

OSCE / ODIHR: 2009 Human Dimension Seminar on Strengthening the Rule of Law in the OSCE Area, with a special Focus on the Effective Administration of Justice, Warsaw 12-14 May 2009

Working Group II – Administrative Justice: Judicial review of administrative decisions, administrative offences and due process of law

**A statement by Sukhrobjon Ismoilov, a representative of the joint
Expert Working Group
of Uzbekistani civil society activists**

Dear Moderator, thank you for giving me the floor!

My name is Sukhrobjon Ismoilov. And I represent here a joint Expert Working Group of Uzbekistani civil society activists. To me as an activist and practicing defense lawyer the judicial review over the acts of the public administration in Uzbekistan is much more important in terms of affecting person's rights and fundamental freedoms than a criminal justice system. The Code of Uzbekistan on administrative responsibility is a very extensive and detailed document with more than 1.000 articles dealing with different branches of the public administration and administrative offences which affect the lives of the citizens.

While establishing a judicial review over the acts of public administration Uzbekistan has retained the former Soviet system which rests on hearing of administrative cases by judges in the courts for criminal cases. So, the same judges deal with both criminal and administrative justice. There are no special judges or courts who are dealing with administrative justice and who are specially trained to do so. Such model of administrative justice goes hand in hand with the so called vertical remedies, i.e. complaining and appealing against the act or decisions of a public administration to the higher level of the public administration office.

However, in practice the courts fail to rigorously examine allegations that the person's rights were denied to him or her by the office of the public administration or a government official. More generally the courts fail to always act in the independent and impartial manner which may be expected of them. This is in spite of the fact that the Law on the Courts stipulates that "judges shall be independent and ruled only by the laws" and that "the judicial power in Uzbekistan shall function independently from the legislative and executive branches, political parties and other public organizations".

One reason for this is that the appointment of judges at all levels is largely determined by the President as is clear from the Law on the Courts, and that they are all appointed for the relatively short period of five years only. Although there are guarantees to protect judicial independence these are ineffective if judges know that they may not be re-appointed if they offend the Government.

I have mentioned that officially and simultaneously with judicial review of the acts of public administration the actions of lower officials can be reviewed by more senior officials. But the practice shows that the latter merely substitute their discretion for the discretion of their inferiors. They do not exercise strict legal control. While dealing with complaints or appeals against acts and decisions of the public administration offices the senior officials write a piece of letter to their inferiors the actions of which are complained. This letter merely orders the alleged perpetrator to rigorously study the complaint / appeal of a person and respond to him / her. All in all the alleged victim will end up taking his complaint and appeal to the same public administration office or government official the action or decision of whom he has tried to put under question. This arbitrariness lies in the heart of the system.

Along with the judicial review of the acts of public administration and review by more senior officials Uzbekistan also maintains a system of quasi-judicial bodies in different government departments and ministries which are entitled to investigate administrative offences and pass a decision on punishing the administrative offenders. Our trial monitoring and interviews with persons who have gone through the administrative justice in the courts and quasi-judicial bodies have shown that such reviews are completely discretionary, missing out of the focus of legal counsel and independent observers, and are dealt in a very short time, e.g. a court can hear the administrative case and pass a decision in 10-20 minutes on average.

Moreover, the tradition of taking the actions or decisions of the public administration to the courts or other available remedies by affected groups of population is very low in the Uzbek society. That explains why more than 95 % of administrative cases considered in the courts and quasi-judicial bodies under the government ministries and departments fall under the category of administrative offences committed by citizens in which the government takes the role of a prosecutor not an offender.

Recommendations to the Uzbek government:

1. There should be special judges and departments of government ministries with quasi-judicial functions who are trained on judicial review of acts of public administration and who only hear administrative cases;
2. The government must make sure the complaints and appeals of the citizens over the acts of public administration are reviewed by independent bodies and not returned to the same public office or official the acts of which are put under the question;
3. The courts and quasi-judicial bodies on judicial review of acts of public administration should be open and accessible for public and qualified legal counsel;
4. The courts and quasi-judicial bodies on judicial review of acts of public administration should make sure such review is not carried out in an arbitrary manner and short period of time;
5. The public awareness on more effective ways of taking acts of public administration to the court or quasi-judicial bodies should be raised.

Thank you for your attention.

May 13 2009
Warsaw, Poland