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ADMINISTRATIVE JUSTICE AS A MEANS OF PROTECTING CITIZENS' RIGHTS: AN ASSESSMENT OF THE REFORMS OF 2016–2018

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Abstract

The present article provides a critical analysis of the development of legal scholarship and the legal system in Uzbekistan, from its historical origins to the current phase of reform. The periodisation of legal history is examined, as are the influences of religious and colonial traditions, the Soviet legal legacy, and the post-1991 transformation towards a democratic state governed by the rule of law. The following key problem areas are identified: the discrepancy between practice and constitutional norms, the lack of distinction between public and private law, the weak independence of the judiciary, insufficient academic and material support for university research, and the need for a methodological rethinking of the theory of state and law. It is proposed that research should focus on the ontology and epistemology of law, the boundaries between administrative and civil law, mechanisms of parliamentary and public oversight, and institutional incentives for academic activity in higher education.

Keywords

legal history of Uzbekistan, Soviet legacy, constitutional supremacy, public and private law, administrative justice, independence of the judiciary, academic research, public-private partnership, legal culture, methodology of legal science

The draft Law 'On Science', included in the 2018 legislative agenda, is of clear practical significance: it enshrines the principles of state regulation and mechanisms for supporting scientific activity, expands opportunities for the implementation of scientific ideas and technologies, and emphasises the conduct of scientific research and experimental design work as a key function of higher education institutions.

The present article conducts an analysis of the status quo in specific areas of legal science in Uzbekistan. In order to concentrate the scope of the research, the author has restricted the subject to the following sections: the history of legal

science, problematic issues in the theory of state and law, in civil and administrative law, as well as an evaluation of the tasks of integrating scientific and educational activities in higher education institutions.

A concise historical survey underscores the evolution of the legal system, emphasizing that the stability and practical value of legal theories is contingent upon their efficacy. The contribution of scholars from Central Asia and other regions to the history and theory of law, to textbooks, monographs and legislative initiatives has created a solid foundation for further research and the development of legal science in the republic.

In order to comprehend the evolution of Uzbek law, it is necessary to examine its history through a series of successive stages. According to A. Saidov's classification, four distinct periods can be identified. The ancient period is defined as the formation of state and legal institutions prior to the introduction of Islamic law. During this period, religious and cultural traditions, including Zoroastrian texts, played a significant role. The advent of Muslim law is concomitant with the arrival of the Arabs in Mawarannahr, and it endured until the colonial conquest. The period is distinguished by the predominance of the Islamic legal tradition, which in subsequent centuries was influenced by Mongol law—a tradition that was centralised and enduring in nature. The colonial period is associated with the incorporation of the region into the legal system of the Russian Empire and the subsequent Soviet transformation, when local law was combined with imperial and Soviet regulations until the declaration of independence. These stages are indicative of the shift in sources of law, institutional models and socio-political conditions that have shaped the current state of Uzbekistan's legal system. The people of Uzbekistan experienced considerable pressure on their religious beliefs and customs as a result of the anti-religious campaign waged during their period of Soviet Union membership. From 1917, the Europeanisation of law in the Soviet interpretation began; legislation was centrally unified according to imperial standards, whilst in practice elements of local law enforcement remained — in family matters, the activities of qadi courts were permitted, and certain functions of Islamic jurists loyal to the Soviet authorities were recognised.

During the period of the Uzbek SSR (1924–1991), the Constitutions of 1927, 1937 and 1978 were adopted. Collectivisation, industrialisation, strict censorship and total control shaped a statist perception of the state, resulting in the alienation of citizens and a lack of interest in the institutionalisation of individual and group legal interests. These conditions also determined the direction of philosophical and legal research; many provisions of the Soviet constitutions lost their scientific and practical validity.

From a methodological perspective, scientific knowledge must be falsifiable: theories that do not withstand empirical scrutiny are susceptible to refutation and replacement.

The Soviet legal system in Uzbekistan was subordinate to the interests of the command-administrative planned economy, suppressed pluralism of opinion and largely copied Soviet and Russian regulations. A considerable number of acts were deemed to be eclectic in nature, detached from real conditions, in contradistinction to national traditions, and restrictive of the sovereign interests of the republic.

Since 1991, the independent Republic of Uzbekistan has been pursuing a course towards a democratic state governed by the rule of law. This process has involved the consolidation of sovereignty, the establishment of institutions of democracy and human rights, and the adoption of constitutional provisions regulating the activities of central and local authorities. The transition in power and social relations necessitated the establishment of novel legal frameworks governing governance, economic relations, and the interaction between the state and its citizens.

The rejection of totalitarian practices and the prioritisation of international legal norms resulted in an orientation towards Western democratic institutions. However, legal scholarship was unable to adapt instantly and faced the need to rethink the relationship between theory and practice, as well as the relationship between scholarship and the authorities. As S.B. Polyakov rightly emphasises, it is imperative that these issues be discussed in the context of the renewal of legal scholarship.

The Soviet legal system in Uzbekistan was subordinated to the interests of the command-and-control planned economy, suppressed pluralism and, to a large extent, replicated Soviet and Russian regulations. A significant number of these laws were deemed to be of an eclectic nature, failing to take account of local traditions and the interests of the republic, and restricting its sovereignty.

Following independence in 1991, the Republic of Uzbekistan embarked on a trajectory towards establishing a democratic state governed by the rule of law. This process entailed the consolidation of sovereignty, the establishment of institutions of democracy and human rights protection, and the adoption of constitutional provisions regulating the activities of central and local authorities. The transition towards a new social order necessitated the establishment of a novel legal framework governing governance, the economy, and the relationship between the state and its citizens. This transformation was accompanied by the ascendancy of international legal norms, which assumed a preeminent role.

Legal scholarship has not yet adapted swiftly enough to the new paradigms, and questions regarding the relationship between theory and practice, and the relationship between scholarship and the authorities, have become acute. In the realm of theoretical studies concerning state and law, several issues warrant particular emphasis. These include the ontology and epistemology of law, the nature of legal understanding, the principle of the separation of powers, and the level of legal culture. The behaviour of public officials, both lawful and unlawful, has not been the subject of sufficient study; the motives and nature of such behaviour require systematic scientific analysis.

Uzbekistan's legal system has been influenced by the Romano-Germanic legal tradition. Significant reforms have included the constitutional enshrinement of a new electoral system, the principle of the separation of powers, the priority of the economy, freedom of enterprise, equality of forms of ownership, media independence and a multi-party system.

The historical memory of the populace, coupled with long-standing practices, impeded the swift implementation of legal principles. During the 1990s, the public and official conduct frequently interpreted democratic reforms as a permit to act with impunity. In response to these challenges, law enforcement practice and legal scholarship have been compelled to reconsider fundamental concepts concerning the purpose of law and the state.

In theoretical terms, the ontology and epistemology of law, the nature of legal consciousness, the implementation of the principle of the separation of powers, and the level of legal culture remain priorities. The behaviour of officials – both lawful and deviant – has not been the subject of sufficient study; this requires systematic, empirical and theoretical analysis.

Uzbekistan's legal system has adopted features of the Romano-Germanic legal family. Significant reforms have included the constitutional enshrinement of a new electoral system, the principle of the separation of powers, the priority of the economy, freedom of enterprise, equality of forms of ownership, media independence and a multi-party system.

The historical memory of the nation, coupled with long-standing practices, served as significant impediments to the swift integration of legal principles. During the 1990s, a substantial proportion of citizens and officials perceived democratic reforms as a carte blanche for unrestrained actions. In response to these challenges, law enforcement practice and legal scholarship have been compelled to rethink the purpose of law and the state. The following tasks are considered to be of priority: firstly, the clarification of the ontology and epistemology of law; secondly, the definition of the nature of legal consciousness; thirdly, the

implementation of the principle of the separation of powers; and fourthly, the enhancement of legal culture.

The principle of the supremacy of the Constitution is formally enshrined, yet the practical application of its provisions remains inconsistent. The establishment of administrative justice, the strengthening of judicial independence and the development of parliamentary oversight are steps that have been initiated but not yet completed. It is incumbent upon legal scholarship to provide the theoretical foundations for these reforms, without limiting itself to a single concept, and to ensure their practical feasibility.

The establishment of Uzbekistan's legal system, which was oriented towards the Romano-Germanic tradition, was accompanied by the adoption of classical codes – namely, the criminal, criminal procedure, civil and civil procedure codes. The transition to a market economy and the concomitant shift in forms of ownership were reflected in the Law 'On Property' (1990) and in the current Civil Code, which was drafted based on CIS model codes but retains conservative features and methodological shortcomings.

The legal regulation of public-private partnerships poses a particular challenge to administrative law, which relies on mandatory methods and protects public interests. At the same time, it must ensure the protection of the rights of natural and legal persons against the actions of public authorities. The absence of a clear delineation between public and private law gives rise to contentious institutions, including the status of legal entities under public law, the state's participation in property relations as an equal party, contracts for services against payment, and so on. The identification and theoretical conceptualisation of the boundaries between administrative and civil law remain a priority for further research.

The development of Uzbekistan's legal system within the Romano-Germanic tradition was accompanied by the adoption of classical codes, including those pertaining to criminal law, criminal procedure, civil law, and civil procedure. The transition to a market economy and the concomitant shift in forms of ownership were reflected in the Law 'On Property' (1990) and in the current Civil Code, which was drafted based on CIS model codes but retains conservative features and methodological limitations.

The legal framework for public-private partnerships is characterised by its complexity, which is evidenced by the interplay between administrative law and the safeguarding of individual and legal entity rights against the actions of public authorities. The absence of a clear delineation between public and private law gives rise to contentious institutions, including the status of legal entities under public

law, the state's participation in property relations as an equal party, contracts for services against payment, and others.

The identification of the boundaries between administrative and civil law, the conducting of a systematic study of public-law legal entities, and the development of a scientific and legal foundation for public-private partnerships remain priority tasks for future theory and practice.

Professor V.V. Lazarev distinguished three types of legal research: that which serves politics, that which seeks the truth, and verbal alchemy. This triad has become increasingly obsolete; the academic community should exclusively retain research that is focused on empirical verifiability, methodological rigour and independence from ideological or opportunistic influences.

Conclusion: The evolution of Uzbekistan's legal system can be traced from its traditional and religious sources, through the colonial and Soviet legacies, to the reforms of a sovereign state. However, the Soviet past has exerted a significant retardation on the development of a legal culture and institutional safeguards. The primary challenges pertain to the incongruence between legal practice and the Constitution, the absence of a clear demarcation between public and private law, the inadequate autonomy of the judiciary, and the inadequate endorsement of academic research. The following constitute the primary objectives for the implementation of reform:

- The consolidation of constitutional oversight
- The completion of the development of administrative justice
- The assurance of judicial independence
- The establishment of a clear distinction between public and private law
- The systematic promotion of academic research in universities Legal scholarship must undergo a methodological reorientation, based on empiricism and the falsifiability of theories.

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