

The Review Functions of the Judiciary

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In the modern society courts not only dispense justice, but have a review function as well. Administrative review means that a court reviews the lawfulness of acts (omissions) of the executive authorities and high officials.

The well-known Hungarian scholar in the constitutional law, *Andras Shayo* stated: "The basic requirements for a court to exist having constitutional importance and playing its role in a state based upon the rule of law are that:

- Only the court is entitled to make a person answerable for a crime and particularly, to punish him by the restriction of liberty;
- All rights should be exercisable in court;
- The possibility to appeal against any offence before an impartial court should be guaranteed".¹

The right of a court to consider complaints concerning the illegal actions of the executive authorities is guaranteed by the principle of the separation of powers and the rule of restrains and counterbalances between various branches of the state power.

The German Basic Law allows for judicial appeal against any violation of fundamental human rights, committed by state authorities. This law grants the specific right of appeal. Put in other words, this means that there should always exist some form of judicial review.

The right to a court hearing means that a case can be initiated against anyone. There should be no privileges to relieve somebody of judicial responsibility. This means that everyone is equal before the law.

There are three main interrelated activities of the judiciary:

- Protection of the legitimate interests of citizens;
- Protection of law and order against criminal and other offences;
- Exercise of controls over state authorities.²

Being a qualitatively new concept for our judicial system, literature often denominates judicial review as the function of judiciary³ or the form of it exercising by the latter⁴.

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¹ *Shayo*, Self-Restriction of Power: a Short Way to Constitutionalism, Moscow (Jurist), 1999, 221.

² Constitutional Law of Foreign States, Moscow (Norma), 2000, 328.

³ *Sheifer/lablokob*, concept of Judicial Power and its Functions, Problems of Judicial-Legal Reform in Russia: the History and the Present, Collected studies, Samara, 1999, 198.

⁴ *Rzhevskaja/Chepurnova*, Judicial Power in Russian Federation, Constitutional Principles of Organization and Operation, Moscow, 1998, 102 et seq.

In the Republic of Azerbaijan Article 60 of the Constitution provides the basis for judicial review. This Article secures the rights and liberties of all citizens. Every citizen is entitled to appeal to a court of law concerning decisions and acts (or omissions) of state authorities, political parties, trade unions, other public organisations and officials.

Nearly all laws and other normative-legal acts guarantee this right. Even if this right was not provided for by some law, there would be no serious problem, as it is a universally acknowledged principle, envisaged by the Constitution, having prevalence and directly valid throughout the whole territory of Azerbaijan.

Strange as it may seem, in the Republic of Azerbaijan, the procedure to appeal against an unlawful act by the executive authorities is given in Civil Procedure Code. This is not typical in other countries and is a consequence of the Soviet approach to law.

It would be better to adopt a specific law on this issue. For our part, we think that it is already high time.

The second subsection of the Civil Procedure Code – “Case proceedings deriving from common law relations (special appeal proceedings)” deals with these issues. To put it mildly, the title of the subsection is not clear concerning the meaning of “common-law relations”. As such, it requires interpretation.

In our opinion this “puzzle” of Civil Procedure Code of the Republic of Azerbaijan requires legislative interpretation.

By virtue of the Civil Procedure Code (Article 285), the following cases are subject to this type of proceedings:

- Against the applications for the protection of voting rights;
- Against the applications regarding decisions of respective executive authorities and local self-government bodies and their officials concerning administrative-legal offences;
- Against the applications regarding the acts (omissions) of executive authorities, local self-government bodies, other authorities and organisations, and their officials;
- Against the applications regarding the acts (omissions) of military officials and authorities;
- Against the applications regarding the lawfulness of normative acts.

It is apparent that this subsection serves to protect against the arbitrariness of the executive, local self-government bodies, other organisations and their officials. Courts of general jurisdiction (Article 25) generally hear such cases.

There is a peculiar feature in these cases. According to Article 287 of Civil Procedure Code the burden of proof, the adoption of respective acts is vested with state authorities, local self-government bodies and other organisations, which have adopted these acts. This is

a step towards improving the protection of the rights against the arbitrariness of public officials.

The Criminal-Procedure Code of the Republic of Azerbaijan contains a special chapter – “Judicial review”. This chapter regulates relations arising in cases when the courts sanction certain investigational, procedural and operational-research measures, when contesting procedural actions and decisions of bodies conducting criminal proceedings, when recourse is made to mandatory procedural measures.

It should be noted, that reviewing functions of the courts are not regulated by a single codified act, which in our opinion is a serious fault of the legislative technique.

Almost every law or normative act contains a provision concerning judicial review. It would be more efficient and expedient to cover all the relations related to judicial review in one law.

The main purpose of judicial review is the settlement of claims of private persons regarding decisions and acts of state authorities.

To consider such disputes, specialised administrative courts should enjoy the right to repeal regulatory acts which contradict the law, or make it mandatory to introduce changes to laws and provide damages when an abuse of authority is proven.⁵

The repeal of an administrative act by an administrative authority or by a court means that a repealed act never existed.⁶

In some countries, special administrative courts consider such disputes and France is the classic example. The system was created by Napoleon, who established the State Council in 1799. This council is still one of the most important bodies within the framework of national state authorities; it is at the head of the three-tier system of administrative courts.

In these countries the administrative justice means special procedure of settlement of administrative-legal disputes arising between citizens and state authorities (public officials)⁷.

Some interesting proposals concerning the introduction of the institute of administrative courts existed in the former Soviet Union. *Dikov* considers, that “... now, when judicial review over the activities of state authorities became the indispensable part of Russian legal reality, it is time to create the system of administrative justice, i.e. the system of

⁵ Constitutional Law of Foreign States, Moscow (Norma), 2000, 335.

⁶ *Kononov*, Concerning general principles of law in the French and Belgian judicial practice with administrative cases, *State and Law*, 2001, No.3, 85.

⁷ *Alekhin/Karmolitski/Kozlov*, Administrative Law of Russian Federation, Moscow (Zertsalo), 1997, 322.

specialised courts, engaged in settling disputes on the grounds of claims of private persons against state authorities, public officials or persons fulfilling functions, related with the exercise of the state-governmental power⁸.

Judicial review requires regulation that is more accurate. This is especially with regard to the establishment of specific procedural rules, deriving from administrative-legal relations⁹.

It is to be hoped that Azerbaijan will develop an efficient system of administrative courts. This will increase judicial authority and enhance the protection of the rights and freedoms as guaranteed by the constitution of the Republic of Azerbaijan.

⁸ *Dikov*, Problems of creating the system of administrative justice in Russia (in the light of foreign experience), *State and Law*, 2001, No.5, 32.

⁹ *Salishcheva/Khamaneva*, Executive and judicial branches of the State Power: correlation and interaction, *State and Law*, 2000, No.1, 10.