)lardagi tajribasidan kelib chiqib, ma’muriy sud ish yurituvidagi islohotlarning amalga oshirilishi jarayonlarini bayon etgan.

Dissertant **tadbirkorlar ishtirokidagi ma’muriy nizolarni sudda ko‘rishning o‘ziga xos xususiyatlari** bo‘yicha bildirilgan fikrlarni (M.P.Sinx, J-M.Ponte, A.V.Absalyamov, Ye.V.Slepchenko, I.M.Zaysev, V.V.Skitovich, Yu.A.Popova, M.3.Shvars, Yu.V.Yefimova) qiyosiy tahlil qilgan.

Tahlil natijasiga ko‘ra, tadbirkorlikka oid ma’muriy nizolarni sudda ko‘rish o‘ziga xos xususiyatlarga egaligi sababli odil sudlovning mustaqil shakli bo‘lishi haqida to‘xtamga kelingan. Tadqiqotchi fikrini davom ettirib, MSIYutKdagi ayrim normalar oldingi fuqarolik va xo‘jalik protsessual qonunchilik ta’sirida shakllanganini undagi prinsiplar orqali ochib bergan.

Ayniqsa, sudning faol ishtiroki prinsipi bo‘yicha olimlar fikrlari (Y.Pudelka, L.Broker, V.Raymers, K.Dreksel, S.Karimov, O.Rogacheva, J.N.Nematov, M.U.Eshimbetov) va Germaniya, Latviya, Estoniya, Ozarbayjon, Gruziya, Armaniston qonunchiligi tahlil qilinib, u ma’muriy sud ish yurituvining asosiy prinsipi ekanligi ko‘rsatib berilgan. Bunda, ushbu prinsipning ilmiy-nazariy jihatlarini o‘rganishga asosiy e’tibor qaratilib, uning o‘ziga xosligida muhim ahamiyat kasb etishi ta’kidlangan.

Shu bilan birga, ayrim tadqiqotchilar bilan munozaraga kirishilgan. Masalan, D.Boronboeva fikriga ko‘ra, ma’muriy nizodan boshqa nizolarni hal qilishda sud passiv pozitsiyani egallashi mumkin emas, sud dalilni talab etishda baribir protsessni boshqaradi. Dissertant sudning faol ishtiroki prinsipi nima uchun zarurligini tahlil qilish orqali bu fikrga qo‘shilib bo‘lmasligini ta’kidlagan. Xususan, taraflar taqdim etgan dalillar doirasida qaror qabul qiladigan iqtisodiy suddan farq qilgan holda, ma’muriy sud taraflar teng faol bo‘lish imkoniga ega emasligi bois haqiqatni aniqlash uchun o‘zi faol harakat qilib, surishtiruv olib boradi. Mazkur prinsip taraflar orasidagi faktik notenglik protsessual notenglikka aylanishiga yo‘l qo‘ymasligi lozim. Shuningdek, ma’muriy organ tomonidan ommaviy manfaat to‘g‘ri ifodalanishini sud nazorat qilishi uchun ham bu prinsip zarur.

Amaliyotchilar ushbu prinsipni to‘g‘ri qo‘llashi juda muhim. Rivojlangan davlatlarda prinsiplar huquqiy qadriyat darajasiga ko‘tarilgani uchun, germaniyalik olim Y.Pudelka ularni qonunda to‘liq yozish zarur emas, deb hisoblaydi. Lekin, **postsovet davlatlarida** qonuniylik holati, mansabdor shaxslar bilimi, zamonaviy ma’muriy huquqning yangiligi, Yevropadagi ustun jihatlar mavjud emasligi sababli **har bir prinsipning mazmunini to‘liq ochib berish** to‘g‘ri bo‘ladi. Shu nuqtayi nazardan qator **takliflar** ishlab chiqilgan.

Jumladan, MSIYutK 11-moddasi sudga ushbu moddada bayon etilgan aniq harakatlardan tashqari, ma’muriy sud ishini yuritish vazifalarini hal etishga qaratilgan boshqa harakatlarni bajarish majburiyatini ham yuklagan. Mazkur vazifa umumiy bo‘lib, bir tomondan, sudga keng ko‘lamdagi chora-tadbirlarni amalga oshirish imkonini berishi ijobiy jihat hisoblanadi, boshqa tomondan, aniq choralar ko‘rsatilmagani sababli tadbirkor himoyasi uchun hech qanday amaliy harakat qilmaslikka ham olib kelishi mumkin.

Estoniya, Ozarbayjon va Armaniston qonunchiligida ishtirokchilarning huquqiy bilimi kamligi oqibatida ularning manfaati buzilmasligi kerak, degan aniq xavfni oldini olish maqsadi bilan bu choralar batafsil yozilgan.

Shunga ko‘ra, mazkur prinsip mazmunini boyitish maqsadida sudning ma’muriy sud ish yurituvi vazifalarini hal qilishga qaratilgan boshqa harakatlarni bajarish majburiyatini saqlab qolgan holda, **sud tomonidan ishtirokchilarga ko‘maklashish mexanizmini yanada kengroq bayon etish** va MSIYutK 11-moddasini uchinchi qism bilan to‘ldirish taklif etilgan.

Dissertatsiyaning **“Tadbirkorlik subyektlari ishtirokidagi ma’muriy nizolarni sudda ko‘rishning protsessual jihatlari”** deb nomlangan ikkinchi bobida ushbu nizolar taalluqliligi, isbotlash majburiyati, hal qiluv qarori va uni ijroga qaratishga oid protsessual masalalar, suddagi ishlar va olimlar fikrlari tahlil qilingan (I.L.Burova, F.R.Gadjieva, R.Melnik, Y.Pudelka, Y.Deppe, J.N.Nematov, I.M.Say, I.M.Salimova, Sh.I.Shayzakov va boshqalar).

Dissertant olimlar fikrlarini o‘rganib, **ma’muriy sud ish yurituvida taalluqlilik** deganda ma’muriy organ va xususiy shaxs o‘rtasida kelib chiqqan ma’muriy nizoni ko‘rib chiqish va hal qilish vazifasining qaysi sud yoki ma’muriy organ vakolatiga kiritilganini tushunish kerakligini bildirgan.

Nizoning ma’muriy va iqtisodiy **sudga taalluqliligi** bo‘yicha ilmiy munozaraga kirishilgan. Xususan, I.M.Salimovaning fikriga ko‘ra, ma’muriy munosabatdan kelib chiqadigan iqtisodiy nizo tadbirkorlar ishtirokidagi ma’muriy nizoni ham qamrab oladi.

J.N.Nematov esa asosiy talab mansabdor shaxs faoliyati yuzasidan nizolashish bo‘lsa, bunday ish ma’muriy sudlovga taalluqliligini bildirgan. Dissertant ushbu pozitsiyani qo‘llab-quvvatlab, ma’muriy munosabatdan kelib chiqadigan iqtisodiy nizoni aslida **ma’muriy organ o‘z vazifasini amalga oshirishi natijasida yuzaga kelgani sababli ma’muriy nizo**, deb hisoblash zarurligini ta’kidlaydi.

Shuningdek, ushbu ilmiy-nazariy yondashuvdan kelib chiqib, taalluqlilik amaliyotdagi ishlar orqali ochib berilgan va **takliflar** ishlab chiqilgan.

Birinchidan, hozirda iqtisodiy sudda ko‘rilayotgan **tadbirkorlikka oid ma’muriy nizolar ma’muriy sud vakolatiga o‘tkazilishi** lozim. Masalan, hokim qarori asosida “Shahodat kasb” korxonasi binosi buzilib, kelishuv bitimiga ko‘ra quruvchi “Grand qurilish plast” MChJ unga kompensatsiya to‘lashi belgilangan. Ikki tadbirkorning kelishuv bitimi iqtisodiy sud tomonidan, hokim qarori ma’muriy sud tomonidan haqiqiy emas deb topilgan, qaror oqibatidagi zararni undirish esa yana iqtisodiy sudda ko‘rilgan. Ushbu ikkita suddagi **barcha nizolarning ildizi**, ya’ni kelishuv bitimi, hokim qarori va yetkazilgan zararni undirish hokimning noqonuniy harakati oqibatida kelib chiqqanligi sababli barcha masalalar ma’muriy sudda ko‘rilishi zarur.

Statistika mazkur muammo shu davrda keng tarqalganligini ko‘rsatdi. Xususan, 2021-yilda ma’muriy sudda jami 15 143 ta ish ko‘rilgan bo‘lsa, qaror oqibatidagi zararni undirish uchun 4 028 ta ish bo‘yicha iqtisodiy va fuqarolik sudiga murojaat bo‘lgan, ya’ni 27 foiz ishda da’vogarlar odil sudlovning yakuniy natijasiga shu sudning o‘zida erishmagan. Mazkur taklif inobatga olinib, MSIYutK 27-moddasiga shikoyat bilan sababiy bog‘lanishdagi zararga oid talabni ma’muriy sudga taqdim etish tartibi kiritilgan.

Shuningdek, ma’muriy organ va tadbirkorning da’vogar va javobgar sifatidagi ishtiroki o‘rganilib, ma’muriy nizolarni iqtisodiy suddan ma’muriy sudga o‘tkazish haqidagi taklif amaliyot bilan ham asoslantirilgan. Hozirda ma’muriy organlar, masalan, bojxona organi va tadbirkorning bir xil, aytaylik, bojxona imtiyoziga oid nizosi da’vo subyekti tadbirkor bo‘lsa – ma’muriy sudda, bojxona organi bo‘lsa – iqtisodiy sudda ko‘rilmoqda.

2022-2023-yillar va 2024-yil 1-yarmida tadbirkor da’vogar, bojxona organi javobgar sifatida qatnashgan ishlar soni iqtisodiy sudda 47 tani, ma’muriy sudda 124 tani tashkil etgan. Xususan, da’vogar F.Djalalovning shikoyati Navoiy tumanlararo ma’muriy sudida, analogik misol – da’vogar bojxona organining arizasi Peshku tumanlararo iqtisodiy sudida ko‘rilgan. Chunki, qonunchilikda davlat organi ma’muriy sudda da’vogar bo‘lmasligi ko‘rsatilgan. Aslida, mazmunan bir xil bu ikkita ma’muriy nizo ma’muriy sudda ko‘rilishi kerak. Shu bois ma’muriy organ va tadbirkorning **vertikal nizolarini ma’muriy sudga o‘tkazish** bo‘yicha MSIYutK 26-moddasi va IPK 25-moddasiga o‘zgartirish kiritish, Germaniya modelidagi ma’muriy sud shakllangungacha MSIYutK 40-moddasida **ma’muriy organ ham da’vogar bo‘lishini belgilash** zarur. Estoniya va Gruziyada bu tajriba qabul qilingan.

Ikkinchidan, **ma’muriy aktni** haqiqiy emas deb topish bilan birga, uni **bekor qilishga oid shikoyat ham ma’muriy sudda ko‘rilishi** lozim. Chunki, qonunchilikka ko‘ra (masalan, Soliq kodeksi 230-modda), tadbirkor huquqini buzadigan ma’muriy aktni sudda bekor qilish ham mumkin bo‘lsada, MSIYutK 185-moddasida ularni faqat haqiqiy emas, deb topish belgilangan.

Vaholanki, har ikkala holat ham ma’muriy munosabatdan kelib chiqadi va hujjat yuridik kuchining tugatilishi haqida gap ketadi. Taklif asosli ekanligini **so‘rov** natijalari ham tasdiqlaydi. Xususan, 210 nafar sudya qatnashgan so‘rovda ularning 86 foizi ushbu vakolat ma’muriy sudda bo‘lishi, 14 foizi iqtisodiy sudda bo‘lishi haqida fikr bergan.

Uchinchidan, ba’zilari ma’muriy sudga, boshqalari iqtisodiy sudga taalluqli, tadbirkorlar ishtirokidagi **o‘zaro bog‘liq bir nechta talab birlashtirilishi va ular ma’muriy sudda ko‘rilishi** zarur. Bunda, iqtisodiy sudga taalluqli nizo deganda ikkita tadbirkorning iqtisodiy munosabati ko‘zda tutilmagan, balki nizoning bir tomoni ma’muriy organ bo‘lgan va nizo ma’muriy organ qarori ta’sirida kelib chiqqan holatlar nazarda tutilgan (yuqorida keltirilgan “Shahodat kasb” korxonasi bilan bogliq, ma’muriy va iqtisodiy sudda ko‘rilgan ishlarni bunga misol qilish mumkin).

2017-yilgacha ma’muriy sud bo‘lmaganligi uchun, bunday birlashtirilgan ishlar xo‘jalik sudida ko‘rilgan. Xo‘jalik protsessual kodeksga 2017-yil 12-aprelda o‘zgartish kiritilib, birlashtirilgan ishlarni iqtisodiy sudda hal qilish yo‘li tanlangan, 2018-yildagi IPK va MSIYutKda bir nechta talab birlashtirilmasligi belgilangani oqibatida esa tadbirkorlar ikki sud orasida ovora bo‘lib qolgan. Taraflar munosabatiga ma’muriy nizo elementi kirib kelganda, birlashtirilgan o‘zaro bog‘liq talablarni qonuniy hal qilish uchun ma’muriy sudda huquqiy mexanizmlar mavjud. Iqtisodiy suddagi teng taraflarga mo‘ljallangan protsessual tartiblar esa bunga yetarli bo‘lmaydi.

Dissertant keyingi paragrafda olimlarning (L.B.Xvan, M.V.Karasyova, V.A.Tupikov, D.I.Sheykin) **isbotlash majburiyati**ga oid fikrlarini o‘rganib, isbotlash majburiyatiga ish uchun muhim ahamiyatga ega bo‘lgan holatlar haqidagi ma’lumotlarni to‘plash, taqdim etish va baholashga oid vazifalarning sud, da’vogar, javobgar va ishda ishtirok etuvchi boshqa shaxslarga yuklatilishi, ular o‘rtasida taqsimlanishi, deb ta’rif beradi.

Ma’muriy protsessdagi **isbotlashning o‘ziga xosligi ma’muriy sud ish yurituvining vertikal mazmunidan kelib chiqadi** va bu **notenglik ishdagi haqiqatni aniqlashga to‘sqinlik qilmasligi maqsadini ko‘zlaydi**. Chunki, xususiy shaxsning isbotlashdagi imkoniyatlari, odatda, ma’muriy organga nisbatan kamroq bo‘lganligi sababli ma’muriy organga ko‘proq majburiyat yuklatiladi.

Tadqiqotchi fuqarolik protsessidan farqli ravishda, ma’muriy protsessda sud ishtirokchilar keltirgan va ikkinchi taraf nizolashmagan vajlarni haqiqiy holat sifatida tan olmasligi, balki asl vaziyatni aniqlash uchun barcha holatlarni o‘rganishi hamda buning uchun zarur protsessual harakatlarni amalga oshirishi kerakligini ta’kidlaydi.

Shu bois 2023-yil 26-apreldagi “Davlat organlari bilan munosabatlarda fuqarolar va tadbirkorlik subyektlari huquqlarining samarali himoya qilinishini ta’minlash bo‘yicha qo‘shimcha choralar ko‘rilishi munosabati bilan O‘zbekiston Respublikasining ayrim qonun hujjatlariga o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi O‘RQ–833-sonli Qonunga ko‘ra, MSIYutK 67-moddasida arizachi dalillarni yig‘ishda o‘z imkoniyati doirasida ishtirok etishi, isbotlash majburiyati ma’muriy organga yuklatilishi belgilangan.

Tadqiqot doirasida boshqa **takliflar** ham ishlab chiqilgan.

Xususan, ilg‘or tajribaga ko‘ra, **isbotlash majburiyati** asosan **javobgarga** yuklatiladi (masalan, ma’muriy akt qonuniyligi), ba’zilarida esa muayyan holatlarni **da’vogar** ham isbotlashi zarur. Xususan, **majburiyat yuklash** da’vosida da’vogar o‘ziga maqbul akt qabul qilishni asoslaydigan holatlarni, javobgar esa shu aktni qabul qilishni rad etganlik zaruratini isbotlashi kerak.

Germaniya, Ozarbayjon, Armaniston, Qozog‘iston qonunchiligida bunday normalar mavjud. Bu masala bo‘yicha Germaniya sudlari, xususan **Lyuneburg**, **Aaxen**, **Koblens**, **Karlsrue** ma’muriy sudlari amaliyoti tahlil qilingan. Shuni e’tiborga olgan holda, MSIYutKga **da’vo institutini kiritib**, har bir da’voda taraflardagi **isbotlash majburiyati taqsimotini va hajmini belgilab qo‘yish** zarur.

Shuningdek, ishdagi **ayrim holatlar isbotlanmay qolishining huquqiy oqibatlari** MSIYutKda belgilanmagan. Aslida hayotdagi turli vaziyatlar huquqdagi vositalar orqali aniqlanmagan hollarda sud qanday yo‘l tutishi kerakligi qonunda aniq ko‘rsatilishi kerak. L.Broker, Y.Pudelka, Y.Deppe, A.Boston, N.Pisarenko, A.Shkolik kabi olimlar tadqiqotlarida va Germaniya, Moldova, Qozog‘iston qonunchiligida bu masalada yakdil xulosaga kelingan.

Shu bois sud barcha dalillarni tadqiq etganidan keyin, muayyan holatni isbotlash imkoniyati tugagan deb hisoblasa, **isbotlanmaganlikning salbiy oqibati mazkur holatni isbotlash majburiyati yuklatilgan tarafning zimmasida bo‘lishi**ni qonunchilikda belgilash kerak.

Dissertant **sud hal qiluv qarori**ga oid masalani o‘rganib, munozaraga kirishadi (Y.Pudelka, M.Xendel, K.J.Gaziev, Sh.I.Shayzakov, M.M.Mamasiddiqov). Xususan, K.J.Gaziev fikriga ko‘ra, ma’muriy ish bo‘yicha sud qarori – davlat nomidan ma’muriy huquq to‘g‘risidagi nizo bo‘yicha qabul qilinadigan adolat aktidir. Bu manfaatdor shaxsning javobgarga da’vosini hal qiladigan, taraflar nizosini yo‘q qiladigan va ma’muriy ish yuritishda tomonlarning buzilgan yoki bahsli huquqini himoya qilish sifatida harakat qiladigan sud hujjatidir.

Ushbu ta’rifda hal qiluv qarori belgilari aks ettirilganini e’tirof etgan holda, undagi adolat akti tushunchasiga qo‘shilib bo‘lmaydi. **Adolat axloqiy-falsafiy kategoriya** bo‘lib, **huquqda ko‘proq qonuniylik va asoslilik tushunchalari**ni qo‘llash kerak. Chunki, sud qarori bilan nizodagi haqiqiy holat obyektiv sababga ko‘ra aniqlanmasligi ham mumkin, lekin sud qarori MSIYutK 154-moddasiga ko‘ra qonuniy va asoslangan bo‘lishi shart.

Hal qiluv qarori nizoni mohiyatan yo‘q qiladigan hujjat sifatidagi talqinga ham to‘liq qo‘shilib bo‘lmaydi, bu o‘rinda da’voni hal qiladigan hujjat tushunchasi qaror mazmunini ifodalash uchun yetarli. Chunki, sud hal qiluv qarori chiqargani bilan taraflarning nizosi yo‘q bo‘lib ketmaydi, balki nizo mazmunini tashkil etuvchi da’vo yuridik jihatdan hal qilinadi.

Dissertant hal qiluv qarorining ko‘p jihatlari Yevropa davlatlari modeli bilan o‘zaro mosligini ta’kidlab, buni MSIYutK 158-moddasi va Germaniya Ma’muriy-protsessual kodeksi 117-paragrafidagi hal qiluv qarori mazmuniga oid talablar deyarli o‘xshash ekanligi orqali ko‘rsatib bergan.

Shunga ko‘ra, **sudning hal qiluv qarori**ga ma’muriy nizoni ko‘rish natijasi bo‘yicha davlat nomidan qonunga muvofiq va sud muhokamasida tekshirilgan dalillar asosida qabul qilingan, taraflarning da’vosini hal qiladigan huquqiy hujjat, deb ta’rif beriladi.

Hal qiluv qarorini o‘z vaqtida va to‘g‘ri ijroga qaratish muhim bo‘lib, qonuniy qaror bajarilmasa, uning amaliy ahamiyati bo‘lmaydi. Shunga ko‘ra, tadqiqotdagi **takliflar** inobatga olinib, ayrim muammolar hal qilingan.

Xususan, 2023-yilgacha ma’muriy sud qarori ijro uchun ma’muriy organga ijro varaqasi emas, balki oddiy xat orqali yuborilgan va bu mansabdor shaxslar ijroga mas’uliyatsizlik bilan qarashiga sabab bo‘lgan. 2022-yilda 4 477 ta ma’muriy sud qarorida davlat organiga qonunbuzilishni bartaraf etish yuklatilgan bo‘lib, ularning 809 tasi, ya’ni 18 foizining ijrosi haqida sudga axborot ham berilmagan (2021-yilda 4 385 ta qarorning 494 tasi, 11 foiz).

Ushbu tadqiqot natijalari ham inobatga olinib, 2023-yil 26-apreldagi O‘RQ–833-sonli Qonun bilan MSIYutK 122 va 276-moddalari o‘zgartirilib, ma’muriy sud qarorini mansabdor shaxslar bir oyda bajarmasa, bazaviy hisoblash miqdorining **5 baravaridan 10 baravarigacha jarima** belgilangan.

Dissertatsiyaning **“Tadbirkorlik subyektlari ishtirokidagi ma’muriy nizolarni sudda ko‘rishni takomillashtirish istiqbollari”** deb nomlangan uchinchi bobida huquqiy ta’sir choralarini sud orqali qo‘llash, keng tarqalgan ma’muriy nizolarni sudda ko‘rish, tadbirkorlar huquqini himoya qilishning sud tartibini takomillashtirish istiqbollari tadqiq etilgan.

Dissertant **tadbirkorga huquqiy ta’sir chorani sud orqali qo‘llash** bo‘yicha ilmiy qarashlarni (J.N.Nematov, M.U.Eshimbetov, I.M.Salimova, B.J.Abdullaev, A.A.Li, X.H.Soyipov, Y.Pudelka, I.M.Divin, G.V.Dikov) tahlil qilib, ma’muriy nizoning barcha belgilari mavjudligi bois ularni **iqtisodiy suddan ma’muriy sudga o‘tkazish**ni taklif qilgan. Chunki, bunda nizoning ma’muriy organ o‘z vakolatini amalga oshirishi oqibatida noteng taraflar orasida vujudga kelishi – eng muhim belgi bo‘lib, arizani ma’muriy organ yoki tadbirkor tashabbus qilishi uning mazmunini o‘zgartirmaydi.

Muallif G.V.Dikovning ma’muriy nizoda faqat xususiy shaxs da’vogar bo‘lishiga oid fikriga to‘liq qo‘shilmasdan, J.N.Nematov, M.U.Eshimbetov, I.M.Salimova, I.M.Divinning xulosalari bilan taklifini asoslantirgan.

So‘nggi yillarda iqtisodiy suddagi jami ishlarda huquqiy ta’sir choraga oid nizolar ulushi ko‘paymoqda. Ayniqsa, 2020-yilda bankdagi hisobvaraq bo‘yicha operatsiyani to‘xtatishga oid 8 726 ta ish hal qilinib, ishlarning 8,4 foizini tashkil etgan bo‘lsa, bu 2021-yilda 30,7 foiz (53 930 ta), 2022-yilda 56,5 foiz (156 873), 2023-yilda 50,2 foiz (136 529), 2024-yilda 68,3 foizgacha (297 345) oshgan. Iqtisodiy suddagi ishlarning yarmidan ko‘pini unga xos bo‘lmagan ma’muriy nizolar tashkil etishi esa mantiqan noto‘g‘ri. Chunki, huquqiy ta’sir choraga oid ishda nazorat organi arizachi bo‘lib, iqtisodiy sud ish yurituvining tenglikka asoslangan tabiati tadbirkorlar huquqini samarali himoya qilish imkonini bermaydi.

Bu masala **tadbirkor litsenziyasini to‘xtatish** bo‘yicha qiyosiy o‘rganilib, uning ma’muriy-huquqiy faoliyatdan kelib chiqqanligi (ya’ni, iqtisodiy sudda ko‘rish noto‘g‘riligi) ko‘rsatib berilgan. Hozir tadbirkor litsenziyasini o‘n kundan ko‘p muddatga to‘xtatish soliq organi arizasiga ko‘ra bilan iqtisodiy sudda ko‘riladi. Mazmunan bir xil boshqa holat, ya’ni soliq organi o‘zi litsenziyani o‘n kundan kam muddatga to‘xtatsa va tadbirkor norozi bo‘lsa, ish ma’muriy sudda ko‘riladi. Aslida ikkalasi ham ma’muriy-huquqiy faoliyat hisoblanadi.

Huquqiy ta’sir choraga oid ishlarni iqtisodiy suddan ma’muriy sudga o‘tkazish masalasida 210 nafar ma’muriy va iqtisodiy sud sudyalari o‘rtasida **so‘rov** o‘tkazilganda, ularning 76 foizi mazkur taklifni qo‘llab-quvvatlagan.

Navbatdagi paragrafda eng ko‘p tarqalgan ikki turkumdagi ishlar bo‘yicha so‘rov o‘tkazilganda, sudyalarning 66 foizi soliqqa, 53 foizi yerga oid nizolarni ko‘rsatgan. 6,9 ming tadbirkorlar o‘rtasidagi so‘rovda ham ularning 68 foizi soliqqa, 52 foizi yerga oid nizolar eng ko‘p muammoga sabab bo‘layotganini qayd etgan. Shu sababli keng tarqalgan bu nizolar ularni sudda ko‘rishni takomillashtirish nuqtayi nazaridan o‘rganilgan. Bunda, ma’muriy nizo deganda qaysi sudda ko‘rilishidan qat’i nazar, tadbirkor va ma’muriy organ o‘rtasidagi barcha vertikal nizolar asos qilib olingan.

Dissertant statistikani ham tahlil qilib, ma’muriy va iqtisodiy suddagi **yerga oid ma’muriy nizolar ko‘payib borayotganiga** e’tibor qaratgan. Jumladan, ma’muriy sudda ko‘rilgan ishlar 2 barobardan ko‘p (2020-yilda 1 937 ta, 2022-yilda 3 965 ta), iqtisodiy sudda 1,5 barobardan ziyod (2020-yilda 1 047 ta, 2022-yilda 1 580 ta) ortgan. 2023-yilda esa ma’muriy suddagi bunday nizolar 3 159 tani tashkil etib, 2022-yilga nisbatan 20 foizga kamaygan.

Ushbu nizolarni o‘rganishda tadqiqotdagi ilmiy-nazariy xulosalar amaliyotdagi ishlar bilan asoslantirilib, qator **takliflar** tayyorlangan.

Prezident Farmoni bilan taqiqlangan bo‘lsada, 2022-2023-yillar va 2024-yil 1-yarmida fermer yerini hokimlik zaxirasiga noqonuniy qaytarish bo‘yicha Sirdaryo viloyati sudlarida 61 ta, Toshkent viloyatida 51 ta, Jizzaxda 47 ta, Andijonda 40 ta ish ko‘rilgan. Shuning uchun, Yer kodeksi 36-moddasiga **ma’muriy organ tomonidan asos hujjatni bekor qilish orqali yer huquqini tugatishga barham berish** bo‘yicha o‘zgartirish kiritish zarur.

Yer kodeksi 36-moddasiga ko‘ra, yuridik shaxs tugatilganda, yerga bo‘lgan huquq bekor qilinadi. Lekin, bu holat tadbirkorning auksion orqali sotib olgan yeriga tatbiq etilmasligi lozim. Shu bois bu moddada **tadbirkorning qishloq xo‘jaligiga kirmaydigan yeriga nisbatan huquqi muassislariga o‘tishini belgilash** lozim. Muammo sud ish yurituviga bevosita taalluqli bo‘lmasada, uning hal etilishi sudda nizolarni kamaytirishga xizmat qiladi.

Tadbirkorlar ishtirokidagi nizolar tahlili ko‘rsatmoqdaki, yer va mulk huquqiga asos bo‘lgan hujjatlarning o‘zgaruvchanligi investitsiyaviy muhitga xavf soladi. Investorlar uchun muhim bo‘lgan **Mulk huquqlarini himoya qilish xalqaro indeksi**da O‘zbekistonning o‘rni haligacha baholanmagan. Jahon odil sudlov tashkilotining 2024-yildagi indeksida esa O‘zbekiston yetarli kompensatsiyasiz mulkni olib qo‘ymaslik indikatorida **142 ta davlat ichida 140-o‘rinda** turibdi. Shunga ko‘ra, xalqaro reytinglardagi o‘rnimizni yaxshilash bo‘yicha **xalqaro tashkilotlar bilan hamkorlikni kuchaytirish** lozim.

Muallif soliqqa oid ma’muriy nizolarni sudda ko‘rish bo‘yicha tahlilni davom ettirib, Oliy sud va Soliq qo‘mitasi statistikasini taqqoslagan holda **tadbirkorlarning soliqqa oid nizolari** ma’muriy nizolarning katta qismini tashkil etayotganini ko‘rsatib bergan va qator **takliflar** tayyorlagan.

Jumladan, Soliq kodeksi 231-moddasiga ko‘ra, soliq organining sayyor tekshiruv va soliq auditi bo‘yicha qarori ustidan sudga shikoyat qilish faqat yuqori soliq organiga murojaat qilingandan keyin mumkin bo‘lgan. Oqibatda, **tadbirkorlarning sud himoyasiga bo‘lgan huquqi**ga putur yetkazib kelingan edi. Shu sababli 2024-yil 20-fevraldagi “O‘zbekiston Respublikasining ayrim qonun hujjatlariga o‘zgartirishlar kiritish to‘g‘risida”gi O‘RQ–910-sonli Qonun bilan mazkur **cheklov bekor qilingan**.

Soliq organlari qonunni noto‘g‘ri qo‘llashi oqibatida tadbirkorlar zarar ko‘rayotgani va masala nizoli ekanligidan kelib chiqib, bitimni **ko‘zbo‘yamachilik vaji bilan haqiqiy emas deb topish**ni barcha hollarda soliq organi da’vosi bo‘yicha **sud orqali amalga oshirish taklifi** ilgari surilgan. Soliq qo‘mitasi ma’lumotiga ko‘ra, tadbirkor norozi bo‘lsada, 2021-yilda 525 ta holatda shu chora sudni chetlab o‘tib qo‘llanilgan. Masalan, Navoiy viloyat soliq boshqarmasi bitim ko‘zbo‘yamachilik uchun tuzilganini isbotlamasdan, asossiz inkasso qo‘ygani sababli “Janubsanoatmontaj” AJga sud qarori bilan 450 million so‘m qo‘shilgan qiymat solig‘i qaytarilgan. Ta’kidlash joizki, O‘zbekiston qonunchiligida nizoli masalalar bo‘yicha asosan sudda to‘xtamga kelish modeli tanlangan.

Yana bir masala – 2023-yil 20-fevraldagi “Sudlar tomonidan soliq qonunchiligini qo‘llashning ayrim masalalari haqida”gi 4-sonli **Plenum qarori** 22-bandidagi “yuqori soliq organi shikoyatni qanoatlantirmasdan qoldirsa, sud uni ishga jalb qilmasligi”ga oid **tushuntirish qonunchilikka zid**. Chunki, kimni ishga jalb qilish nizodagi aniq holatlardan kelib chiqib, sud tomonidan hal qilinishi lozim. Bu taklifning asosliligini sudyalar ham tasdiqlagan. Xususan, 24 nafar ma’muriy sud sudyalaridan ko‘rsatilgan holatda “yuqori soliq organi vakilini ishga jalb qilasizmi?”, deb so‘ralganda, 96 foizi jalb qilishi, 4 foizi jalb qilmasligi haqida fikr bildirgan. Shunga ko‘ra, mazkur tushuntirishni bekor qilish tavsiya etilgan.

Dissertant **tadbirkorlar huquqini himoya qilishning sud tartibini takomillashtirish istiqbollari** bo‘yicha ilmiy yondashuvlarni (P.Kvosta, K.Xinterberger, I.A.Xamedov, M.U.Eshimbetov, A.B.Gabbasov, Sh.B.Bakaev) tahlil qilib, tadqiqotdagi takliflar amalga oshirilishi natijasida sud tartibida tashkiliy-huquqiy, amaliy o‘zgarishlar, transformatsiya jarayoni yuz berishini ta’kidlagan. Xususan, 2017-2023-yillarda ma’muriy sud ish yurituvi instituti qisman (ma’muriy sud tuzilgani, kodeks qabul qilinib, umumiy masalalar belgilangani) joriy etilib, qonunchilikda uning barcha o‘ziga xosliklarini aks ettirish ishlari davom etayotgani ko‘rsatib berilgan.

Umuman, tadqiqotchi O‘zbekistonda postsovet huquqi va Germaniya huquqi elementlaridan tarkib topgan **“aralash model”** shakllanmoqda, degan fikrni ilgari suradi. Mazkur bosqichda qandaydir huquqiy muammo yuzaga kelganda, faqat shu muammoning o‘zini tezda hal qilish emas, balki kompleks yechim topish kerakligi haqidagi konseptual yondashuv taklif etiladi. Chunki, bunday tezkor choralar – qisqa muddatda natija bergandek bo‘lib ko‘rinsada, aslida islohotdan ko‘zlangan pirovard maqsadga erishish muddatini aksincha uzaytiradi yoki erishish imkoniyatlarini yo‘qqa chiqaradi. Yuqoridagi omillardan kelib chiqib, **ma’muriy sud ish yurituviga oid qonunchilikni takomillashtirish konsepsiyasi**ni ishlab chiqish zarurati asoslantirilgan.

XULOSA

Dissertatsiya tadqiqoti natijasida quyidagi ilmiy-nazariy xulosalar, qonunchilikka takliflar va amaliy tavsiyalar ilgari surildi:

I. Ilmiy-nazariy xulosalar

1. Tadbirkorlar huquqini himoya qilishga oid ma’muriy nizoning **mualliflik ta’rifi** ishlab chiqilib, o‘zaro teng bo‘lmagan ishtirokchilar, ya’ni tadbirkorlar va ma’muriy organlar, hokimiyat vakolatiga ega boshqa subyektlar o‘rtasida ularning qarori (mansabdor shaxs harakati, harakatsizligi), hokimiyat vakolatini boshqacha amalga oshirishi oqibatida yuzaga keladigan, ma’muriy va boshqa ommaviy munosabatlardan kelib chiqadigan nizo tushunilishi asoslantirildi.

2. Tadbirkorlar huquqini himoya qilishga oid **ma’muriy nizoning** subyektlar, munosabat xarakteri, soha va shikoyat predmeti bilan bog‘liq **o‘ziga xos belgilarga ega ekanligi** asoslantirildi.

3. Bunday **nizolarning** quyidagi **turlari** mavjudligi ko‘rsatib berildi:

– tadbirkorlar huquqiga doir individual ma’muriy aktlar (mansabdor shaxs harakati, harakatsizligi) yuzasidan kelib chiqadigan nizolar;

– idoraviy normativ-huquqiy hujjat qabul qiladigan organning tadbirkorlar huquqiga oid qarorlari bo‘yicha kelib chiqadigan nizolar;

– ma’muriy organlarning investitsiya shartnomasi bilan bog‘liq qarorlari va harakatlariga (harakatsizligiga) doir investitsiya nizolari;

– raqobat munosabatidan kelib chiqadigan ommaviy xarakterdagi nizolar;

– ma’muriy organ va tadbirkorlar o‘rtasida ushbu organlar qarori, vakolatini boshqacha amalga oshirishi oqibatida yuzaga keladigan, ma’muriy va ommaviy huquqiy munosabatlardan kelib chiqadigan boshqa nizolar.

4. Ma’muriy huquqbuzarlik va **ma’muriy nizo**ning jamiyatdagi konfliktli holatlar tizimidagi o‘rni ilmiy-nazariy tahlil qilinib, delikt ziddiyat va ma’muriy nizoning farq qiladigan jihatlari tadbirkorlar ishtirokidagi ma’muriy ishlar nuqtayi nazaridan ochib berildi.

5. Ma’muriy nizo tushunchasidan kelib chiqib, **davlat korxonasi** va davlat ishtirokidagi **xo‘jalik jamiyati** (masalan, “O‘zbekiston temir yo‘llari” AJ) tadbirkorga qarshi taraf sifatida boshqaruv vakolatiga ega bo‘lib harakat qilganda, ma’muriy-huquqiy faoliyatni amalga oshirishga vakolatli boshqa tashkilot sifatida ma’muriy nizo subyekti bo‘lishi asoslantirildi.

6. Ma’muriy nizo turlarini o‘rganish natijasiga ko‘ra, **investitsiya va raqobatga oid nizolar**ni to‘g‘ridan-to‘g‘ri Oliy sudda va viloyat ma’muriy sudida ko‘rish haqidagi normani bekor qilish zarurligi asoslantirildi. Bunda, yetarli asossiz ayrim nizolar uchun alohida instansiyani belgilash odil sudlov sifatini instansiyaga qarab tabaqalash ekanligidan kelib chiqildi.

7. Sudning faol ishtiroki prinsipi ilmiy-nazariy o‘rganilib, ma’muriy sud ish yurituvi mazmun-mohiyatini belgilab berishi va iqtisodiy protsessdagi tortishuv prinsipidan farqli jihatlari ko‘rsatib berildi.

Jumladan, **tortishuv** iqtisodiy protsessda asosiy prinsip hisoblanib, klassik tarzda namoyon bo‘lishi, ma’muriy sud ish yurituvida esa **sudning faol ishtiroki** asosiy prinsip hisoblanib, uning **ta’sirida mazmuni qisman o‘zgargan tortishuv prinsipi ham amal qilishi** haqida xulosaga kelindi.

8. O‘zbekistonda ma’muriy sud ish yurituviga oid qonunchilikni takomillashtirish konsepsiyasini ishlab chiqish zarurati asoslantirilib, tadqiqotdagi takliflarni mukammal tayyorgarlikdan keyin, ya’ni qonunchilikni yangilash, tashkiliy masalalarni hal qilish, kadrlarni o‘qitish va malakasini oshirish ishlari qilingandan so‘ng, konsepsiya asosida bosqichma-bosqich amalga oshirish lozimligi ko‘rsatib berildi. Xususan, tadbirkorlar ishtirokidagi ma’muriy ishlarni, masalan, huquqiy ta’sir chora qo‘llashga oid ishlarni iqtisodiy suddan **ma’muriy sudga**, jiddiy huquqiy oqibat keltirib chiqarmaydigan turlarini **ma’muriy organga o‘tkazish tendensiyasi** davom etishi zarurligi haqida xulosaga kelindi.

9. Tadqiqotdagi takliflarni amalga oshirish bilan hamohang ravishda **ma’muriy sud va iqtisodiy sudga nisbatan yondashuvlarni konseptual jihatdan o‘zgartirish** lozimligi, jumladan tadbirkorlarning ma’muriy organlar bilan bo‘ladigan barcha ommaviy nizolarini ma’muriy sudda ko‘rish, iqtisodiy sudda esa faqat tadbirkorlar o‘rtasidagi iqtisodiy (fuqarolik) nizolarni hal qilish zarurligi haqida ilmiy-nazariy xulosaga kelindi.

10. Ma’muriy da’vo turlaridan kelib chiqib, ma’muriy aktni haqiqiy emas deb topish, bekor qilishga oid da’volarda hal qiluv qarori to‘g‘ridan-to‘g‘ri ijro bo‘lishi, ma’muriy akt qabul qilish majburiyatini yuklash, muayyan harakatni bajarish (bajarishdan tiyilish) majburiyatini yuklash va tan olish haqidagi da’volarda esa **hal qiluv qarori ijrosini ta’minlashga qaratilgan mexanizmlarni joriy etish, jumladan sud jarimasi kiritilgani ilmiy-nazariy jihatdan asoslantirib berildi**.

11. O‘zbekistonda tadbirkorlar ishtirokidagi ma’muriy nizolarni sudda ko‘rish **tarixini uch davrga bo‘lib o‘rganish** haqida xulosaga kelindi:

– sovet davriga qadar ushbu ma’muriy nizolarni sudda ko‘rish institutiga o‘xshash bo‘lgan institutlarning yuzaga kelishi bosqichi;

– sovet davrida ma’muriy nizolarni sudda ko‘rish instituti ayrim elementlarining shakllanishi bosqichi;

– mustaqillik davrida ma’muriy nizolarni sudda ko‘rish institutining rivojlanishi bosqichi.

Mustaqillik yillarida mazkur nizolarni sudda ko‘rish tarixi **ikkita davr**ga, ya’ni ularni **1991-2016-yillarda** xo‘jalik sudlarida, **2017-yildan** boshlab ixtisoslashgan ma’muriy sudlarda ko‘rib chiqish davriga bo‘lib o‘rganildi.

II. Qonunchilikni takomillashtirish bo‘yicha takliflar

12. Sudning faol ishtiroki prinsipi mazmunini kengaytirib, **MSIYutK 11-moddasi**ni “sud ishda ishtirok etuvchi shaxslarga kamchiliklarni bartaraf etish, o‘z talablarini aniqlashtirish, da’vo turini o‘ziga manfaatli da’voga almashtirish, yetarli bo‘lmagan ma’lumotlarni berishda, shuningdek ish holatlarini aniqlash va baholash uchun ahamiyatga ega materiallarni taqdim etishda ko‘maklashishga majbur. Bunda, sud ishda ishtirok etuvchi shaxslarning huquqiy tajribasizligi sababli zarur dalillar taqdim etilmay qolishiga, ularning haqiqiy xohish-irodasi noto‘g‘ri talqin etilishiga yo‘l qo‘ymaslik choralarini ko‘rishi shart”, degan tahrirdagi uchinchi qism bilan to‘ldirish taklif etildi. Bunda, sudning ma’muriy sud ish yurituvi vazifalarini hal qilishga doir boshqa harakatlarni bajarish majburiyati saqlanib qoladi.

13. MSIYutK 11-moddasida sudning faol ishtiroki prinsipiga zid bo‘lmagan mazmundagi taraflarning tortishuvi prinsipini ham belgilash yoki tortishuvning mazmunini boshqa shaklda saqlab qolish, shuningdek bu moddaga sudning faol ishtiroki prinsipini sudyaning xolisligi asosida amalga oshirishga doir o‘zgartirish kiritish taklif etildi.

14. Davlat organi va tadbirkor o‘rtasidagi ushbu organ o‘z vazifalarini amalga oshirishi bilan bog‘liq **barcha ma’muriy nizolar iqtisodiy sudda emas, balki ma’muriy sudda ko‘rilishi** zarurligi asoslantirilib, MSIYutK va IPKning qator moddalariga o‘zgartirish kiritish taklif etildi. Xususan:

14.1) **tadbirkorning shikoyat bilan sababiy bog‘lanishdagi zararga oid talabi** ma’muriy nizoning tarkibiy qismi ekanligi ko‘rsatilib, MSIYutK 27-moddasida bu talabni ma’muriy sudga taqdim etish tartibi belgilanganligi asoslantirildi. Mazkur zarar bilan birga, barcha huquqiy oqibatlarni hal qilish vakolatini ham ma’muriy sudga o‘tkazish zarurligi ko‘rsatilib, **MSIYutK 27-moddasi uchinchi qismini** “arizachining ushbu moddada ko‘rsatilgan ariza (shikoyat) bilan bir qatorda mazkur talablarga sababiy bog‘lanishda bo‘lgan zararlarning o‘rnini qoplash va boshqa huquqiy oqibatlarga oid talablari ham ma’muriy sudda ko‘rib chiqilishi shart”, degan tahrirda bayon etish va to‘rtinchi qismini bekor qilish taklif etildi;

14.2) ma’muriy organ va tadbirkorning **da’vogar va javobgar sifatidagi ishtiroki** sud amaliyoti orqali o‘rganilib, ularning **vertikal nizolarini ma’muriy sud vakolatiga o‘tkazish** bo‘yicha MSIYutK 26-moddasi va IPK 25-moddasiga o‘zgartirish kiritish, shuningdek MSIYutK 40-moddasida ma’muriy organ ham da’vogar bo‘lishi mumkinligini belgilash asoslantirildi;

14.3) MSIYutK 27-moddasi va IPK 26-moddasiga o‘zgartirishlar kiritilib, tadbirkorga nisbatan ommaviy munosabatlardan kelib chiqadigan talab bo‘yicha so‘zsiz undiriladigan ijro hujjati ustidan shikoyat qilishga doir ishlar ma’muriy sudga taalluqliligi belgilangani asoslantirildi.

15. MSIYutK 185-moddasiga o‘zgartirish kiritib, **ma’muriy aktni haqiqiy emas deb topish** haqidagi shikoyat bilan birga uni **bekor qilish** to‘g‘risidagi da’vo ham ma’muriy sudda ko‘rilishini belgilash taklif etildi.

16. MSIYutK 26-moddasi va IPK 25-moddasiga o‘zgartirish kiritib, “ba’zilari ma’muriy sudga, boshqalari iqtisodiy sudga taalluqli, ya’ni ma’muriy munosabat aralashgan va o‘zaro bog‘liq talablar **birlashtirilishi va barchasi ma’muriy sudda ko‘rilishi**”ni belgilash zarurligi asoslantirildi. Bunda, iqtisodiy sudga taalluqli nizo deganda ikkita tadbirkorning iqtisodiy munosabati ko‘zda tutilmagan, balki nizoning bir tomoni ma’muriy organ bo‘lgan va nizo ma’muriy organ qarori ta’sirida kelib chiqqan holatlar nazarda tutilgan.

17. MSIYutK 67-moddasiga o‘zgartirish kiritilib, arizachi dalilni yig‘ishda o‘z imkoniyati doirasida ishtirok etishi, isbotlash majburiyati qarori yuzasidan nizolashilayotgan ma’muriy organ zimmasiga yuklatilishi belgilangani asoslantirildi.

18. Isbotlash majburiyati taqsimoti **ma’muriy da’vo turi**ga bog‘liq ekanligi o‘rganilib, haqiqiy emas deb topish, bekor qilish, ma’muriy akt qabul qilish majburiyatini yuklash, muayyan harakatni bajarish (bajarishdan tiyilish) majburiyatini yuklash va tan olish haqidagi da’vo turlarini kiritish hamda har birida taraflardagi **isbotlash yuki hajmini belgilash** taklif etildi.

19. Ayrim holatlar isbotlanmay qolishining oqibati belgilanmagani sababli MSIYutK 67-moddasini “sud barcha dalillarni tadqiq etganidan va o‘ziga bog‘liq barcha vakolatlardan foydalanganidan keyin, muayyan holatni isbotlash imkoniyati tugagan deb hisoblasa, isbotlanmaganlikning salbiy oqibati bu holatni isbotlash majburiyati yuklatilgan tarafning zimmasida bo‘ladi”, degan tahrirdagi beshinchi qism bilan to‘ldirish taklif etildi.

20. Ayrim bo‘shliqlar mavjudligi sababli **FPKning ma’muriy sud ish yurituvi mazmuniga zid bo‘lmagan normalarini qo‘llash mumkinligini MSIYutKda belgilash** yoki FPKda mavjud va ma’muriy sud ish yurituvida qo‘llash zarur qoidalarni MSIYutKga ham kiritish lozimligi asoslantirib berildi.

21. Tadbirkorlarga **huquqiy ta’sir choralarini sud orqali qo‘llash ommaviy munosabatlardan kelib chiqqanligi** va bu holatda ma’muriy nizoning barcha belgilari mavjudligi sababli MSIYutK va IPKga ularni ma’muriy sud vakolatiga o‘tkazishga oid normalarni kiritish taklif etildi.

22. Dastlabki bosqichda **bank hisobvarag‘i bo‘yicha operatsiyani to‘xtatib turish**ga oid huquqiy ta’sir chorasini mansabdor shaxslar mas’uliyatini oshirgan holda, ma’muriy organ vakolatiga o‘tkazish taklif etildi.

23. Yerga bo‘lgan huquqni ma’muriy organning o‘zi tomonidan ushbu huquq uchun asos hisoblangan hujjatlarni bekor qilish orqali tugatish amaliyotiga chek qo‘yish bo‘yicha Yer kodeksi 36-moddasiga o‘zgartirish kiritish zarurligi ko‘rsatib berildi.

Jumladan, 2022-2023-yillar va 2024-yil 1-yarmida sudlarda fermer yerini hokimlik zaxirasiga noqonuniy qaytarish bilan bog‘liq 372 ta ish ko‘rilgan bo‘lib, tadbirkorlarning mulk huquqi kafolatlarini kuchaytirish maqsadida ma’muriy organlarning ushbu vakolatini qonun bilan bekor qilish kerak.

24. Ortiqcha nizolarning oldini olish uchun Yer kodeksi 36-moddasiga o‘zgartirish kiritib, **tugatilgan yuridik shaxsning qishloq xo‘jaligiga kirmaydigan yeriga nisbatan huquqi** uning muassislariga o‘tishini ko‘zda tutish taklif etildi.

Chunki, yuridik shaxs tugatilishi unga tegishli mulkning egasiz bo‘lishini va davlat zaxirasiga olinishini anglatmaydi.

25. Soliq kodeksi 231-moddasiga o‘zgartirish kiritib, tadbirkorning soliq organi ustidan **sudga shikoyat qilishidagi cheklov** bekor qilingani asoslantirildi.

Bunda, soliq organi sudga chiqmasdan tadbirkorga chora ko‘rish vakolatiga ega bo‘lgan holatlarda uning qarori ustidan sudga shikoyat huquqi cheklanmasligi kerak, degan nuqtayi nazardan kelib chiqildi.

26. Soliq organlari qonunni noto‘g‘ri qo‘llashi oqibatida tadbirkorlar zarar ko‘rayotganligi va masala nizoli ekanligidan kelib chiqib, Soliq kodeksining 14-moddasiga o‘zgartirish kiritib, tadbirkorning bitimini **ko‘zbo‘yamachilik (qalbakiligi) vaji bilan haqiqiy emas deb topish va pul mablag‘ini undirib olish**ni barcha holatlarda soliq organi arizasi bo‘yicha sud orqali amalga oshirish lozimligi asoslantirildi.

III. Sud amaliyotini takomillashtirish, sudyalar va ma’muriy organlar xodimlari malakasini oshirish bo‘yicha taklif va tavsiyalar

27. Oliy sud Plenumi tomonidan tadbirkorlar ishtirokidagi yer, soliq va boshqa ma’muriy nizolarni ko‘rib chiqishda yagona amaliyotni shakllantirish bo‘yicha **tushuntirishlar berish** tavsiya etildi.

Bunda, ma’muriy nizolar tushunchasi, belgilari va turlari mazmunini to‘g‘ri yetkazish, sudning faol ishtiroki prinsipini amaliyotda keng va to‘g‘ri qo‘llash masalalariga alohida e’tibor berish zarurligi ko‘rsatib berildi.

28. Oliy sud Plenumining 2023-yil 20-fevraldagi 4-sonli **qarori 22-bandi**dagi “yuqori soliq organi shikoyatni qanoatlantirmasdan qoldirish haqida qaror qabul qilganda, sud uni ishga jalb qilmasligi” haqidagi tushuntirishni qonunchilikka nomuvofiqligi sababli chiqarib tashlash tavsiya etildi.

29. Sudyalar oliy maktabi, Kadastr agentligi, Soliq qo‘mitasi tomonidan yer, soliq va boshqa ma’muriy nizolarni qonuniy hal qilishga qaratilgan **idoralararo malaka oshirish kurslarini tashkil etish** zarurati ochib berildi.

30. Tadbirkorlar ishtirokidagi yerga oid ma’muriy nizolar sabablarini (mulk huquqiga asos hujjatlar o‘zgaruvchanligi, byurokratiya kabi) o‘rganib, O‘zbekistonning **xalqaro reytinglar**dagi o‘rnini yaxshilash bo‘yicha **xalqaro tashkilotlar bilan hamkorlikni kuchaytirish** taklif etildi. Jumladan, O‘zbekistonning Mulk huquqlarini himoya qilish xalqaro indeksidagi o‘rnini baholash va boshqa reytinglardagi o‘rnini yaxshilash choralarini ko‘rish zarur.

31. Hal qiluv qarorlarini rasmiylashtirishda til qoidalariga amal qilinmasligi, yetarlicha asoslantirilmasligi, ma’muriy organga uning vakolatiga kirmaydigan majburiyat yuklatilishi va qarorlar bekor qilinishi sabablarini o‘rganib, **sudyalar uchun seminarlar tashkil qilish, ilmiy-amaliy qo‘llanmalar tayyorlash** tavsiya etildi.

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FOR AWARDING SCIENTIFIC DEGREES
AT TASHKENT STATE UNIVERSITY OF LAW**

TASHKENT STATE UNIVERSITY OF LAW

MADRIMOV KHUSHNUD KUVANDIKOVICH

IMPROVEMENT OF JUDICIAL TRIAL OF ADMINISTRATIVE DISPUTES RELATED TO PROTECTION OF THE RIGHTS AND LEGAL INTERESTS OF BUSINESS ENTITIES IN THE REPUBLIC OF UZBEKISTAN

12.00.02 – Constitutional Law. Administrative Law.
Financial and Customs Law

Doctoral (PhD) dissertation abstract on legal sciences

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The doctoral dissertation (PhD) is available at the Information Resource Center of Tashkent State University of Law (registered under № 1404), (Address: 100047, Amir Temur street, 13, Tashkent city. Phone: (998 71) 233-66-36).

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INTRODUCTION (abstract of PhD thesis)

The actuality and relevance of the dissertation theme. The rule of law has been declining in the world in recent years. In particular, according to the 2023 report of the World Justice Project, "the rule of law has been in recession since 2016, with a decline observed in 78 percent of countries."[1] Another authoritative organization, the Economist Intelligence Unit, also noted in its 2022 report that "more than half of the 167 countries studied have seen a decline or stagnation in the level of democracy. In particular, the indicator of the limitation of the powers of state bodies has decreased in 74 percent of countries over the past seven years"[2] - this means that judicial control, along with other types of control over the executive branch, has weakened, and this indicates the relevance of the research theme on an international scale. This negative trend continued in 2024. At the same time, this report highlights Uzbekistan as one of the five countries that have been strengthening the rule of law since 2016 and are most likely to resist these global trends in the long term. This requires a logical continuation of our reforms in the field of administrative judicial proceedings and the consistent introduction of advanced practices and standards.

In the world, special attention is paid to conducting research on issues such as increasing the role of legal institutions such as courts and quasi-judicial bodies, strengthening judicial control over executive bodies, and clarifying the powers of administrative courts and administrative bodies. In particular, the active participation of the court, jurisdiction, the burden of proof, administrative claims, and various issues related to court decisions are being studied as important areas of research.[3]

Statistics on administrative disputes involving entrepreneurs in our country indicate the need to study this issue separately. In particular, the total number of public disputes tried in the administrative court in 2024 (15,369) increased by 2 % compared to 2020 (15,066), while the number of cases tried on the basis of an entrepreneurs' complaints increased from 1,391 in 2020 to 4,757 in 2024, i.e. by 3.4 times (3,366).[4] An analysis of the past 6 years of practice has shown that problems are arising due to the incomplete implementation of administrative court proceedings. In particular, due to the fact that the concept of an administrative dispute has not been developed, the specifics of an administrative dispute have not been taken into account in the application, the principles of administrative court proceedings and the circle of participants, and the institution of the claim have not been fully determined, mass disputes involving entrepreneurs are being considered in the administrative court together with the economic court. In fact, the administrative court is a new institution, and the emergence of problems was predicted. This situation is also explained by the lack of in-depth scientific research in 2016-2017, which would showcase solutions to problems on the border of practice and theory. Taking into account the above circumstances, in his speech on November 6, 2021, President of the Republic of Uzbekistan Sh.M. Mirziyoyev

[1] worldjucticeproject.org/news/wjp-rule-law-index-2023-global-press-release.
[2] eiu.com/n/compaigns/democracy-index-2022/.
[3] These studies are provided in the list of references of the dissertation.
[4] stat.sud.uz/file/2024/31.01/site%20administrative%202023%20annual.pdf.

gave an instruction to "improve the activities of administrative courts"[1]. The fact that the "Uzbekistan-2030" strategy[2] sets the establishment of effective judicial control over state bodies as a priority goal also increases the relevance of the theme. Another aspect is that during the Soviet period and even after it, administrative disputes involving entrepreneurs were studied less. Because in a planned economy, there was no private entrepreneurship, and only after the introduction of market relations did the issue of protecting their rights from administrative bodies become relevant.

The Constitution of the Republic of Uzbekistan, the Administrative procedure code of the Republic of Uzbekistan, the Decrees of the President of the Republic of Uzbekistan PD No.4850 dated October 21, 2016 "On measures to further reform the judicial system, strengthen guarantees for reliable protection of the rights and freedoms of citizens", PD No.11 dated January 16, 2023 "On additional measures to further expand opportunities for access to justice and increase the efficiency of the activities of courts", PD No.107 dated January 29, 2022 "On measures to ensure effective protection of the rights of citizens and business entities in relations with state bodies and further increase public confidence in the courts", PD No.33 dated January 30, 2025 "On additional measures to introduce modern mechanisms for judicial protection of the rights of citizens and business entities" and other legislative acts on the subject dissertation work serves to a certain extent to its implementation.

The dependence of the research on the priority areas of development of science and technologies in the country. The dissertation was carried out on the basis of the priority direction of the republican science and technology development "Formation of a system of innovative ideas and ways of their implementation in the social, legal, economic, cultural, spiritual and educational development of a society of information and a democratic state".

The extent of the research of the research problem. Issues of administrative disputes involving entrepreneurs have been studied less by our national scholars. Existing analysis are mainly based on a general approach.

Uzbek scholars E.T.Khojiyev, G.T.Khakimov, Zh.N.Nematov, L.B.Khvan, A.A.Lee, I.A.Khamedov, I.M.Tsai, Sh.I.Shayzakov, D.R.Artikov, M.U.Eshimbetov, and S.B.Bakaev have conducted scientific research on various aspects of administrative justice. In particular, E.T.Khojiyev conducted research and studied administrative process, administrative proceedings, G.T.Khakimov, I.A.Khamedov, I.M.Tsai studied development of administrative justice, administrative process, J.N.Nematov studied administrative act, relevance of administrative dispute, L.B.Khvan studied administrative act, history of administrative justice and principles, A.A. Lee studied authorization procedures, Sh.I.Shayzakov studied participation of the prosecutor in administrative court proceedings, D.R.Artikov studied hearing cases related to departmental normative legal documents in court, M.U.Eshimbetov studied hearing cases arising from the decision of an administrative body in court, Sh.B.Bakaev studied organizational and legal basis for the activities of administrative courts.

[1] president.uz/uz/lists/view/4743
[2] National database of legislation, lex.uz/docs/6600413.

In the CIS, some aspects of the subject were studied by E.B.Luparev, Yu.N.Starilov, A.B.Zelentsov, V.V.Skitovich, N.G.Kiper, A.N.Artamonov, N.V.Sukhareva, O.V.Chumakova, I.M.Divin, S.Karimov, A.B.Gabbasov, S.I.Ibragimov and other scholars, while in foreign countries Y.Pudelka, L.Broker, W.Reimers, Y.Deppe, P.Kwosta, K.Hinterberger, F.Hufen, K.Drexel, M.P.Sinh, J-M.Ponte, Y.Paujayte-Kulvinskene, V.Kruminya, R.Melnik and others conducted research.

However, the scientific problems, legislation, and practice of the period after the establishment of the administrative court in Uzbekistan have not been studied as a monographic research work from the point of view of improving the consideration of administrative disputes involving entrepreneurs and effectively introducing advanced foreign experience into the process of considering these disputes.

Relation of the dissertation's theme to the scientific-research work of higher education institution where it was implemented. The dissertation work was completed within the framework of the fundamental project of the research plan of Tashkent State University of Law on the topic of "Main directions of further liberalization of public administration in the context of deepening democratic reforms" (2021-2023).

The aim of the research is to develop proposals and recommendations for improving the judicial trial of administrative disputes related to the protection of the rights and legitimate interests of entrepreneurs in Uzbekistan.

The tasks of the research:

analyzing the concept and specific features of administrative disputes related to the protection of the rights and legitimate interests of entrepreneurs;

studying the history of the development of these administrative disputes in court;

studying the principle of active participation of the court as a specific principle of administrative judicial proceedings;

analyzing the legal foundations of the jurisdiction of administrative disputes related to the protection of the rights and legitimate interests of entrepreneurs;

studying the scientific and practical aspects of the burden of proof;

studying the issues of the court's indictment and its enforcement;

analyzing the procedure for applying legal measures of influence to business entities through the courts;

studying some issues related to the judicial consideration of common administrative disputes, particularly those related to the land and taxation, and ways to resolve them;

developing proposals on prospects of improving the judicial procedure for protecting the rights of entrepreneurs;

developing of scientific and practical proposals and recommendations related to certain issues of improving administrative court proceedings, including relevance to the judiciary, compensation for damage in administrative courts, proof, and the introduction of the principle of active participation of the court.

The object of the research is the system of legal relations related to the judicial trial of administrative disputes related to the protection of the rights and legitimate interests of business entities.

The subject of the research is regulatory legal documents related to the judicial trial of administrative disputes related to the protection of the rights and legal interests of business entities, the practice of law enforcement, scientific-theoretical views and legal categories.

Research methods. Historical, formal legal, systematic and complex approach, comparative-legal, logical analysis, induction, deduction, sociological survey, statistical analysis, study of judicial practice and scientific forecasting methods were used in the research process.

The scientific novelty of the research is as follows:

since the grounds for the entrepreneurs' claims for the illegality of an administrative act and the recovery of damage caused by it are within the same decision (action, inaction), the need to consider these two claims together in an administrative court is substantiated;

it is substantiated that cases on appealing against an executive document that is unconditionally enforceable against a business entity on claims arising from public relations belong to the administrative court;

it is substantiated that administrative court proceedings should be carried out on the principle of active participation of the court;

it is substantiated that the burden of proof in administrative court proceedings is placed on the administrative body that is being disputed over the decision;

it is substantiated that it is necessary to develop a concept for improving the legislation on administrative court proceedings, further improve the scope of administrative disputes and introduce types of administrative claims;

it is substantiated that it is necessary to abolish the restriction on directly appealing a tax authority's decision to the court against a business entity.

The practical results of the research are as follows:

the need to expand the content of the principle of active participation of the court and assist the parties in eliminating shortcomings, clarifying their claims and providing other materials was substantiated;

the fact that the content of mass disputes between an administrative body and entrepreneurs requires their consideration not in an economic court, but in an administrative court, was substantiated by land, tax and customs disputes;

a proposal was developed to consider several interconnected claims related to both the administrative and economic courts in an administrative court;

the transfer of legal measures of influence applied to entrepreneurs from the economic court to the administrative court, and some to the administrative body, was substantiated;

the need to consider an appeal for the annulment of an administrative act in an administrative court along with a claim for its invalidity was substantiated;

a proposal was developed that an administrative body may also be a plaintiff in administrative disputes involving entrepreneurs;

a proposal has been made that if, even after examining all the evidence, it is not possible to prove a certain fact, the negative consequences of the failure to prove it will fall on the party that has the burden of proving this fact;

it has been shown that the implementation of the proposals within the framework of the study will lead to significant changes in the structure of administrative and economic courts, and subsequently will affect the quasi-judicial system;

it is justified that amendments and additions should be made to Article 11, 26, 27, 28, 40, 67, 185 of the Administrative procedure code (hereinafter referred to as the APC), Article 25 of the Economic procedure code (hereinafter referred to as the EPC), Article 36 of the Land code, and Article 14 of the Tax code.

Reliability of research results. The method, scientific-theoretical approach, examples of statistics and judicial practice used in the scientific work were taken from official sources, referred to according to the established requirements, national legislation and foreign practice were comparatively studied, theoretical conclusions and proposals were prepared based on the analysis of practice, sociological survey, the preliminary results of the dissertation were put into practice and approved by the competent state agencies, the conclusions, proposals and recommendations were approved, and the results were published in leading national and foreign publications confirmed the reliability of research conclusions.

Scientific and practical significance of the research results. The scientific significance of the research is manifested in the fact that the scientific and theoretical conclusions, proposals and recommendations can be used for conducting research in the field of administrative law, teaching such subjects as "Administrative law", "Administrative court procedure" and "Entrepreneurship law", and preparing methodological recommendations.

The practical significance of the research is that the practical proposals and recommendations prepared at the end of the study of the theme can be used for the improvement of legislation, the court, other state bodies and the advocacy practice.

Implementation of the research results. Based on the study of the theme:

the proposal that the administrative court, along with recognizing the administrative act as illegal, should also resolve the issue of recovery of damage in the causal connection was taken into account when supplementing Article 27 of the APC with the third and fourth parts, and Article 158 with the seventh part (Act of the Legislative Chamber dated May 2, 2023 No. 04/2-10/1794). This proposal was the legal basis for resolving two claims in one court without inconvenience to entrepreneurs;

the proposal that cases on appealing against an enforceable document on claims arising from public relations against a business entity are subject to the jurisdiction of an administrative court was taken into account when supplementing Article 27, Part 1, Clause 8 of the APC (Acts of the Institute of Parliamentary Studies No. 01/q-08-54 dated September 26, 2024, and of the Supreme Court No. 08/737-24 dated September 23, 2024). This proposal served to determine the jurisdiction of the court based on the content of the administrative dispute;

the proposal to conduct administrative proceedings based on the principle of active court participation was taken into account in the course of drafting of the new version of Article 11 of the APC (Parliamentary Research Institute Act

No. 01/q-08-54 dated September 26, 2024, and Supreme Court Act No. 08/737-24 dated September 23, 2024). As a result of implementing this proposal, one of the fundamentally new principles of administrative justice has been introduced;

the proposal to shift the burden of proof to the administrative body was taken into account in the course of drafting of the new version of Part Three of Article 67 of the APC (Act of the Legislative Chamber dated May 2, 2023 No. 04/2-10/1794). This proposal served to correctly distribute the burden of proof between unequal parties in administrative court proceedings;

the proposal to develop a concept for improving the legislation on administrative court proceedings, further improve the scope of administrative disputes, and introduce types of administrative claims was used in the course of drafting of the section 5 of Appendix 2 to Presidential Decree No. 11 of January 16, 2023 (Act of the Supreme Court of the Republic of Uzbekistan No. 08/43-23 of January 25, 2023). The implementation of this proposal served to further improve administrative court proceedings, which differ from civil and economic procedural proceedings;

the proposal to abolish the restriction on directly appealing a tax authority's decision to a court against a business entity was taken into account when amending Article 231 of the Tax code (Act of the Parliamentary Research Institute dated September 26, 2024 No. 01/q-08-54). This proposal expanded the possibilities for business entities to use judicial protection.

Approbation of the results of the research: The research results were discussed at 7 scientific conferences, in particular 2 international and 5 republic conferences.

Publication of research results: A total of 8 scientific works have been published on the research theme, including 7 articles in publications recommended by the Supreme Attestation Commission (SAC) for the publication of the main scientific results of dissertations (6 in national journals and 1 in a foreign journal).

The structure and volume of the dissertation: The structure of the dissertation consists of an introduction, three chapters of 9 paragraphs, a conclusion, a list of references and appendices. The volume of the dissertation is 158 pages.

THE MAIN CONTENT OF THE DISSERTATION

The introduction describes the relevance and necessity of the research theme, its relevance to the priority areas of science and technological development, practical and theoretical problems, whether it has been studied by national and foreign scholars, its connection with the scientific and research plans of the higher educational institution where the dissertation is being conducted, the goals and objectives of the research, its object and subject, methods, scientific novelty and practical results, the reliability of the research results, scientific and practical significance, implementation, approbation, publication of the results, the structure and volume of the dissertation.

The first chapter of the dissertation, entitled **"Administrative disputes related to the protection of the rights and legitimate interests of business entities: scientific and theoretical analysis",** studies the concept and features of administrative disputes involving entrepreneurs, the history of their consideration in court,

the principle of active participation of the court, and analyzes scientific approaches (Y.Pudelka, J-M.Pontye, F.Hufen, E.B.Luparev, A.B.Zelentsov, N.G.Kiper, N.V.Sukhareva, I.M.Divin, J.N.Nematov, G.T.Khakimov, E.T.Khojiyev, Sh.I.Shayzakov, and others.).

Having studied the opinions of scholars and legislation, the author of the dissertation expresses his opinion on the understanding of an **administrative dispute regarding the protection of the rights of entrepreneurs** as a dispute between unequal participants, that is, entrepreneurs and administrative bodies, other subjects with authority, arising from administrative and other public relations, as a result of their decision (action, inaction of a public official), a different exercise of authority.

Based on this concept, it was recognized that there are a number of **features of an administrative dispute with the participation of entrepreneurs**. In particular, **a feature related to the subjects** - the entrepreneur and the administrative organization are parties to the dispute; **a feature related to the nature of the relationship** - the relationship of unequal participants has a vertical nature; **a feature related to the field** - the dispute arises as a result of the administrative body exercising its authority in the field of management; **a feature related to the subject of the complaint** - usually an individual administrative act, action, inaction of a public official is the subject.

The presence of all these signs at the same time in one case is the most basic requirement, and one sign alone is not enough.

The researcher, having studied the opinions of scholars on **the types of administrative disputes related to the protection of the rights of entrepreneurs** (E.B.Luparev, O.V.Chumakova, D.I.Zakharova, J.N.Nematov), proposes to classify them based on the analysis of national legislation as follows:

– disputes arising from individual administrative acts (actions, inactions of a public official) related to the rights of entrepreneurs;

– disputes arising from decisions of a body adopting a departmental regulatory legal act related to the rights of entrepreneurs;

– investment disputes related to decisions and actions (inactions) of administrative bodies related to an investment contract;

– disputes of a public nature arising from competition relations;

– other disputes arising from administrative and public legal relations between an administrative body and entrepreneurs.

Also, disputes arising with a private entity as a result of the implementation of their functions by an administrative body in the fields of land, tax, customs, standards, intellectual property, ecology and management are indicated as separate types of administrative disputes related to entrepreneurship.

In this regard, the author enters into a discussion on the difference between an administrative dispute and an administrative offense. In particular, he does not agree with the opinion of E.B.Luparev, O.V.Chumakova, D.I.Zakharova that an administrative offense is an administrative dispute, but supports the approach of J.N.Nematov that an administrative offense is closer to criminal law.

The dissertation proposes to study **the history of judicial trial of administrative disputes** involving entrepreneurs in the territory of present-day Uzbekistan within the following **three periods**:

- the stage of emergence of institutions similar to the institution of court hearing of these administrative disputes before the Soviet era;
- the stage of formation of some elements of the institution of administrative disputes in court during the Soviet period;
-the stage of development of the institution of administrative disputes in court during the period of independence (specifically, the period after 2017).

Although there was no institution of judicial trial of administrative disputes in the modern sense in Uzbekistan **before the Soviet era**, its initial manifestations were demonstrated in the example of **judges**, **mazalims**, and **biys**. In particular, public disputes were considered by mazalims, since state officials had the opportunity to negatively influence the judges.

The works of national scholars such as Z.U.Muqimov, F.A.Mukhitdinova, L.B.Khvan, Sh.I.Shayzakov, scholars from Tadjikistan such as S.I.Ibragimov, R.S.Odinaev were studied, and it was explained that the institutes of qazi, mazalim, and biy are unique manifestations of administrative court work in Central Asia.

Although administrative courts were established in May 1917 at the **beginning of the Soviet era**, their statutes were not enforced. In this case, the administrative court did not develop due to the fact that the recognition of the existence of a conflict between the state and private entities contradicted the Soviet regime's idea of building communism. This was also mentioned by the German scholar J.Pudelka using the example of the German Democratic Republic. In the 60s of the 20th century, the path of general reflection of the institution of administrative appeal not as an independent administrative law, but within the framework of civil procedural legislation continued. In the 70s of this century, scientists such as A.T.Bonner, V.T.Kvitkin, L.A.Nikolaeva, V.F.Sirenko put forward the idea that there could also be a conflict between the state and a private entity, and the 1977 Constitution of the former Soviet Union established the right of a citizen to appeal to the court against a state body. However, no practical steps were taken. Although laws implementing this norm were passed during the period of perestroika on June 30, 1987, and November 2, 1989, the subsequent collapse of the Soviet Union diminished the significance of these development points.

The history of the judicial trial of these disputes **during Uzbekistan's independence** has been studied in two stages: in the economic court system from 1991 to 2016, and in the administrative court system from 2017.

In particular, economic courts formed a comprehensive system of administrative court proceedings in Uzbekistan with the participation of entrepreneurs before the establishment of the administrative court. Its roots go back to the Soviet era. In particular, in 1979, the state arbitration, which was not part of the judicial system, was given the authority to try the decisions of management bodies, in 1988 to consider complaints about dissatisfaction with the decisions of state enterprises, and in 1990 to consider complaints about other entrepreneurs, such as cooperatives. As market relations began to emerge, an arbitration court

was established instead of the state arbitration court, which considered disputes between entrepreneurs and disputes with state bodies.

In Uzbekistan, the Law "On arbitration court and the procedure for resolving economic disputes" was adopted on November 20, 1991, which served to develop administrative court proceedings. The role of the economic court in resolving business disputes has been thoroughly studied in the scientific works of F.H.Otakhanov, a scholar with extensive theoretical and practical experience in this field.

From 2017 till today, the administrative disputes of entrepreneurs are considered both in the economic court and in the administrative court system.

Based on his experience in various working groups (commissions) on legislation from 2010 to now, the researcher described the processes of implementation of reforms in the operation of the administrative court.

The dissertation author made a comparative analysis of the opinions expressed on **the specific features of the judicial trial of administrative disputes involving entrepreneurs** (M.P.Sinh, J.-M.Pontier, A.V.Absalyamov, E.V.Slepchenko, I.M.Zaytsev, V.V.Skitovich, Yu.A.Popova, M.Z.Schwartz, Yu.V.Yefimova).

According to the results of the analysis, it was concluded that the judicial trial of administrative disputes related to entrepreneurship is an independent form of justice due to its specific features. The researcher continued his opinion and revealed through its principles that some norms in the Civil procedure code were formed under the influence of previous civil and economic procedural legislation.

In particular, the opinions of scholars (Y.Pudelka, L.Broker, V.Reimers, K.Drexel, S.Karimov, O.Rogacheva, J.N.Nematov, M.U.Eshimbetov) and the legislation of Germany, Latvia, Estonia, Azerbaijan, Georgia, Armenia were analyzed on the principle of active participation of the court, and it was based on the fact that it is the main principle of administrative court work. In this, the main attention is paid to the study of the scientific-theoretical aspects of this principle, and it is shown that it is of great importance in its uniqueness.

Moreover, the researcher debated with certain researchers. For example, according to D.Boronbaeva, in resolving disputes other than administrative disputes, the court cannot take a passive position, and the court still manages the process when requesting evidence. The doctoral candidate emphasized that he could not agree with this opinion by analyzing why the principle of active participation of the court is necessary. In particular, unlike an economic court, which makes a decision within the framework of the evidence presented by the parties, an administrative court, since the parties do not have the opportunity to be equally active, actively acts and conducts an inquiry to determine the truth. This principle should not allow factual inequality between the parties to turn into procedural inequality. This principle is also necessary for the court to monitor the correct expression of the public interest by the administrative body.

It is very important for practitioners to correctly apply this principle. In developed countries, principles have been elevated to the level of legal values, which is why German scholar Y.Pudelka believes that it is not necessary to fully codify them in the law.

However, in **post-Soviet states**, due to the legal situation, the level of knowledge of public officials, the novelty of modern administrative law, and the absence of the dominant legal features present in Europe, it is more appropriate to **fully elaborate the content of each principle**. From this perspective, several **proposals** have been developed.

In particular, Article 11 of the APC of the Republic of Uzbekistan obliges the court, in addition to the specific actions specified in this article, to perform other actions aimed at resolving the tasks of administrative court proceedings. This task is general, and on the one hand, it is a positive aspect that allows the court to take a wide range of measures, but on the other hand, due to the lack of many specific measures, it may lead to the failure to take any practical action to protect the entrepreneurs.

In the legislation of Estonia, Azerbaijan and Armenia, these measures are spelled out in detail in order to prevent the clear risk that the interests of the participants should not be violated due to their lack of legal knowledge.

Accordingly, in order to enrich the content of this principle, it is proposed to **further describe the mechanism for assisting the participants by the court**, while maintaining the obligation of the court to perform other actions aimed at resolving the tasks of administrative judicial proceedings, and to supplement Article 11 of the APC with a third part.

The second chapter of the dissertation, entitled **"Procedural aspects of judicial trial of administrative disputes involving business entities"** analyzes the relevance of these disputes, the burden of proof, procedural issues related to the decision and its enforcement, court cases, and the opinions of scholars (I.L.Burova, F.R.Gadzhieva, R.Melnik, Y.Pudelka, Y.Deppe, J.N.Nematov, I.M.Tsai, I.M.Salimova, Sh.I.Shayzakov, and others).

After studying the opinions of scholars, the dissertation author asserts that **in administrative proceedings, jurisdiction** should be understood as the determination of which court or administrative body has the authority to consider and resolve an administrative dispute that arises between the administrative body and private person.

A scientific debate has been **launched on the subject of the dispute to administrative and economic courts**. In particular, according to I.M.Salimova, an economic dispute arising from an administrative relationship also includes an administrative dispute involving entrepreneurs. J.N.Nematov stated that if the main requirement is a dispute over the activities of a public official, then such a case falls under administrative jurisdiction. The dissertation candidate supports this position and emphasizes that an economic dispute arising from an administrative relationship should be considered an **administrative dispute**, since it actually **arises as a result of the administrative body performing its functions**.

Also, based on this scientific-theoretical approach, relevance is revealed through practical work and **proposals** are developed.

First of all, administrative disputes related to entrepreneurship, which are currently being considered in the economic court, should be transferred to the authority of the administrative court. For example, based on the decision

of the mayor, the building of the "Shahodatkasb" enterprise was demolished, and according to the settlement agreement, the builder "Grand Qurilishplast" LLC was required to pay compensation to it. The settlement agreement of the two entrepreneurs was declared invalid by the economic court, and the decision of the mayor was declared invalid by the administrative court, and the recovery of damages resulting from the decision was considered again in the economic court. Since **the root of all disputes** in these two courts, namely the settlement agreement, the decision of the mayor and the recovery of damages caused, arose as a result of the illegal actions of the mayor, all issues should be considered in the administrative court.

Statistics show that this problem is widespread at this time. In particular, in 2021, a total of 15,143 cases were heard in the administrative court, while 4,028 cases were appealed to the economic and civil court to recover damages resulting from the decision, i.e. in 27 percent of cases, the plaintiffs did not achieve the final result of a fair trial in the same court. Taking this proposal into account, Article 27 of the APC includes a procedure for submitting a claim for damages in a causal connection with the complaint to the administrative court.

The participation of an administrative body and an entrepreneur as plaintiff and defendant was also studied, and the proposal to transfer administrative disputes from an economic court to an administrative court was substantiated by practice. Currently, a dispute between administrative bodies, for example, a customs authority and an entrepreneur on the same issue, for example, regarding customs privileges, is considered in an administrative court if the subject of the claim is an entrepreneur, and in an economic court if the customs authority is the subject of the claim.

In 2022-2023, the first half of 2024, the number of cases in which an entrepreneur was the plaintiff and the customs authority was the defendant was 47 in the economic court, and 124 in the administrative court. In particular, the complaint of the plaintiff F.Jalalov was considered in the Navoi interdistrict administrative court, and an analogous example - the application of the plaintiff customs authority was considered in the Peshku interdistrict economic court. This is because the legislation states that a state body cannot be a plaintiff in an administrative court. In fact, these two administrative disputes, which are identical in content, should be considered in an administrative court. Therefore, it is necessary to amend Article 26 of the APC and Article 25 of the EPC on **the transfer of vertical disputes** between an administrative body and an entrepreneur **to an administrative court**, and to stipulate in Article 40 of the APC that the administrative body can also be a plaintiff until an administrative court based on the German model is formed. This experience has been adopted in Estonia and Georgia.

Secondly, along with the declaration of invalidity of an **administrative act**, an appeal for its **annulment should also be considered in an administrative court**. Because, according to the legislation (for example, Article 230 of the Tax code), an administrative act that violates the rights of an entrepreneur can be annulled in court, Article 185 of the APC stipulates that they can only be declared invalid.

However, both cases arise from an administrative relationship and involve the termination of the legal force of the document. The results of the survey also confirm

the validity of this proposal. In particular, in a survey of 210 judges, 86% of them said that this authority should lie with the administrative court, and 14% with the economic court.

Thirdly, **several interrelated claims** of entrepreneurs, some of which relate to the administrative court and the others to the economic court, **should be consolidated and considered in an administrative court**. In this context, a dispute under the jurisdiction of the economic court does not refer to an economic relationship between the two entrepreneurs. Rather, it pertains to the situations where one party of the dispute is an administrative body, and the dispute arises as a result of a decision made by that administrative body (the aforementioned cases, considered in administrative and economic courts, related to the enterprise "Shahodat Kasb" can be the example of this situation).

Since there was no administrative court until 2017, such consolidated cases were heard in the economic court. On April 12, 2017, the Economic procedure code was amended to resolve consolidated cases in the economic court, and the 2018 APC and the EPC of the Republic of Uzbekistan stipulated that several claims cannot be consolidated, which resulted in entrepreneurs being caught between two courts. When an element of an administrative dispute enters the relationship between the parties, there are legal mechanisms in the administrative court for the lawful resolution of consolidated interrelated claims. However, the procedural proceedings intended for equal parties in the economic court are not sufficient for this.

In the next paragraph, the dissertation candidate examines the views of scholars (L.B.Khvan, M.V.Karasyova, V.A.Tupikov, D.I.Shchekin) on **the burden of proof** and defines the burden of proof as the assignment of tasks to the court, plaintiff, defendant and other persons participating in the case to collect, present and evaluate information about circumstances that are important for the case, and their distribution among them.

The specificity of proof in the administrative process **stems from the vertical nature of administrative court proceedings and aims to ensure that this inequality does not hinder the establishment of the truth in the case**. Since the individual's ability to prove is not equal, the administrative body is given a greater burden than him.

The researcher emphasizes that, unlike in civil proceedings, the court in an administrative proceeding should not recognize the reasons put forward by the participants and not disputed by the other party as true facts, but should study all the circumstances to determine the true situation and take the necessary procedural actions for this.

Therefore, according to Law No. LRU-833 of April 26, 2023, "On amendments and additions to certain legislative acts of the Republic of Uzbekistan in connection with the adoption of additional measures to ensure the effective protection of the rights of citizens and business entities in relations with state bodies," Article 67 of the APC now stipulates that the applicant participates in the collection of evidence within their capabilities, while the burden of proof shall be placed on the administrative body.

Other **proposals** were also developed as part of the research.

In particular, according to advanced practice, **the burden of proof** is mainly on the **defendant** (for example, the legality of an administrative act), but in some cases the **plaintiff** must also prove certain circumstances. In particular, in a claim for imposition of an obligation, the plaintiff must prove the circumstances justifying the adoption of an act favorable to him, and the defendant must prove the necessity of refusing to adopt this act.

There are such norms in the legislation of Germany, Azerbaijan, Armenia, Kazakhstan. The practice of administrative courts of **Lüneburg, Aachen, Koblenz, Karlsruhe** was analyzed on this issue. Taking this into consideration, it is necessary to enter **the institution of the claim** in APC and **determine the distribution and size of the burden of proof** on the parties in each claim.

Also, the legal consequences of **failure to prove certain circumstances in the case** are not defined in the APC. In fact, the law should clearly indicate how the court should act in cases where various life situations are not resolved through legal means. The studies of such scholars as L.Broker, Y.Pudelka, Y.Deppe, A.Boston, N.Pisarenko, A.Shkolyk, and the legislation of Germany, Moldova, and Kazakhstan have reached a unanimous conclusion on this issue.

Therefore, if the court, after examining all the evidence, considers that the possibility of proving a certain circumstance has been exhausted, the legislation should **stipulate that the negative consequences of failure to prove the circumstance will fall on the party who is charged with the burden of proving the circumstance**.

The dissertation candidate examines and discusses the issue of a **court decision** (Y.Pudelka, M.Handel, K.J.Gaziev, Sh.I.Shayzakov, M.M.Mamasiddikov). In particular, according to K. J. Gaziev, a court decision in an administrative case is an act of justice adopted on behalf of the state in a dispute over administrative law. This is a judicial document that resolves the claim of an interested person against the defendant, resolves the dispute between the parties, and acts as a protection for the violated or disputed rights of the parties in administrative proceedings.

While recognizing that this definition reflects the features of a decision, one cannot agree with the concept of an act of justice in it. **Justice is a moral and philosophical category**, and **in law, the concepts of legality and justification** should be used more. Because the court decision may not determine the true state of the dispute for objective reasons, but the court decision must be legal and justified according to Article 154 of the APC.

One cannot fully agree with the interpretation of a decision as a document that essentially eliminates the dispute, in this case the concept of a document that resolves the claim is sufficient to express the content of the decision. Because the court's decision does not eliminate the dispute between the parties, but rather the claim that constitutes the content of the dispute is legally resolved.

The dissertation candidate emphasizes that many aspects of the decision are consistent with the model of European countries, demonstrating this by the fact that the requirements for the content of the decision in Article 158 of the APC and Article 117 of the Code of Administrative Court Procedure of Germany are almost identical.

Accordingly, **the court's decision** is defined as a legal document adopted on behalf of the state as a result of considering an administrative dispute in accordance with the law and on the basis of evidence verified in court, resolving the claims of the parties.

It is important **to ensure timely and correct execution of the decision**, and if a legal decision is not implemented, it will have no practical significance. Accordingly, the **proposals** in the study were taken into account and certain problems were solved.

In particular, until 2023, the administrative court decision was sent to the administrative body for execution not by an execution document, but by a simple letter, which caused officials to approach the execution irresponsibly. In 2022, 4,477 administrative court decisions entrusted the state body with eliminating violations of the law, and in 809 of them, i.e. 18 percent, the court was not even informed about the execution (in 2021 - 494 out of 4,385 decisions, 11 percent).

Taking into account the results of this study, Articles 122 and 276 of the APC were amended by Law No. LRU-833 of April 26, 2023, and if officials fail to comply with the decision of the administrative court within one month, they will be subject to **a fine ranging from 5 to 10 times the base calculation amount**.

The third chapter of the dissertation, entitled **"Prospects for improving the judicial trial of administrative disputes involving business entities"** examines the prospects for the application of legal impact measures through the courts, the judicial review of widespread administrative disputes, and the improvement of the judicial procedure for protecting the rights of entrepreneurs.

The dissertation candidate analyzed the scientific views on **the judicial application of legal measures against an entrepreneur** (J.N.Nematov, M.U.Eshimbetov, I.M.Salimova, B.J.Abdullaev, A.A.Li, Kh.H.Soyipov, Y.Pudelka, I.M.Divin, G.V.Dikov) and proposed **transferring them from the economic court to the administrative court**, since they have all the features of an administrative dispute. Because in this case, the most important feature is that the dispute arises between unequal parties as a result of the administrative body exercising its authority, and the fact that the claim is initiated by the administrative body or the entrepreneur does not change its content.

The author does not fully agree with G.V.Dikov's opinion that only a private individual can be a plaintiff in an administrative dispute, but substantiates his proposal with the conclusions of J.N.Nematov, M.U.Eshimbetov, I.M.Salimova, and I.M.Divin.

In recent years, the share of disputes regarding legal measures in the total number of cases in the economic court has been increasing. In particular, in 2020, 8,726 cases were resolved on the suspension of bank account transactions, which amounted to 8.4% of the cases, while this increased to 30.7% (53,930) in 2021, 56.5% (156,873) in 2022, 50.2% (136,529) in 2023, and 68.3% (297,345) in 2024. It is logically incorrect that more than half of the cases in the economic court are administrative disputes that are not specific to it. Because in cases regarding legal measures, the supervisory authority is the plaintiff, and the equal nature of the economic court proceedings does not allow for effective protection of the rights of entrepreneurs.

This issue was studied comparatively with **the suspension of an entrepreneur's license**, and it was shown that it arose from administrative-legal activity (i.e., it is inappropriate to consider it in an economic court). Currently, the suspension of an entrepreneur's license for a period of more than ten days is considered in an economic court upon the claim of the tax authority. A situation that is essentially the same, that is, if the tax authority itself suspends the license for a period of less than ten days and the entrepreneur disagrees, the case is considered in an administrative court. In fact, both are administrative-legal activities.

When a **survey** was conducted among 210 administrative and economic court judges on the issue of transferring cases related to the legal effect measure from the economic court to the administrative court, 76 percent of them supported this proposal.

In the next paragraph, when asked about the two most common categories of cases, 66% of judges indicated tax disputes and 53% land disputes. In a survey of 6,900 entrepreneurs, 68% of them noted that tax disputes and 52% land disputes caused the most problems. Therefore, these widespread disputes were studied from the point of view of improving their judicial trial. In this case, an administrative dispute is taken as the basis for all vertical disputes between an entrepreneur and an administrative body, regardless of the court in which they are tried.

The dissertation candidate also analyzed statistics and drew attention to the **increasing number of administrative disputes related to land** in administrative and economic courts. In particular, the number of cases heard in administrative courts increased by more than 2 times (1,937 in 2020, 3,965 in 2022), and in economic courts by more than 1.5 times (1,047 in 2020, 1,580 in 2022). In 2023, such disputes in administrative courts amounted to 3,159, a decrease of 20% compared to 2022.

In studying these disputes, the scientific and theoretical conclusions of the study were substantiated by practical work, and a number of **proposals** were prepared.

Although prohibited by the Presidential Decree, in 2022-2023 and the first half of 2024, 61 cases were considered in the courts of the Syrdarya region, 51 in the Tashkent region, 47 in Jizzakh, and 40 in Andijan on the illegal return of farmer's land to the khokimiyat reserve. Therefore, it is necessary to amend Article 36 of the Land code **to eliminate the termination of land rights by canceling the primary document by an administrative body**.

According to Article 36 of the Land code, when a legal entity is liquidated, the right to land is terminated. However, this situation should not apply to land purchased by an entrepreneur through an auction. Therefore, this article should stipulate that **the entrepreneur's rights to land that is not included in agricultural land are transferred to its founders**. Although the problem is not directly related to court proceedings, its resolution serves to reduce disputes in court.

Analysis of disputes involving entrepreneurs shows that the volatility of documents that form the basis of land and property rights harms the investment climate. Uzbekistan's position in **International Property Rights Protection Index**, which is important for investors, has not yet been assessed. In the 2024 index of the

World Justice Organization, Uzbekistan ranks 140th out of 142 countries in the indicator of non-expropriation of property without adequate compensation. Accordingly, it is necessary to strengthen cooperation with international organizations to improve our position in international rankings.

The author continues the analysis of the judicial trial of **tax administrative disputes**, comparing the statistics of the Supreme Court and the Tax Committee, showing that tax disputes of entrepreneurs constitute a large part of administrative disputes, and prepares a number of **proposals**.

In particular, according to Article 231 of the Tax code, a court appeal against a tax authority's decision on an on-site inspection and tax audit was possible only after an appeal to a higher tax authority. As a result, **the right of entrepreneurs to judicial protection** was undermined. Therefore, **this restriction was abolished** by the Law of the Republic of Uzbekistan No. LRU-910 dated February 20, 2024 "On Amendments to Certain Legislative Acts of the Republic of Uzbekistan".

Given that entrepreneurs are suffering losses as a result of the incorrect application of the law by tax authorities and the fact that the issue is controversial, it was proposed to **declare the transaction invalid on the grounds of fraud in all cases through the court** at the request of the tax authority. According to the Tax Committee, this measure was applied in 525 cases in 2021, even if the entrepreneur disagreed. For example, due to the fact that the Navoi regional tax administration imposed an unjustified encashment without proving that the transaction was a sham, the court ruled in favor of “Janubsanoatmontaj” JSC, ordering the return of 450 million soums in value-added tax. It is worth noting that Uzbek legislation mainly favors the court-based model for resolving disputes.

Another issue is the **explanation** in paragraph 22 of the **Plenum Resolution** No. 4 of February 20, 2023 “On Certain Issues of the Application of Tax Legislation by Courts” that “if the higher tax authority leaves the complaint unsatisfied, the court shall not involve it in the case” **contradicts the legislation**. Because whom to involve should be decided by the court based on the specific circumstances of the dispute. The validity of this proposal is also confirmed by the judges. In particular, when 24 administrative court judges were asked “will you involve a representative of the higher tax authority in the case?” in the indicated case, 96 percent said they would, and 4 percent said they would not. Accordingly, it is recommended to cancel this explanation.

The dissertation candidate analyzes scientific approaches to **the prospects for improving the judicial procedure for protecting the rights of entrepreneurs** (P.Kvosta, K.Hinterberger, I.A.Khamedov, M.U.Eshimbetov, A.B.Gabbasov, Sh.B.Bakaev) and emphasizes that as a result of the implementation of the proposals in the study, organizational, legal, practical changes, and a transformation process will occur in the judicial procedure. In particular, it is shown that in 2017-2023, the institute of administrative judicial proceedings was partially introduced (an administrative court was established, a code was adopted, and general issues were determined), and the process of reflecting all its features in the legislation continues.

In general, the researcher puts forward the idea that a **“mixed model”** is being formed in Uzbekistan, consisting of elements of post-Soviet law and German law.

At this stage, a conceptual approach is proposed that when a legal problem arises, it is necessary not only to quickly solve the problem itself, but also to find a comprehensive solution. Because such quick measures, although they seem to give results in the short term, in fact, on the contrary, extend the period for achieving the ultimate goal of the reform or eliminate the possibility of achieving it. Based on the above factors, the need to develop a **concept for improving the legislation on administrative court proceedings in Uzbekistan** is justified.

CONCLUSION

As a result of the dissertation research, the following scientific-theoretical conclusions, legislative proposals and practical recommendations were put forward:

I. Scientific and theoretical conclusions

1. The author's definition of the administrative dispute related to the protection of the rights of entrepreneurs was developed, and the understanding of the dispute between unequal participants, that is, entrepreneurs and administrative bodies, other subjects with authority, arising from their decision (action, inaction of a public official), due to different exercise of authority, arising from administrative and other public relations, was substantiated.

2. It was substantiated that an **administrative dispute** regarding the protection of the rights of entrepreneurs **has specific characteristics** related to the subjects, the nature of the relationship, the field, and the subject of the complaint.

3. It was indicated that there are the following **types of such disputes**:

– disputes arising from individual administrative acts (actions, inactions of public officials) concerning the rights of entrepreneurs;

– disputes arising from decisions of the body adopting a departmental regulatory legal act concerning the rights of entrepreneurs;

– investment disputes concerning decisions and actions (inactions) of administrative bodies related to an investment contract;

– disputes of a public nature arising from competition relations;

– other disputes arising from administrative and public legal relations arising from decisions and other exercise of authority by these bodies between an administrative body and entrepreneurs.

4. The role of **administrative offense** and **administrative dispute** in the system of conflict situations in society was analyzed scientifically and theoretically, and the different aspects of delict conflict and administrative dispute were revealed from the point of view of administrative cases involving entrepreneurs.

5. Based on the concept of an administrative dispute, it was justified that **a state-owned enterprise** and **a business company** with state participation (for example, Uzbekistan Railways joint stock company) acting as a party to an entrepreneur with management authority, may be a subject of an administrative dispute as another organization authorized to carry out administrative and legal activities.

6. Based on the results of the study of the types of administrative disputes, the need to abolish the norm on the direct consideration of **investment and competition disputes** in the Supreme Court and the regional administrative court was

substantiated. In this regard, it was concluded that the establishment of a separate instance for certain disputes without sufficient grounds is a differentiation of the quality of justice depending on the instance.

7. The principle of active participation of the court was **scientifically and theoretically studied**, determining the content and essence of administrative court proceedings and showing its differences from the principle of adversarial proceedings in the economic process.

In particular, it was concluded that **adversarial proceedings** are considered the main principle in the economic process and are manifested in a classical way, while in administrative court proceedings **the active participation of the court** is the main principle, and **under its influence the principle of adversarial proceedings**, the content of which has partially changed, **operates**.

8. The need to develop **a concept for improving the legislation on administrative court proceedings in Uzbekistan** was substantiated, and it was shown that the proposals in the study should be implemented step by step on the basis of the concept after thorough preparation, that is, after updating the legislation, resolving organizational issues, training and upgrading the skills of personnel. In particular, it was concluded that the trend of transferring administrative cases involving entrepreneurs, for example, cases involving the application of legal measures, from the jurisdiction of the economic court **to the administrative court**, and those types that do not entail serious legal consequences **to the administrative body**, should continue.

9. In parallel with the implementation of the proposals in the study, a scientific and theoretical conclusion was reached on the need **to conceptually change the approaches to the administrative court and the economic court**, including the need to consider all public disputes between entrepreneurs and administrative bodies in the administrative court, and to resolve only economic (civil) disputes between entrepreneurs in the economic court.

10. Based on the types of administrative claims, the direct execution of the decision in claims for invalidation and cancellation of an administrative act, the imposition of an obligation to adopt an administrative act, the imposition of an obligation to perform (abstain from performing) a certain action, and **the introduction of mechanisms aimed at ensuring the execution of the decision, including the introduction of a court fine, were scientifically and theoretically substantiated**.

11. It was concluded that the history of the judicial trial of administrative disputes involving entrepreneurs in Uzbekistan **should be studied in three periods**:

– the stage of the emergence of institutions similar to the institution of judicial trial of these administrative disputes before the Soviet era;

– the stage of the formation of certain elements of the institution of judicial trial of administrative disputes during the Soviet era;

– the stage of the development of the institution of judicial trial of administrative disputes during the period of independence.

The history of the judicial trial of these disputes during the years of independence was studied **in two periods**, namely, **in 1991-2016**, when they were considered in economic courts, and **since 2017**, in specialized administrative courts.

II. Proposals for improving legislation

12. It was proposed to expand the content of the principle of active participation of the court and supplement **Article 11 of the APC** with the third part, which reads: “The court is obliged to assist the persons participating in the case in eliminating shortcomings, clarifying their claims, changing the type of claim to a claim that is beneficial to them, providing insufficient information, as well as providing materials that are important for determining and assessing the circumstances of the case. In this case, the court must take measures to prevent the failure to provide the necessary evidence due to the lack of legal experience of the persons participating in the case and the misinterpretation of their true will”. In this case, the court’s obligation to perform other actions related to the resolution of administrative court proceedings remains.

13. It was proposed to establish in **Article 11 of the APC** of conduct of administrative court proceedings the principle of the parties’ dispute in a content that does not contradict the principle of the court’s active participation or to preserve the content of the dispute in another form, as well as to amend this article to implement the principle of the court’s active participation based on the judge’s impartiality.

14. It was proposed to amend a number of articles of the APC and the EPC, arguing that **all administrative disputes** between a state body and an entrepreneur related to the performance of this body’s functions **should be heard in an administrative court, not an economic court**. In particular:

14.1) it was stated that **the entrepreneurs’ claims for damages in causal connection with the complaint** is an integral part of the administrative dispute, and it was justified that Article 27 of the APC establishes the procedure for submitting this claim to the administrative court. It was stated that it is necessary to transfer the authority to resolve all legal consequences of this damage to the administrative court, and it was proposed to rephrase **the third part of Article 27 of the APC** as follows: "The applicant’s claims for compensation for damages and other legal consequences in causal connection with these claims, along with the application (complaint) specified in this article, must also be considered by the administrative court," and to cancel the fourth part;

14.2) **the participation** of an administrative body and an entrepreneur **as a plaintiff and a defendant** was studied through court practice, and it was justified to amend Article 26 of the APC and Article 25 of the EPC to transfer their **vertical disputes to the authority of an administrative court**, as well as to establish that an administrative body can also be a plaintiff in Article 40 of the APC;

14.3) amendments were made to Article 27 of the APC and Article 26 of the EPC, justifying the fact that cases related to appealing against an executive document that is unconditionally enforceable against an entrepreneur based on a claim arising from public relations are subject to the jurisdiction of the administrative court.

15. It was proposed to amend Article 185 of the APC to stipulate that, along with a complaint **to declare an administrative act invalid**, **a claim to cancel it shall also be considered in an administrative court**.

16. It was justified to amend Article 26 of the APC and Article 25 of the EPC to stipulate that "some claims, some of which are related to the administrative court, and others to the economic court, that is, claims that are mixed in administrative relations and are interrelated, **shall be consolidated and all considered in the administrative court**". In this context, a dispute under the jurisdiction of the economic court does not refer to an economic relationship between the two entrepreneurs. Rather, it pertains to the situations where one party of the dispute is an administrative body, and the dispute arises as a result of a decision made by that administrative body.

17. Article 67 of the APC was amended, and it was justified that it was stipulated that the applicant should participate in the collection of evidence within their capacity, and the burden of proof should be placed on the disputed administrative body.

18. It was proposed to introduce **types of claims** for invalidation, cancellation, imposition of an obligation to adopt an administrative act, imposition of an obligation to perform (refrain from performing) a certain action, and recognition, and to determine the burden of proof on the parties in each of them.

19. Since the consequences of failure to prove **certain circumstances are not specified**, it was proposed to supplement Article 67 of the APC with the fifth part, which reads: "If the court, after examining all the evidence and using all the powers vested in it, considers that the possibility of proving a certain circumstance has expired, the negative consequences of failure to prove this circumstance shall be borne by the party on whom the obligation to prove this circumstance rests".

20. Due to the existence of certain gaps, it was justified **to stipulate in the APC that the provisions of the Civil procedure code that do not contradict the content of administrative judicial proceedings may be applied**, or to include in the APC the provisions existing in the Civil procedure code and necessary for application in administrative judicial proceedings.

21. Due to the fact that **the application of legal measures to the entrepreneur through the court originates from public relations** and it has all the signs of an administrative dispute, it was suggested to include norms on their transfer to the authority of the administrative court in the APC and the EPC.

22. At the initial stage, it was proposed to transfer the measure of legal influence on **the suspension of the operation on the bank account** to the authority of the administrative body, increasing the responsibility of the officials.

23. It was indicated that it is necessary to amend Article 36 of the Land code **to put an end to the practice of terminating the right to land by the administrative body itself by canceling the documents that are the basis for this right**.

In particular, in 2022-2023 and the first half of 2024, 372 cases related to the illegal return of farmer's land to the khokimiyat reserve were considered in the courts, and in order to strengthen the guarantees of property rights of entrepreneurs, this authority of administrative bodies should be abolished by law.

24. In order to prevent unnecessary disputes, it was proposed to amend Article 36 of the Land code to provide for the transfer of **rights to non-agricultural land of a liquidated legal entity to its founders**.

This is because the liquidation of a legal entity does not mean that the property belonging to it becomes ownerless and is taken into the state reserve.

25. The amendment to Article 231 of the Tax code was justified by the abolition of **the restriction on an entrepreneurs's abilities to appeal a tax authority to court**.

This was based on the view that in cases where the tax authority has the authority to take action against an entrepreneur without going to court, the right to appeal its decision to court should not be restricted.

26. Given that entrepreneurs are suffering losses as a result of the incorrect application of the law by tax authorities and that the issue is controversial, it was justified to amend Article 14 of the Tax code to declare an entrepreneurs' transactions **invalid on the grounds of fraud (forgery) and to recover the amount of money** through the court in all cases upon the claim of the tax authority.

III. Proposals and recommendations for improving judicial practice and training judges and administrative staff

27. The Plenum of the Supreme Court recommended giving explanations on the formation of a uniform practice in the consideration of land, tax and other administrative disputes involving entrepreneurs.

In this case, it was shown that it is necessary to pay special attention to the issues of correct communication of the concept, signs and types of administrative disputes, wide and correct application of the principle of active participation of the court in practice.

28. It was recommended to remove the explanation in **paragraph 22 of Plenum Resolution** No. 4 of February 20, 2023 that "when a higher tax authority makes a decision to leave the appeal without satisfaction, the court shall not involve it in the case" due to its inconsistency with the legislation.

29. Supreme School of Judges, Cadastre Agency, Tax Committee revealed the need **to organize interdepartmental training courses** aimed at legal resolution of land, tax and other administrative disputes.

30. It was proposed to study the causes of administrative land disputes involving entrepreneurs (variability of property rights documents, bureaucracy, etc.) and strengthen cooperation with international organizations to improve Uzbekistan's position in **international rankings**. In particular, it is necessary to assess Uzbekistan's position in the International Property Rights Protection Index and take measures to improve its position in the World Justice Organization index.

31. It was recommended **to organize seminars for judges, to prepare scientific and practical manuals** after studying the reasons for non-observance of language rules, insufficient justification, imposition of obligations on the administrative body that do not fall within its competence and annulment of decisions.

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ТАШКЕНТСКИЙ ГОСУДАРСТВЕННЫЙ ЮРИДИЧЕСКИЙ УНИВЕРСИТЕТ

МАДРИМОВ ХУШНУД КУВАНДИКОВИЧ

СОВЕРШЕНСТВОВАНИЕ СУДЕБНОГО РАССМОТРЕНИЯ АДМИНИСТРАТИВНЫХ СПОРОВ, СВЯЗАННЫХ С ЗАЩИТОЙ ПРАВ И ЗАКОННЫХ ИНТЕРЕСОВ СУБЪЕКТОВ ПРЕДПРИНИМАТЕЛЬСТВА В РЕСПУБЛИКЕ УЗБЕКИСТАН

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АВТОРЕФЕРАТ
диссертации доктора философии (PhD) по юридическим наукам

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ВВЕДЕНИЕ (Аннотация к диссертации доктора философии (PhD)

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Научная новизна исследования заключается в следующем:

обоснована необходимость совместного рассмотрения в административном суде двух требований предпринимателя (о признании незаконности административного акта и о возмещении связанного с ним ущерба), поскольку основанием для обоих требований послужило одно и то же решение (действие, бездействие);

обоснована подведомственность административным судам дел об обжаловании исполнительного документа, подлежащего безусловному взысканию по требованиям, вытекающим из публичных правоотношений, в отношении субъекта предпринимательства;

обоснована необходимость осуществления административного судопроизводства на основе принципа активной роли суда;

исходя из специфики доказывания в административном судопроизводстве, в том числе неравенства возможностей сторон, обосновано возложение обязанности доказывания на административный орган, принявший решение;

обоснована необходимость разработки концепции совершенствования законодательства об административном судопроизводстве и уточнения в ней подведомственности административного спора и определения видов административных исков;

обоснована необходимость отмены ограничения на прямое обжалование в суд решения налогового органа в отношении субъекта предпринимательства.

Внедрение результатов исследования. На основе изучения темы:

предложение о том, что административный суд, наряду с признанием административного акта незаконным, должен также решать вопрос о возмещении убытков, состоящих в причинно-следственной связи с этим актом, было учтено при дополнении статьи 27 КоАС частями третьей и четвертой, статьи 158 – частью седьмой (акт Законодательной палаты от 2 мая 2023 года № 04/2-10/1794). Данное предложение послужило правовой основой для разрешения двух требований в одном суде, не обременяя предпринимателей;

предложение о подведомственности административному суду дел об обжаловании исполнительного документа, подлежащего безусловному взысканию по требованиям, вытекающим из публичных правоотношений, в отношении субъекта предпринимательства, учтено при дополнении части первой 1 статьи 27 КоАС пунктом 8 (акты Института парламентских исследований от 26 сентября 2024 года № 01/q-08-54 и Верховного суда от 23 сентября 2024 года № 08/737-24). Данное предложение послужило определению подведомственности суда, исходя из содержания административного спора;

предложение об осуществлении административного судопроизводства на основе принципа активной роли суда было учтено при разработке статьи 11 КоАС в новой редакции (акты Института парламентских исследований от 26 сентября 2024 года № 01/q-08-54 и Верховного суда от 23 сентября 2024 года № 08/737-24). В результате реализации данного предложения внедрен один из новых по своему содержанию основополагающих принципов административного судопроизводства;

предложение о возложении обязанности доказывания на административный орган было учтено при разработке части третьей статьи 67 КоАС в новой редакции (акт Законодательной палаты от 2 мая 2023 года № 04/2-10/1794). Данное предложение послужило правильному распределению бремени доказывания между неравными сторонами в административном судопроизводстве;

предложение о разработке концепции совершенствования законодательства об административном судопроизводстве, уточнении в ней подведомственности административного спора и определении видов административных исков использовано при разработке пункта 5 приложения № 2 к Указу Президента Республики Узбекистан от 16 января 2023 года №УП–11 (акт Верховного суда от 25 января 2023 года № 08/43-23). Реализация данного предложения послужила дальнейшему совершенствованию административного судопроизводства, которое отличается от гражданского и экономического процессуального производства;

предложение об отмене ограничения на прямое обжалование в суд решения налогового органа в отношении субъекта предпринимательства было учтено при внесении изменения в статью 231 Налогового кодекса (акт Института парламентских исследований от 26 сентября 2024 года № 01/q-08-54). Данное предложение расширило доступ субъектов предпринимательства к судебной защите.

Структура и объем диссертации: Диссертация состоит из введения, трех глав, включающих 9 параграфов, заключения, перечня использованной литературы и приложений. Объем диссертации составляет 158 страниц.

E’LON QILINGAN ISHLAR RO‘YXATI
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I bo‘lim (I часть; I part)

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