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UDC: 34(045)(575.1)

INSOFLILIK TAMOYILINING MAZMUN-MOHIYATI VA UNING HUQUQIY TAVSIFI

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Annotatsiya. *Insoflilik tamoyili qadimgi xalqlardan to bugungi davrga qadar dunyo xalqlarining ijtimoiy munosabatlarini tartibga solishda muhim omil sifatida qo'llanib kelingan. Insoflilik tamoyili har bir huquqiy munosabatlar uchun o'ziga xos huquq va majburiyatlarni belgilovchi, umumiy xususiyatga ega bo'lgan, muayyan mazmundagi xatti-harakatlar me'yorini ifodalamasa-da, turli huquqiy munosabatlar mazmunini himoya qilish va amalga oshirishni ta'minlashdagi ahamiyati katta. Insoflilik tamoyili haqiqat, huquqlarga hurmat va majburiyatlarga sodiqlik, o'z harakatlarining natijalarini anglab yetish, boshqa shaxslarning manfaatlaridan o'z manfaatlarini ustun qo'ymaslik, uchinchi shaxslarga zarar yetkazishdan tiyilishni nazarda tutuvchi tamoyildir. U ijobiy deb hisoblangan va jamiyat manfaatlariga mos keladigan qoida, normalarga rioya qiladigan huquqiy munosabatlar ishtirokchilarining xatti-harakatlari bilan tavsiflanadi. Ammo qonun hujjatlarida bu tamoyil turli atamalar bilan birlashtirib qo'llanilishiga qaramay uning mohiyati mavhum, chegaralari noaniq va foydalanish mezonlari mavjud emas. Ya'ni o'zining mavhum va umumiyligi tufayli uni qonuniy yo'l bilan aniqlashda qiyinchiliklar mavjud. Natijada sud amaliyotida bu tamoyil har doim ham to'g'ri talqin qilinmasligi yoki to'g'ri ma'noda ifodalanmasligi mumkin. Maqolada muallif insoflilik tushunchasi va tamoyilining mazmun-mohiyatini ochib berish uchun huquqiy doktrinalardan unumli foydalanadi. Shuningdek, rim huquqi, islom huquqi, anglo-sakson huquqiy tizimlaridagi insoflilik tamoyili va huquqiy tavsifini o'rgangan holda, ushbu tamoyilni amaldagi huquqiy tizimda qo'llashda ahamiyatga molik masalalar haqidagi fikrlarni ilgari suradi.*

Kalit so'zlar: *adolat, insoflilik, bona fides, ishonch, huquqda qo'llash, qonunchilik, rim huquqi, islom huquqi.*

СУЩНОСТЬ ПРИНЦИПА СПРАВЕДЛИВОСТИ И ЕГО ЮРИДИЧЕСКАЯ ХАРАКТЕРИСТИКА

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Аннотация. *Принцип справедливости использовался с древних времен как важный фактор регулирования социальных отношений народов мира. Принцип справедливости не представляет собой определенный набор правил поведения, определяющих конкретные права и обязанности каждого вида правоотношения, однако он имеет огромное значение для защиты и обеспечения соблюдения содержания различных правоотношений. Принцип справедливости – это принцип, подразумевающий правдивость, уважение к правам и обязанностям, понимание последствий своих действий, непостановку собственных интересов выше интересов других, воздержание от причинения вреда третьим лицам. Он характеризуется положительными действиями участников правовых отношений, придерживающихся норм и правил и соответствующих*

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общественным интересам. Однако, несмотря на то, что этот принцип используется в сочетании с различными терминами в законодательстве, неясна его сущность, нечетки его границы и отсутствуют критерии его применения. Иными словами, из-за абстрактности и общности его трудно определить юридически. Как следствие, данный принцип не всегда может быть верно истолкован или определен в судебной практике. В статье автор эффективно использует правовые доктрины для разъяснения сущности понятия и принципа справедливости. Также, изучив принцип справедливости и правовые характеристики в римском и исламском праве, англосаксонской правовой системе, он выдвигает идеи по вопросам, важным для применения этого принципа в действующей правовой системе.

Ключевые слова: *правосудие, справедливость, добросовестность, доверие, правоприменение, законодательство, римское право, мусульманское право.*

THE ESSENCE OF THE PRINCIPLE OF FAIRNESS AND ITS LEGAL DESCRIPTION

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Abstract. *The principle of fairness has been used from ancient times to the present day as an essential factor in regulating the social relations of the peoples of the world. The principle of fairness is important in protecting and enforcing the content of various legal relations, although it does not express a general, normative norm of conduct that defines the specific rights and obligations for each legal relationship. The principle of fairness is the principle of truth, respect for rights and obligations, understanding the consequences of their actions, not putting their interests above the interests of others, and refraining from harming third parties. It is characterized by the behavior of the participants of the legal relationship, which is considered positive and is in the interests of society, adhering to the norms. However, although this principle is applied in combination with various terms in the legislation, its essence is abstract, its boundaries are vague and there are no criteria for its use. Therefore, there are difficulties in defining it legally because of its abstraction and generality. As a result, in judicial practice, this principle may not always be correctly interpreted or expressed in the correct sense. In the article, the author makes effective use of legal doctrines to explain the essence of the concept and principle of fairness. It also puts forward opinions on important issues in the application of this principle in the current legal system by studying the principle of fairness and legal description of Roman law, Islamic law, and Anglo-Saxon legal systems.*

Keywords: *justice, fairness, bona fides, trust, application in law, legislation, Roman law, Islamic law.*

Kirish

Insoniyat yaratilganidan buyon jamiyat hayotidagi barcha munosabatlarni tartibga solishda insoniy xususiyatlarni qamrab olgan ko‘plab axloq normalarining moddiylashtirilishidan kelib chiqqan tamoyillar keng qo‘llanib kelinadi. Butun dunyo mamlakatlari huquqiy tizimidagi turli qarashlar ichida eng muhim tamoyillardan biri bu insoflilikdir.

Insoflilik tushunchasi huquq asoslanadigan konseptual asos bo‘lib, ijtimoiy munosabatlarni tartibga solish vositasi sifatida huquq negizida yotadi. Insoflilik tushunchasi huquqiy qadriyat sifatida qonunning ijobiy salohiyati, uning ijtimoiy taraqqiyot ehtiyojlariga javob beradigan ijtimoiy tartibga solishni ta’minlashga qo‘shgan hissasini oshiradi. Huquq sohasida bu kategoriya tamoyil shaklida namoyon bo‘ladi. Lekin o‘zining mavhum va umumiyligi tufayli uni qonuniy yo‘l bilan aniqlashda qiyinchilik keltirib chiqaradi. Sud amaliyotida bu tamoyil har doim ham to‘g‘ri talqin qilinmasligi yoki to‘g‘ri ma’noda ifodalanmasligi mumkin.

Shuningdek, amaldagi qonunchiligimizda ham insoflilik tamoyili tez-tez ishlatilishiga qaramay qonun chiqaruvchi tomonidan uning mazmuni ochib berilmagan va undan foydalanish mezonlari ishlab chiqilmagan [1].

Shu nuqtai nazardan, insoflilik tamoyili va insoflilik tushunchasining mohiyati o'zbek huquqshunos olimlari tomonidan kam o'rganilgan. Bugungi kunda ushbu tamoyilga aniq izohning mavjud emasligi natijasida yuzaga keladigan muammolar nuqtai nazaridan tahlil qilinmagan deyish mumkin.

Xorijiy mamlakatlar olimlari mazkur masalada keng tadqiqotlar olib bormoqda. Jumladan, g'arb olimlaridan V. Fikentsher, F. Isterbruk, F. Mahmoud, Ph. Hacker, R. Podszun kabilar, MDH mamlakatlaridan M.A. Polyakov, A.V. Popova, K.V. Nam, I.Yu. Karlyavin va boshqalarning tadqiqot natijalari e'lon qilingan.

Lekin O'zbekiston, umuman, Markaziy Osiyo mamlakatlarida insoflilik tamoyilining mazmun-mohiyati va uning huquqiy tavsifi, insoflilik tushunchasini qonunchilikda qo'llashda yuzaga keladigan muammolar shu kunga qadar konseptual, nazariy va amaliy jihatdan tahlil qilinmagan.

Material va metodlar

Insoflilik tamoyilining huquqdagi ifodasi va insoflilik tushunchasiga beriladigan ta'rifdan huquqni qo'llash amaliyotida foydalanishning ahamiyati hozirgi kunga qadar milliy nazariy adabiyotlarda chuqur tadqiq qilinmagan. Mazkur tadqiqot ishi umumlashtirish, aksiomatik, formal-yuridik (analiz, sintez, deduksiya, induksiya) va qiyosiy metodlar asosida amalga oshirilgan. Tadqiqot jarayonida insoflilik tamoyilining huquqdagi ifodasi, uning MDH va g'arb mamlakatlari olimlari talqinidagi mohiyati hamda islom huquqida insoflilik tamoyilining ifodasi o'rganilgan. Shuningdek, insoflilik tushunchasining ta'rifi borasidagi ayrim muammolar o'rganilgan. O'zbekiston huquqshunosligidagi bo'shliqlarni to'ldirish bo'yicha takliflar ilgari surilgan.

Tadqiqot natijalari

Ko'plab huquqshunos olimlar insoflilik tushunchasiga ta'rif berib, uning xususiyatlarini ochib berishga harakar qilishgan. Jumladan, rus sivilist nazariyotchi olimi M.M. Agarkov insoflilik tushunchasiga ta'rif berishda uning leksik ma'nosiga to'xtalib, insonlar o'rtasidagi munosabatlardagi (честность) halollikdan boshqa narsani anglatmaydi [2], deb ta'kidlaydi. Darhaqiqat, aksariyat hollarda qonunchilikda insof tushunchasiga sinonim sifatida halollik tushunchasi qo'llaniladi. Lekin, fikrimizcha, halollik (честность) va insof tushunchalari o'rtasida nozik chegara mavjud. Halollik (честность) – axloqiy fazilat sifatida haqiqatparvarlik, majburiyatlarga sodiqlik, ishning to'g'riligiga subyektiv ishonch, boshqalar va o'ziga nisbatan samimiylikni o'z ichiga oladi. Halollik insof bilan bog'liq bo'lib, ijtimoiy me'yorlarga rioya qilishga asoslangan va odamlarning bir-biriga bo'lgan ishonchining asosi hisoblanadi. Shu tufayli ham biz yuqorida keltirgan insoflilik tushunchasi va halollik tushunchasi mohiyatan bir narsa emas.

E.A. Frolov insoflilik tushunchasiga baho berishda ushbu tamoyilni miqdor va sifat tushunchalariga bo'lishni muhim deb hisoblaydi [3]. Shu orqali huquqiy munosabat ishtirokchilariga qanday talablar qo'yilishini aniqlashga imkon beradi.

Huquqshunos olim A.V. Popov esa insoflilik tamoyilini baholashda haqiqat, huquqlarga hurmat, majburiyatlarning egasi tomonidan majburiyatlarga sodiqlik, o'z harakatlarining oqibatlarini anglash, o'z manfaatlarini boshqa shaxslarning manfaatlari bilan muvofiqlashtirish, uchinchi shaxslarga zarar yetkazishdan tiyilish kabi o'lchovlardan foydalanishni ilgari suradi [4]. Ushbu o'rinda A.V. Popov insoflilik tushunchasining mohiyatini nisbatan kengroq ochib bergan. Insoflilik tamoyilining obyektiv elementi muayyan huquqiy normalardan, lozim bo'lsa, odob-axloq normalaridan kelib chiqadigan insoflilik xulqi talabining mavjudligi bilan tavsiflanadi.

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M.A. Polyakov insoflilikning umumhuquqiy tamoyili bu – ham xalqaro, ham davlat ichidagi va xususiy darajadagi jamoat munosabatlarining universal regulyatori ekanligini ta'kidlaydi. Bunga muvofiq ijobiy deb hisoblangan va jamiyat manfaatlariga mos keladigan qoida, me'yor, yashash sharoitlari, tamoyillarga rioya qiladigan subyektlarning (huquqiy munosabatlar ishtirokchilarining) xatti-harakatlari bilan tavsiflanadi.

O'zbek huquqshunos olimi A.A. Muhammadiyev insoflilik tamoyiliga umumhuquqiy tamoyil sifatida baho beruvchi tushuncha deb qaraydi [1]. Olimlar ushbu tamoyilni qonun chiqaruvchi tomonidan tushuntirilmagan turli predmetlar, harakatlar, jarayonlarning umumiy belgilari, xususiyati, sifatini belgilovchi huquq normasida ifodalangan baho beruvchi tushunchalar qatoriga kiritadi. Bundan maqsad esa huquqni qo'llash jarayonida unga baho berish yo'li bilan aniqlik kiritish va undagi umumiylikdan kelib chiqib, ijtimoiy munosabatlarni o'ziga xos tarzda tartibga solish imkonini beradi.

V.P. Malaxovning fikricha esa insoflilik g'oyasi ierarxiyaning eng yuqori qismida turishi va har bir huquq instituti insoflilik tamoyili bilan bog'liqligi va oxir-oqibat mana shu huquqiy tizimning ma'lum bir tarkibiy elementi doirasida markaziy konsepsiya ta'rifini ishlab chiqishni talab qiladi (misol uchun, insofli sotib oluvchi, insofsiz raqobat, insofli egalik qiluvchi, insofli soliq to'lovchi kabi) [5]. Shuni ta'kidlash o'rinliki, insoflilikka beriladigan ta'rifning o'zi turli huquq institutlaridagi insoflilik tamoyili bilan bog'liq tushunchalardan mazmunan farq qilgani uchun ham qonunchilikda insoflilik tamoyiliga qat'iy ta'rif berish kuzatilmaydi. Lekin insoflilik tushunchasining o'ziga xosligini inobatga olgan holda, uning ta'rifini ishlab chiqish, doktrinal tarzda aniqlash, qonunchilikda chegarasini aniqlash murakkab bo'lishiga qaramay, huquqshunos olim A.A. Muhammadiyevning fikrlariga qo'shilgan bu kabi baho beruvchi tushunchalarga izoh berish ularni bir xilda qo'llash imkonini berib, huquqda qo'llashdagi xatolarning oldini olishi mumkinligini ta'kidlab o'tmoqchimiz.

Olimlar tomonidan insoflilik tamoyiliga berilgan turli ta'riflar o'zida quyidagi xususiyatlarni namoyon etadi.

Insoflilik kishilarning ijtimoiy o'zaro munosabatdagi xulq-atvorini anglatadi va shuning uchun o'zaro munosabatning oqibati yoki natijasiga emas, balki jarayonga tegishlidir [6]. Insoflilik imperativligi bilan belgilanadigan qoidalar ma'lum darajada protsessual qoidalardir. Insoflilik qoidalarining odatiy elementlari teng muomala, diskriminatsiya qilmaslik, teng imkoniyat yoki protsessual me'yorlarga rioya qilishdir. Iqtisodiy muhitda insoflilikning protsessual elementi e'tiborni bitim ishtirokchilarining mustaqilligi, xulq-atvori va bitimlarni tuzish hamda bajarish doirasiga qaratadi. Ideal holda qaror qabul qilish jarayonida tomonlar protsessual me'yorlarga rioya qiladilar [7]. Demak, ijtimoiy o'zaro munosabatdagi xulq-atvor sifatida protsessual me'yorlarga rioya qilish insoflilikning asosiy xususiyatidir.

Insoflilik tamoyilining yana bir asosiy jihati jamiyat ruhi uchun insoflilikning rolidir. Jamiyat a'zolari uning asosiy qoidalariga rioya qilishsa va bir-birlariga o'zaro hurmat bilan munosabatda bo'lishsa, ijtimoiy tinchlikda yashashi shubhasizdir. Agar buning aksi bo'lsa, ular o'zlari bilan munosabatda bo'lganlar bilan yoki butun jamiyatda o'zlarining afzalliklarini qidirib, o'zlarini insofsiz tutishi muqarrar [6]. Bunday hollarda dastlab buzg'unchilik, keyinroq esa ularning insofsizligi kattalashib borishi bilan ular butun tizim uchun xavf tug'dirishadi. Tijoratni rivojlantirish uchun muhim tarkibiy qism bo'lgan ishonch yo'qoladi. Shuning uchun insof jamiyatni birlashtiradigan hamda shu bilan jamiyatning ijtimoiy va huquqiy qadriyatlari ta'sirida bo'lgan asosiy qoidalar bilan bog'liq bo'ladi [6].

Biznes huquqida ham korxonaning ta'sis etilish jarayonida ustav fondining tashkil eti-

lish jarayonida pul ko‘rinishida bo‘lmagan mol-mulkni baholashda ko‘pincha muassislar yoki mustaqil ekspertlarning “insofli fikri”ga tayaniladi. Mustaqil ekspertlar ham mol-mulkka qo‘yilgan narxning insofli jihatdan qo‘yilgani yoki yo‘qligini ko‘rsatib beradi. Bu jarayonda insoflilik tamoyilining muhim elementi ishonch ko‘zda tutiladi.

Insofli fikrlar to‘g‘risida aniq qoidalar mavjud emas, ammo manfaatdor taraflar taqdim etgan tavsiyalarning aksariyatida ikkita xususiyat ajralib turadi: birinchidan, tavsiyalarning aksariyati jarayon, oshkoralik, manfaatlar to‘qnashuvi va qabul qilish masalalari bo‘yicha beriladi. Bu insoflilik tamoyilining asosiy elementlaridan biri insofli narxga ishora qiluvchi protsessual masaladir [6].

Ikkinchidan, insofli narx deb ataladigan tushuncha standarti juda noaniqdir. Shuning uchun insoflilik tamoyilining yana bir elementi hisoblangan mutanosiblikni ko‘rib chiqish zarur. Amerikalik huquqshunos va sudya Frank Isterbruk “Insoflilik – bu nuqta emas, balki diapazon (oraliq)”, deb bayonot bergan edi [8]. Yuqoridagi masaladan kelib chiqib, insoflilik haqida xulosa beradigan ekspertlar tomonlarning manfaatlarini hisobga olib, turli omillarning mutanosib kelishiga harakat qilishadi va insofli deb topilgan boshqa bitimlar bilan taqqoslashadi.

O‘z iqtisodiyotini erkin bozor tamoyillari va erkin raqobat tamoyillariga asoslaydigan jamiyatlar, shuningdek, muayyan tartib-qoidalar – raqobat ehtiyojlarini tartibga soluvchi qoidalar, mukofotlarning munosib taqsimlanishi va o‘z-o‘zini himoya qilish sabablari – o‘zaro ta’sirning muayyan ijtimoiy shaklini hurmat qilishga ishonishadi [6].

Yuqoridagi uch xususiyatdan kelib chiqqan holda, AQSh huquqshunos olimi V. Fikentsher insoflilik tamoyilining ildizi va mexanizmlarini qonuniylik va ishonch tamoyillari mustahkamlanishiga ishora qilib, insoflilik – sog‘lom raqobatni ta’minlaydigan jamiyatning umumiy standartlariga hurmat [7], deb xulosa qiladi. Ushbu ta’rif insoflilikning jamiyat bilan bog‘liqligi va biznes hamjamiyatni birgalikda ushlab turish uchun qiymatiga ishora qilib, bozor iqtisodiyotini o‘zaro hamkorlikda qabul qilish hisoblanadi.

Bugungi Yevropa milliy huquq tizimidan ushbu tamoyilga aniq izoh topishning imkoni bo‘lmasa-da, lekin AQSh huquqshunos olimlari insoflilik tamoyilini “kelishilgan umumiy maqsadga sodiqlik va boshqa tomonning kutilgan umidlariga muvofiqlik (ularni puchga chiqarmaslik)”, deb ta’riflaydilar [9].

AQSh huquqshunoslari insoflilik tamoyilini ikkiga bo‘ladi: subyektiv va obyektiv insoflilik. Subyektiv insoflilik – bu shartnoma tuzayotgan tomonning subyektiv ong holati (psixologik holat), obyektiv insoflilik esa to‘g‘ridan-to‘g‘ri shartnoma shartlari, bitim tuzuvchi tomonlarning huquq va majburiyatlari o‘rtasida muvozanatni saqlash bilan bog‘liq tamoyildir. Ushbu ikki elementga asoslanib, insoflilik tushunchasining bir nechta ma’nolarini quyidagicha izohlash mumkin:

1. Normativ ma’no. Shartnoma taraflarining o‘z huquqiy munosabatlarini muvozanatlashi uchun yuklatilgan shartnomaviy insofni aks ettiradi. Ushbu ma’noga asoslanib, insoflilik tamoyili o‘zlarining kelishuvlaridan kelib chiqadigan umidlarini himoya qilish uchun vakolatli shaxsning insofli harakatini talab qiladi.

2. Kontekstdagi ma’no. Shartnoma tuzilgan joyda ishlatiladigan umumiy standartlarga asoslanib, shartnoma tuzuvchi tomonlarning oqilona kutishlarini aks ettiradi. Ushbu ma’noga asoslanib, insoflilik har bir kontragentning boshqa tarafning shartnoma majburiyatlarini savdo jamiyati uchun maqbul tarzda halol va insofli bajarishini kutishdir [10].

3. Asosiy ma’nosi. Yuridik bitimlarni amalga oshirishda insoflilikning mavjud minimal standartlarini aks ettiradi [11].

Yuqoridagi uchta ma’noga muvofiq, insoflilik – har ikkala tomonning bir-birlari, hattoki uchinchi taraflar bilan hozirgi va kelgusi-

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dagi munosabatlarida kutilishi kerak bo‘lgan halol xatti-harakatlar deb ta’riflanishi mumkin [11].

Insoflilik shartnoma taraflari har birining qonuniy manfaatlari va qarama-qarshi tomonning umidlarini hisobga olish, o‘z xudbin manfaatlariga intilishini cheklashni talab qiladigan harakatdir. Insoflilik tamoyilining vazifasi zarar ko‘rgan tarafga, kelishuvdan kelib chiqadigan huquq va majburiyatlarning nomutanosibligi natijasida yetkazilgan zararning iloji boricha cheklanishiga imkon berishdir [12]. Buni huquqiy bitimlarda odob-axloq va odillikka oid shartnoma qonunchiligi standartlarini qo‘llash, shartnoma huquqining boshqa tamoyillari qoidalarini to‘ldirish va agar ularga qat’iy rioya qilish aniq insofsiz natijalarga olib keladigan bo‘lsa, ushbu qoidalardan ustun turish orqali amalga oshirish mumkin.

AQSh huquqshunos olimi R. Summers fikriga ko‘ra, “Insoflilik tamoyilisiz sudya muayyan ish bo‘yicha sud ishlarini umuman amalga oshira olmasligi mumkin yoki u buni faqat mavjud bo‘lgan huquqiy tushunchalar va me’yorlar evaziga amalga oshirishi va shu bilan kelgusi ishlar uchun qonunni og‘irlashtirishi mumkin” [13]. Chindan ham sud ishlarida insoflilik tamoyilini e’tiborga olish zarur. Aks holda, shaxslarning buzilgan yoki nizolashilayotgan huquqlari, erkinliklari va qonuniy manfaatlarini himoya qilishda muammolar yuzaga kelishi tabiiy. Shuning uchun ham sudlar bu prinsip bilan bog‘liq muammolarni tushunishlari, insoflilik prinsipini qo‘llashdan hayiqmasliklari lozim. Chunki aynan insoflilik va huquqni suiiste’mol qilishga yo‘l qo‘yilmasligi asosida fuqarolarning huquqiy ongini sezilarli darajada o‘zgartirish, korrupsiyaga barham berish, huquqni muhofaza qilish tizimini takomillashtirish va jamiyatning axloqiy holatini o‘zgartirish uchun asos yaratish mumkin.

Ijtimoiy hamkorlikning insofli usullariga asoslangan jamiyat modeli (“adolat insoflilik kabi” (“justice as fairness”)ni yaratgan faylasuf olim J.B. Roulsning insoflilik va adolat haqidagi fikrlari mashhur doktrinalardan biriga aylangan. Rouls demokratik jamiyatning ommaviy siyosiy madaniyatida topadigan uchta eng asosiy g‘oyalar – fuqarolar erkin va teng huquqli bo‘lishlari hamda jamiyatda insofli hamkorlik tizimi mavjud bo‘lishi kerakligini ilgari suradi [14].

Rouls tomonidan insoflilikka quyidagicha ta’rif beriladi: “Insoflilik – agarda biz o‘z manfaatlarimizdan mahrum bo‘lsak-da, bunga rozi bo‘lishimizdir”. Ushbu konsepsiyasining bu ajoyib ta’rifi iqtisodiy munosabatlarda ko‘proq maqsadli ta’riflar uchun yordam berishi mumkin [14]. Bu ta’rif bilan Rouls insoflilik tamoyili orqali kishining o‘z manfaatlaridan boshqa shaxslarning manfaatlarini ustunroq qo‘yish kerakligiga ishora qiladi.

Iqtisodchi olim, nobel mukofoti sovrindori Jozef Stiglitz hamda London Iqtisodiyot maktabi tadqiqotchisi Endryu Charlton xalqaro savdo-sotiqdagi shartnomalar to‘g‘risida shunday yozadi: “Demokratik davlatda har qanday savdo shartnomasi erkin ravishda tuzilishi va mamlakat fuqarolari ushbu bitim, aslida, insofli ekanligiga ishonch hosil qilishlari kerak” [15]. Insoflilik tamoyilining savdo shartnomalarida ifodalanishi nizolarning sudgacha yetib bormasligiga, kontragentlarning munosabatlari uzoq va davomli bo‘lishiga hissa qo‘shadi.

Insoflilik tamoyiliga oid qarashlar turli zamon va jamiyatlarda turlicha o‘lchanib, yagona, aniq tushunchaga ega bo‘lmagan. Insoflilikni idrok etish xalqlar va ijtimoiy guruhlar bo‘yicha farqlanadi [16]. Ushbu tamoyilning ildizi esa qadimgi rim huquqiga borib taqaladi. Qadimgi Rimda tejamkorlik, vijdon va uyat kabi axloq turlari diniy aloqalar doirasidan chiqib, *fides* – *(insof)* tushunchasini mustaqil axloqiy tamoyil sifatida belgilab berdi [17].

Rim huquqi normalarini tushunish uchun *fides* tushunchasi asos bo‘lib, u orqali Rimdagi barcha huquqiy munosabatlar qo‘llab-quvvatlanadi [18], deb ishonilgan.

Fides to‘g‘ri xatti-harakatni kutish va shu bilan berilgan va’dalarning bajarilishi hamda va’da bajarilishiga tegishli ishonchni o‘zida mujassam etuvchi tushunchadir [17]. “*Fides (insof)* – bu iymon kabi axloqiy hodisaning turli jihatlarini bildiruvchi atama bo‘lib, e’tiqod o‘z iymoni va halolligi, berilgan so‘zga sodiqligi, barcha odamlarning o‘z majburiyatlarini qanday ifoda etishidan qat’i nazar, bajarishlari uchun axloqiy majburiyatlariga ishonishdir” [19]. Axloqiy jihat sifatida har bir qonun normasi uchun *fides* zaruriy asos sifatida tushunilgan [20]. Keyinchalik esa bu tushuncha huquqiy munosabatlarda shaxslar o‘rtasidagi ishonchni himoya qilish darajasini oshirishga xizmat qiladigan *bona fides (*insoflilik*)* tushunchasi bilan mustahkamlangan. *Bona fides* yuridik kategoriya sifatida oldi-sotdi, yollanma mehnat, shaxslarni birlashtirish kabi huquqiy munosabatlarda qo‘llanilgan va qat’iy qonun-qoidalarni to‘ldirgan. Huquqiy formula sifatida *bona fides* qarzdor nimani va qanday qilib bajarishi shartligini aniqlashga yordam bergan. Shunday qilib, Qadimgi Rimdagi pretorlar (farmon chiqarish huquqiga ega amaldorlar) nizolarni hal qilishda nafaqat rasmiy normalar, balki ijtimoiy munosabatlarning umume’tirof etilgan axloqiy asoslariga ham tayanishi mumkin edi [20].

Bona fides tamoyili fuqarolik shartnomalari uchun yangi qoidalarni nazarda tutishi mumkin bo‘lgan huquq manbayi sifatida qaraldi. Ushbu tamoyil Rim sudyalariga norasmiy shartnomalarni (informal contracts) ko‘rib chiqish uchun keng vakolatlar berdi [17]. Iste’molchi shartnomalarida (consumer contracts) ushbu tamoyil shartnoma taraflarining xatti-harakatlari har doim shartnoma tuzishda erishmoqchi bo‘lgan kelishuv maqsadlariga ega bo‘lishini ta’minlashga qaratilgan edi [21]. Bu esa shartnoma taraflarini insofli muvozanatga erishish uchun bir-birining manfaatlarini hisobga olishga majbur qiladi. Ushbu tamoyil shartnoma shartlarining insofliligini baholashda muhim rol o‘ynabgina [13] qolmasdan, balki ijtimoiy munosabatlarning barqarorligiga hissa qo‘shadigan asosiy norma sifatida saqlanib qoldi.

Bona fides (insoflilik tamoyili) tuzatuvchi va majburiyat yaratuvchi funksiyalari bilan zamonaviy shartnoma huquqidagi insoflilik qoidasiga ham talqin qilingan. Insof tushunchasi huquqlarni suiiste’mol qilish, nomuvofiq xatti-harakatlarni taqiqlash kabi ko‘plab turli ta’limotlar manbayidir. Insof prinsipi o‘zining noaniqligi va axloqiy-huquqiy qadriyatlarga asoslanganligi sababli turli huquq tizimlari o‘rtasida ko‘prik vazifasini o‘taydi. Huquqiy normalarda katta rol o‘ynay boshlagan insoflilik tamoyili milliy huquqiy normalarning mustahkamligini va huquqning globallashuvi uchun zarur bo‘lgan huquqiy dinamizmni yengish uchun moslashuvchanlikni ta’minlashga xizmat qiladi.

Insoflilik tamoyili haqida so‘z ketganda, islom huquqidagi o‘rni haqida ta’kidlamaslik ilojsiz. Zero, islom huquqidagi barcha huquqiy munosabatlarni tartibga solishda insoflilik tamoyilini chin ma’noda qo‘llamasdan erishish mumkin emas. Islom huquqi ta’limotlariga ko‘ra, savdoda boshqa tomonga har doim noqonuniy bosim o‘tkazmasdan yoki firibgarlik qilmasdan halol foyda olinishi kafolatlanishi lozim [13]. Islom huquqi insoflilik tamoyilini tashkil qiluvchi ko‘plab ko‘rsatmalarni o‘zida mujassamlashtirgan. Ushbu ko‘rsatmalar har bir musulmon o‘zaro bir-birini hurmat qilishi, moddiy ta’minlashiga undaydigan axloqiy normalar hisoblanadi [13]. Shuningdek, ular insonning e’tiqodi bilan bog‘liq g‘oyaviy qoidalar bo‘lib, ular shartnomalar tuzishda insoflilik tamoyiliga ta’sir ko‘rsatadi [13]. Ushbu qoidalar o‘ziga xos huquqiy sanksiyalar, shuningdek, insofsiz shartnoma shartlaridan foydalanishni rad etish uchun asos yaratishi mumkin bo‘lgan yuridik kodeksga ega. Masalan, islom huquqi qoidalariga asoslangan 1876-yildagi “Al – Majalla” (Usmonlilar sudlari uchun fuqarolik kodeksi)ga qarasak, kodeks insof

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tushunchasining qo‘llanishi uchun ko‘plab huquqiy tamoyillarni ta’minlaydi. Xususan, ommaviy zarar yetishining oldini olish uchun ba’zida bir shaxs zararda qolishiga yo‘l qo‘yilishi [22] yoki og‘ir jarohatdan ko‘ra yengil jarohat olish afzal bo‘lishi mumkin [22]. Agar kattaroq va kamroq halokatdan biri sodir bo‘lishi kutilsa, shubhasiz, kamroq zarar keltiradigani tanlanadi [22]. Yomonlikni qaytarish foyda olishdan afzaldir [22]. Hisbah[1]ning funksiyalari islomiy marketing qoidalari buzilishining oldini olish, odamlar obro‘yini himoya qilish va jamoat xavfsizligini ta’minlashdan iborat. Ko‘rinib turibdiki, insoflilik har qanday foyda olinishi zarur bo‘lgan bir o‘rinda insofsizlikka yo‘l qo‘yilmasligi, o‘zgalar manfaatini o‘z manfaatidan ustunroq tutish kabi altruistik axloqiy tamoyil sifatida islom dinidagi ustun qadriyatdir.

Xalifa Ali (r.a.) o‘zining shahar hukmdoriga yozgan maktubida insoflilik tamoyillarini buzuvchi savdogarlarning xatti-harakatlariga qanday munosabatda bo‘lishni o‘rgatadi. U savdogarlarning ochko‘zligi, monopoliyasi, insofsiz raqobati hamda ularning bozorga oid shartnomalarni nazorat qilishini qattiq qoralaydi. Savdogarlarning ushbu harakatlari jamiyat va shaxslar uchun salbiy ta’sirga ega bo‘lib, ularning manfaatlariga daxl qilishini aytadi. “Monopoliyaga qarshi kurashing, chunki payg‘ambarimiz Muhammad sollallohu alayhi vasallam bunga chorlaganlar, bozor munosabatlarida sotuvchi va xaridorning haqlariga rioya qilishga, kimdir bu ko‘rsatmalarni insofsizlik bilan buzgan taqdirda buzgan tarafni jazolashga buyurganlar” [23], deb ta’kidlaydi.

Ko‘pchilik huquqshunoslarning ta’kidlashicha, bu tizimning ahamiyati savdogarlarning iste’molchilar oldidagi vazifalarini insofli yo‘sinda bajarish va ishonchni oqlashga kafolat berish, shuningdek, barcha nuqson va ayblar, xususan, yolg‘on va insofsizlikni taqiqlash majburiyatlarini o‘z ichiga olishidadir [23].

[1] Hisbaning savdoga nisbatan vazifasi: o‘lchov va tarozini joyida tekshirish, sotilayotgan mol sifati, savdoda halollik, savdo va odamlarning umumiy xulq-atvorida hayo va xushmuomalalikni kuzatishdan iborat.

Hozirgi zamon arab olimlari shartnomalarda islom huquqining insoflilik tamoyilini qo‘llashda 5 ta holatni aniqlashdi [23]:

– shartnomaning xulosa qismida insof va tanlovlar tizimi (xyarat);

– shartnomaning bajarilishida insoflilik tamoyili;

– shartnomaning ixtiyoriy ravishda yoki fors-major holatda tugatilishida insoflilik tamoyili;

– ribo (sudxo‘rlik) va g‘arar (shartnomadagi noaniqliklar);

– “shartnoma natijasi noma’lum bo‘lganda” tushunchasi.

Demak, islom huquqida insoflilik tamoyili shartnomaning barcha qismlarida ham ta’minlangan. Insoflilik tamoyili asosida shartnomalar tuzilishi orqali yuzaga kelish mumkin bo‘lgan nizo avvaldan bartaraf etilgan.

Shartnoma tuzish oldidan islom qonunlaridagi insoflilik tamoyilining qo‘llanishi shartnomani imzolashdan avval tomonlarning insof haqidagi qarashlarini tekshirishga yordam beradi. Ahdlashuvchi tomonlarning umumiy manfaatlari, xususan, savdolashish pozitsiyalarining kuchliligiga ham asoslanadi. Islom shartlariga ko‘ra, shartnomani imzolashdan avval ahdlashuvchi tomonlar kelishuv shartlarini tekshirish majburiyati, shartnomalarda har qanday shakldagi firibgarlikning taqiqlanishi va qarshi tomon nimaga rozi bo‘layotganidan xabardor ekanligining kafolat majburiyatini oladi [23].

Birinchidan, islom qonunchiligi musulmonlarni har qanday qaror qabul qilish yoki biron-bir chora ko‘rishdan oldin bayonot yoki ma’lumotni tekshirish va tahlil qilishga buyuradi. Payg‘ambarimiz Muhammad sollallahu alayhi vasallam “Sizlardan birortangiz o‘zi uchun yaxshi ko‘rgan narsani birodari uchun ham ravo ko‘rmaguncha mo‘min bo‘la olmaydi”, dedilar [24]. Ushbu majburiyat ahdlashuvchi tomonlar sotib olayotgan mahsuloti halol yoki harom ekanligini aniqlash bilan boshlanadi hamda ahdlashuvchi tomon-

ning u rozi bo'lgan shart va holatni tekshirish vazifasi bilan tugaydi [13]. Ushbu vazifa sotuvchi xaridor bilan birodarlik munosabatlarida muomala qilishi kerakligi, ya'ni sotuvchi xaridorning manfaatlarini xuddi o'zining manfaatlari kabi ko'rish majburiyatini o'z ichiga oladi.

Ikkinchidan, islom qoidalari bitim tuzishdan oldin ham, keyin ham har qanday firibgarlik elementlari bo'lishini taqiqlaydi. Payg'ambarimiz Muhammad sollallahu alayhi vasallam shartnoma tuzishda ahdlashuvchi tomonlarning insof bilan muomala qilish majburiyatini misol qilib keltirganlar. Payg'ambarimiz Muhammad Rasulullоh sollallohu alayhi vasallam bozorlarni kuzatganlar. Hukumat boshlig'i kabi u yerlarda buyruqlar berganlar. Bir marta bir tijoratchining yoniga kelib, savdogarning qopda turgan moliga qo'llarini botirib, aralashtirib ko'radilar. Qarasalar, tagi ho'l, usti quruq... Qopdagi molning tagi yomon, usti chiroyli qilib qo'yilgan... Shunda "Bunday qilma!" dedilar. "Kim bizni aldasa, bizdan emas", – deganlar [25].

Ikkinchi xalifa Umar ibn Xattob (r.a.) sutga suv qo'shib, uni ko'paytirishni taqiqlaganlar. Xalifa sut ichishga yaroqsiz bo'lib qolishi tufayli emas, balki kelishuvdan avval xaridor sut va suvning aniq miqdorini bilolmay qolishi mumkinligi sababli shunday taqiq qo'ygan [23].

Uchinchidan, sotiladigan mahsulotning har qanday xususiyatini yashirishga qaratilgan xaridorning tanloviga ta'sir etishi mumkin bo'lgan barcha harakatlar noqonuniy hisoblanadi [26]. Xaridorga sotilayotgan mahsulotning qanday ishlatilishi haqida ma'lumot berish va yetarli darajada tushuntirish juda muhim [13]. Bundan kelib chiqib, shuni ta'kidlash mumkinki, islom huquqida insofsiz savdo amaliyoti taqiqlangan xatti-harakatdir, shu bilan birga, savdo amaliyotida insoflilik eng ustun tamoyil ekanligi o'z asosini topgan.

Qur'oni Karim musulmon millatini muvozanatli millat deb ta'riflaydi va butun dunyo shu asosida yaratilgan. Qur'oni Karimda Alloh taolo quyidagilarni ta'kidlaydi: "Ular infoq qilganlarida isrof ham va xasislik ham qilmaslar. U ikkisi o'rtasida mo'tadil bo'lurlar" [27]. Ushbu muvozanat shaxsning o'zini o'zi bilan tutishini o'z ichiga oladi. Bunda iste'molchi ehtiyojlari va uning iste'mol harakatlari o'rtasida muvozanatni saqlab, o'z ehtiyojlarini qondirish paytida o'zini oqilona tutishi kutiladi. Shu nuqtai nazardan, islomiy yurisdiksiya faqat muvozanatni aniqlash uchun harakatning o'zi bilan shug'ullanmaydi. U shu muvozanatning natijasiga ham e'tibor qaratadi. Shuningdek, har bir tomonga shartnomani rasmiy ravishda bekor qilish to'g'risidagi qaror haqida ma'lumot berishni buyuradi. Ya'ni agar ikki tomon shartnoma tuzsa va bittasi bekor qilishni xohlasa, u buni faqat qarshi tomonga xabar berish orqali amalga oshirishi mumkin. Rivojlangan va rivojlanayotgan mamlakatlarning aksariyat qismida xuddi shu qoidaga amal qilinmoqda. 1500 yil oldin islom tomonidan ilgari surilgan ushbu tamoyil endilikda boshqa davlatlar tomonidan qabul qilingan. Shu nuqtai nazardan qarama-qarshi bo'lgan manfaatlar o'rtasidagi nomutanosiblik va ehtimollik to'g'risidagi bitimlarning taqiqlanishi insoflilikni aks ettiruvchi qoidalardir [23].

Birinchidan, ikki qarama-qarshi tomon o'rtasida huquq egasi va qarshi tomonning zarari o'rtasidagi muvozanatsizlikdan nomutanosiblik sodir bo'lishi mumkin. Bu qoida bir ahdlashuvchi tomonga ustunlik yaratish va bu orqali boshqa tarafga sezilarli zarar yetkazish taqiqlanadigan shartnoma sharti sifatida tushunilishi lozim. Shuning uchun bir tomonning ustunligi va boshqa tarafning zarari o'rtasidagi muvozanatsizlik muammodagi shartlarning ishlatilishini qonuniylashtirish uchun baholanishi lozim. Shunday qilib, bu usuldan foydalanish shartnoma tuzuvchi tomonlar o'rtasidagi huquq va majburiyatlar nomutanosibligidan xalos etishi mumkin [23].

Ikkinchidan, ehtimollik to'g'risidagi bitimlar islom qonunlarida taqiqlangan. Is-

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lom qoidalari tasodif va taxminlarga bog‘liq bo‘lgan operatsiyalarni qoralaydi. Natijasi aniq bo‘lmagan shartnoma islom huquqida taqiqlangan [28]. Shunday qilib, noaniq bitimlar tomonlar o‘rtasida taqiqlanadi.

Muxtasar qilib aytganda, islom dinida kishilar o‘rtasidagi tadbirkorlik, ishbilarmonlik va hamkorlik munosabatlaridagi insoflilikning o‘ziga xos xususiyatlari va nozik jihatlariga doir masalalar mufassal bayon qilingan. Insofning aniq chegaralari, belgi va xususiyatlari ko‘rsatib berilgan. Islom huquqida insoflilik tamoyili o‘zgalar manfaati o‘z manfaati kabi hisoblanishi, xudbinlikning aksi sifatida namoyon bo‘ladi. Bir tomonning ustunligi va boshqa tarafning zarari o‘rtasidagi muvozanatsizlikning oldini olish, noaniqliklar tufayli zarar ko‘rishning oldini olish insoflilik tamoyilining aniq chegaralarini ko‘rsatib beradi. Zamonaviy huquqshunoslik insoflilik tamoyiliga aniq izoh topishi imkonsiz bo‘lib turgan bir paytda islom bu masalaga allaqachon yechim topib ulgurgan.

Xulosalar

Yuqoridagilardan kelib chiqib, shuni ta’kidlash o‘rinliki, insoflilik tamoyili qadimgi xalqlardan to bugungi davrga qadar dunyo xalqlarining ijtimoiy munosabatlarini tartibga solishda muhim omil sifatida qo‘llanib kelingan. Insoflilik tamoyili har bir huquqiy munosabatlar uchun o‘ziga xos huquq va majburiyatlarni belgilovchi, umumiy xususiyatga ega bo‘lgan, muayyan mazmundagi xatti-harakatlar me’yorini ifodalamasa-da, turli huquqiy munosabatlarning mazmunini himoya qilish va amalga oshirishni ta’minlashda ahamiyati katta. Insoflilik tamoyili haqiqat, huquqlarga hurmat va majburiyatlarga sodiqlik, o‘z harakatlarining natijalarini anglab yetish, boshqa shaxslarning manfaatlaridan o‘z manfaatlarini ustun qo‘ymaslik, uchinchi shaxslarga zarar yetkazishdan tiyilishni nazarda tutuvchi tamoyildir. U ijobiy deb hisoblangan va jamiyat manfaatlariga mos keladigan qoida, normalarga rioya qiladigan huquqiy munosabatlar ishtirokchilarining xatti-harakatlari bilan tavsiflanadi.

Insoflilik tamoyili bilan bog‘liq milliy qonunchilikka, xususan, fuqarolik kodeksiga kiritiladigan o‘zgartishlar, albatta, O‘zbekiston milliy qonunchiligini rivojlantirish uchun prinsipial va muhim ahamiyatga ega, degan xulosaga kelishimiz mumkin. Chunki ushbu tamoyil huquq va majburiyatlarni belgilashda, huquqlarni amalga oshirishda va majburiyatlarni bajarishda, shuningdek, huquqlarni himoya qilishda fuqarolik muomalasi ishtirokchilarining harakatlariga taalluqlidir. Fuqarolik-huquqiy munosabatlar ishtirokchilariga insoflilik tamoyili bilan xatti-harakat qilish majburiyatini rasman yuklab qo‘yishning o‘zi yetarli bo‘lmaydi. Insoflilik tamoyilining doktrinasi va sud amaliyotida shakllangan yondashuvlarni hisobga olgan holda, unga quyidagicha huquqiy ta’rifni kiritishni lozim deb topdik.

Insoflilik – shaxsning o‘z huquq va majburiyatlaridan foydalanishda fuqarolik huquqiy munosabatlarning boshqa ishtirokchilarining huquq va manfaatlarining ta’minlanishi haqida g‘amxo‘rlik qilishi, shuningdek, fuqarolik huquqiy munosabatlarda shartnoma maqsadiga erishish uchun zarur yordamni o‘zaro ta’minlashlaridir.

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SOLIQ INTIZOMINI BUZGANLIK UCHUN YURIDIK JAVOBGARLIKNING ILMIY-NAZARIY TAHLILI

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Annotatsiya. *Ushbu ilmiy maqolada soliq intizomini buzganlik uchun yuridik javobgarlikning huquqiy asoslari tizimli tahlil qilingan. Hozirga qadar soliq intizomini buzganlik uchun yuridik javobgarlikning ilmiy asoslari chuqur tadqiq qilinmagan. Shu bois sohaga oid amaliyot kuzatildi. So'nggi yillarda O'zbekistonda soliq intizomini buzganlik uchun yuridik javobgarlik masalasi yetarlicha huquqiy va iqtisodiy jihatdan o'rganilmaganligi asoslanadi. Soliq intizomini buzganlik uchun yuridik javobgarlikning nazariy jihatlarini yoritib berishga harakat qilingan. Shuningdek, bugungi kunda dolzarb hisoblangan javobgarliklar toifalari – "soliq intizomini buzganlik uchun moliyaviy javobgarlik", "soliq intizomini buzganlik uchun ma'muriy javobgarlik" va "soliq intizomini buzganlik uchun jinoiy javobgarlik" tushunchalarining mazmun-mohiyati tahlil etilgan. Muallifning xorijiy mamlakatlar qonunchiligi bo'yicha qiyosiy tahlili maqolaning o'ziga xos jihatlarini aks ettirishga xizmat qilgan. Mazkur maqolada amaldagi qonunchilik hujjatlarini takomillashtirish asosida O'zbekistonda soliq tizimiga sun'iy intellektni joriy etish orqali soliq intizomini buzish holatlarini kamaytirish imkoniyati va yaqin kelajakda qilinishi lozim bo'lgan ishlar yoritilgan. Muallif ushbu masalalarning huquqiy yechimini topishda asosiy yo'nalish soliq intizomini ta'minlash, soliq madaniyatini yuksaltirish va axborot texnologiyalarini qo'llashni kengaytirish bo'lishi zarur, degan qat'iy pozitsiyani ilgari suradi. Shu bilan birga, maqolada ushbu sohadagi mavjud muammolar tahlilidan kelib chiqib, taklif va tavsiyalar ilgari surilgan.*

Kalit so'zlar: *soliq intizomi, soliq ma'muriyatchiligi, soliq tizimi, huquqbuzarliklar, soliqlar turlari, soliq majburiyati, soliq to'lovchi, javobgarlik, yuridik javobgarlik, moliyaviy javobgarlik, ma'muriy javobgarlik, jinoiy javobgarlik, huquqbuzarliklar obyekti va subyektlari, javobgarlikning obyekti va subyektlari.*

НАУЧНО-ТЕОРЕТИЧЕСКИЙ АНАЛИЗ ЮРИДИЧЕСКОЙ ОТВЕТСТВЕННОСТИ ЗА НАРУШЕНИЯ НАЛОГОВОЙ ДИСЦИПЛИНЫ

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Аннотация. *В данной научной статье проводится системный анализ правовых основ юридической ответственности за нарушения налоговой дисциплины. До настоящего времени научная основа юридической ответственности за нарушения налоговой дисциплины изучена недостаточно. Однако практика в этой сфере рассматривается. В последние годы в Узбекистане вопросу исследования юридической ответственности за нарушения*

налоговой дисциплины с правовой и экономической точки зрения уделяется недостаточно внимания. Автор попытался осветить вопросы и теоретические аспекты юридической ответственности за нарушения налоговой дисциплины. Автор также анализирует содержание таких актуальных на сегодняшний день понятий, как «материальная ответственность за нарушение налоговой дисциплины», «административная ответственность за нарушение налоговой дисциплины» и «уголовная ответственность за нарушение налоговой дисциплины». Проведенный автором сравнительный анализ законодательства зарубежных стран позволил в статье отразить их особенности. Кроме того, рассматриваются возможности снижения количества нарушений налоговой дисциплины в Узбекистане за счет внедрения искусственного интеллекта в систему налогообложения и осуществления мер, которые необходимо предпринять в ближайшее время, в том числе на основе совершенствования действующего законодательства. Автор доказывает, что основным направлением в поиске правового решения данных вопросов должно стать обеспечение налоговой дисциплины, развитие налоговой культуры и расширение использования информационных технологий. В то же время в статье разработаны предложения и рекомендации, основанные на анализе существующих проблем в этой сфере.

Ключевые слова: *налоговая дисциплина, налоговое администрирование, налоговая система, правонарушения, виды налогов, налоговая ответственность, налогоплательщик, ответственность, юридическая ответственность, материальная ответственность, административная ответственность, уголовная ответственность, объект и субъекты правонарушений, объект и субъекты ответственности.*

SCIENTIFIC AND THEORETICAL ANALYSIS OF LEGAL RESPONSIBILITY FOR VIOLATION OF TAX DISCIPLINE

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Abstract. *This scientific article provides a systematic analysis of the legal basis of legal responsibility for the violation of tax discipline. So far, the scientific basis for legal responsibility for tax discipline violations was not thoroughly studied. Therefore, practice in this sphere has been observed. In recent years, the issue of legal responsibility for violations of tax discipline in Uzbekistan has not been sufficiently studied from a legal and economic point of view. The author tried to illuminate the issue of the theoretical aspects of legal liability for violations of tax discipline. The author also analyzes the content of the concepts of "financial responsibility for tax violation", "administrative responsibility for violation of tax discipline" and "criminal responsibility for violation of tax discipline" which are relevant today. The author's comparative analysis of the legislation of foreign countries served to reflect the special characteristics of the article. This article discusses the possibility of reducing the number of violations of tax discipline in Uzbekistan through the introduction of artificial intelligence in the taxation system and the actions to be taken in the near future, based on the improvement of existing legislation. The author argues that the main direction in finding a legal solution to these issues should be to ensure tax discipline, develop the tax culture and expand the use of information technology. In addition, the article develops suggestions and recommendations based on the analysis of existing problems in this sphere.*

Keywords: *tax discipline, tax administration, tax system, offenses, types of taxes, tax responsibility, taxpayer, responsibility, legal responsibility, financial responsibility, administrative responsibility, criminal responsibility, object and subjects of offenses, object and subjects of responsibility.*

Kirish

Soliq qonunchiligini buzganlik uchun yuridik javobgarlik masalasiga yondashishdan oldin, avvalo, umumiy holda yuridik javobgarlik masalasini ko‘rib chiqishimiz lozim. Yuridik javobgarlik – bu, avvalo, huquqbuzarga nisbatan davlat tomonidan qonun hujjatlariga muvofiq, tegishli sanksiyalar doirasida qo‘llaniladigan davlat majburlov chorasidir. Huquqshunoslik ilmida esa mazkur tushunchaga huquqshunos olimlar quyidagicha yondashganlar. Jumladan, huquqshunos olim H.T. Odilqoriyevning fikricha, yuridik javobgarlik huquqbuzarga nisbatan huquq normalarida ko‘zda tutilgan sanksiyalar asosida davlatning majburlov choralarini qo‘llashi bo‘lib, bunda aybdor shaxs muayyan huquqlardan (shaxsiy, mulkiy, tashkiliy va hokazo) mahrum etiladi [1].

Yuridik javobgarlikning mukammal tizimisiz huquq ojiz va kuchsizdir hamda o‘ziga yuklatilgan ijtimoiy vazifalarni bajarishga qodir bo‘la olmaydi. Agar hokimiyat buzilgan huquqlarni tiklash, burchlarning bajarilishini ta’minlash, huquqiy taqiqlarni buzuvchilarni jazolashni tashkil qila olmas ekan, huquqiy normalar va ularga bog‘liq holda kelib chiquvchi jamiyat a’zolarining huquqlari va burchlari amalga oshmay, balki faqat olijanob orzularga aylanib qolaveradi. Boshqa tarafdan, huquq va huquqiy tartibotni qo‘riqlashga xizmat qiluvchi davlat majburlovi shaxs, uning manfaatlari, huquq va erkinliklariga muayyan darajada daxl qiladi. Agar u adolatsiz huquqni himoya qilish uchun qo‘llanilsa, u huquqdan tashqari yoki huquqqa zid hisoblanadi. Shu munosabat bilan huquq va davlat majburlovining ijtimoiy o‘zaro aloqasi muammosi tobora keskinlashmoqda.

Yuqoridagi belgilarga asoslanib, bir guruh olimlar shunday fikr bildiradilar: “... yuridik javobgarlik – bu yuridik norma sanksiyasida ko‘zda tutilgan shaxsiy, tashkiliy yoki mulkiy xarakterdagi cheklovlar shaklida ifodalanuvchi davlat majburlov choralarining huquqbuzarga nisbatan qo‘llanilishidir” [2]. “Yuridik javobgarlik deb huquqbuzarlikni sodir etgan shaxsga protsessual tartibda qonunda belgilangan majburlov choralarini qo‘llashdir” [3].

M.A. Axmedshayeva esa: “Yuridik javobgarlik – bu huquq normalarida ko‘zda tutilgan sanksiyalar asosida aybdor shaxsga davlat ta’sir choralarini qo‘llash va muayyan salbiy oqibatlarni tayinlash zarurati bo‘lib, bunda shaxs muayyan ne’mat (shaxsiy, mulkiy, tashkiliy va boshqa huquq)lardan mahrum etiladi. Yuridik javobgarlik – bu davlatning huquqbuzarlikka nisbatan munosabat bildirishi, qonunda belgilangan sanksiyalarni amalga oshirish usulidir”, [4] – deb ta’riflagan.

Z.M. Islomovning fikricha, “Yuridik javobgarlik – bu sodir etilgan huquqbuzarlik uchun shaxsning davlat hokimiyatiga ega bo‘lgan muayyan cheklashlarni boshdan kechirish majburiyatidir” [5].

G.N. Magliossa esa yuridik javobgarlik qonun hujjatlariga muvofiq protsessual shaklda amalga oshirilishini ta’kidlaydi [6].

A.B. Vengerov yuridik javobgarlik – bu jamiyatning huquqiy tizimini ta’minlovchi davlat majburlov shakllaridan biri ekanligini ta’kidlab, unga shunday ta’rif beradi: “Yuridik javobgarlik – davlat organlari tomonidan qonunda belgilangan tartibda huquqbuzarga nisbatan uning uchun noxush bo‘lgan oqibatlarni nazarda tutuvchi ta’sir etish choralaridir” [7].

Z.M. Islomovning fikricha, “... yuridik javobgarlik – bu sodir etilgan huquqbuzarlik uchun shaxsning davlat-hokimiy xarakterdagi muayyan cheklovlarni o‘tash majburiyatidir” [8].

V.N. Xropanyuk esa bu masala yuzasidan quyidagi fikrlarni bildiradi: “Yuridik javobgarlik – bu murakkab ijtimoiy-huquqiy hodisa. Unda eng kamida ikkita tomon: davlat va huquqbuzar ishtirok etadi. Ular o‘rtasidahuquqniqo‘riqlashmunosabatishakllanib, unda davlat o‘zining vakolatli organlari

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timsolida vakolatli taraf, huquqbuzar esa majburiyatli taraf bo‘lib qatnashadi. Bunda vakolatli taraf ham, majburiyatli taraf ham qonun doirasida harakat qiladi, yuridik javobgarlikni amalga oshirish huquq va aynan shu huquqbuzarlik uchun javobgarlikni nazarda tutuvchi huquqiy normalar sanksiyalari asosida bo‘ladi” [9].

Demak, yuridik javobgarlik – bu sodir etilgan huquqbuzarlik uchun davlat tomonidan o‘rnatilgan majburlov choralaridir. Yuridik javobgarlik o‘ziga xos belgilardan tashqari tarkibiy elementlarga ham ega, ya’ni bular yuridik javobgarlik asoslari, subyektlari, javobgarlik shartlari va choralari, javobgarlikni qo‘llash tartibidan iborat.

Yuridik javobgarlik davlat va huquq nazariyasida keng o‘rganilgan masalalardan biri hisoblanadi. Shuning uchun ushbu tushunchaning mohiyati juda ko‘p olimlar tomonidan tahlil qilingan. Har bir muallif unga o‘zi muhim deb hisoblagan va yuridik javobgarlikning mohiyatini tashkil qiluvchi jihatlarini ko‘rsatgan holda, o‘z ta’rifini beradi. Aksariyat olimlar yuridik javobgarlik tushunchasiga davlatning majburlov chorasi yoki huquqbuzarlik uchun beriladigan jazo choralari deb ta’rif berishadi. Boshqa olimlar esa yuridik javobgarlikni mavjud huquqiy kategoriyalar doirasida ko‘rib chiqadilar va unga muhofazalovchi huquqiy munosabatlar, huquq normasining sanksiyasini amalga oshiruvchi yoki yuridik majburiyatlarning o‘ziga xos shakli sifatida tushunadilar.

Yuqorida keltirib o‘tilgan ta’riflardan shuni ko‘rish mumkinki, yuridik javobgarlik mohiyati haqida olimlar tomonidan bildirilgan fikrlar bir-biridan jiddiy farqlanmaydi. Faqatgina ayrim olimlar uning xususiyati qanday bo‘lishi mumkinligiga ham alohida to‘xtalib o‘tganlar.

Yuridik javobgarlik faqatgina huquq normasining buzilishi bilangina yuzaga kelibgina qolmay, u bilan bevosita bog‘liq bo‘ladi va aniq protsessual tartibda amalga oshiriladi. Boshqacha qilib aytganda, huquqbuzarga nisbatan yuridik javobgarlikni qo‘llash faqatgina qonunda belgilangan tartibda va maxsus vakolatli organlar tomonidan amalga oshiriladi. Ushbu fikrlardan kelib chiqib, yuridik javobgarlikka qisqacha huquqbuzarning sodir etgan huquqbuzarligiga yarasha beriladigan davlatning majburlov chorasidir, deb ta’rif berish mumkin.

Yuqorida berilganlardan shuni ko‘rish mumkinki, yuridik javobgarlikni bir necha turlarga bo‘lish mumkin. Shuni ham unutmaslik kerakki, yuridik javobgarlikni turlarga ajratishda uning o‘ziga xos jihatlari ham mavjud bo‘lib, bular quyidagilar:

- yuridik javobgarlik turlari huquq sohalariga nisbatan kam;
- turli huquq sohalari uchun bir turdagi javobgarlik choralari qo‘llanilishi mumkin;
- bir huquq sohasida turli xildagi yuridik javobgarlik choralari qo‘llanilishi mumkin.

Shuni qayd etish lozimki, huquq sohalari yuridik javobgarlikni turlarga ajratishda asosiy mezon hisoblanmaydi.

Umuman olganda, yuridik javobgarlik – muayyan hududdagi davlat, davlat organlari, davlat muassasalari, davlat tashkilotlari, davlat idoralari va yuridik shaxslar tomonidan ushbu hududda o‘rnatilgan qonunchilik tizimi bo‘yicha ijtimoiy nojo‘ya xatti-harakat sodir etgan jismoniy shaxs yoki yuridik shaxsga nisbatan qo‘llaniladigan majburlov tusidagi ta’sir chorasi hisoblanadi.

Yuridik javobgarlikka tortishning umumiy asoslari, birinchidan, qilmishning huquqqa zidligi; ikkinchidan, nojo‘ya qilmishning sanksiyalanganligi; uchinchidan, subyektning javobgarlikka tortish uchun layoqatliligi; to‘rtinchidan, qonunchilik bilan qo‘riqlanadigan ijtimoiy munosabatning buzliganlik fakti sanaladi.

Yuridik javobgarlik huquq tizimida alohida huquqiy maqomga ega. Huquqqa zid har qanday qilmishga nisbatan javobgarlik instituti yuzaga keladi. Shu sababli yuridik

javobgarlikning tarbiyaviy, tartibga soluvchi, ogohlantiruvchi, muhofaza qiluvchi, oldini oluvchi va himoya qiluvchi funksiyalari mavjud.

O‘zbekiston Respublikasida soliq intizomini buzganlik uchun yuridik javobgarlikning quyidagi umumiy turlari mavjud: jinoiy, ma’muriy, moliyaviy.

Soliq qonunchiligini buzganlik uchun yuridik javobgarlik masalasiga to‘xtalganimizda esa, avvalo, mazkur javobgarlik soliq qonunchiligi buzilishi natijasida yuzaga keluvchi har qanday yuridik javobgarlik nazarda tutiladi va bu xususida ham bir qator huquqshunos olimlar o‘z fikrlarini bildirib o‘tishgan.

Masalan, S.G. Pepelyaev mazkur javobgarlikning mohiyati, ya’ni soliq qonunchiligini buzganlik uchun yuridik javobgarlik – bu qonun hujjatlarida belgilangan hollarda va tartibda aybdor shaxsga nisbatan jazo xususiyatidagi majburiy ta’sir etish choralari yig‘indisidir, deya ifodalagan. Darhaqiqat, agar biz soliq majburiyatini moliyaviy javobgarlikning bir turi deb hisoblasak, u muhim moliyaviy xususiyatlarga ega, deb aytishimiz mumkin, chunki u soliq huquqbuzarligini sodir etish uchun yuzaga keladi, protsessual shaklda amalga oshiriladi va davlat majburloviga asoslanadi [10].

Shunga ko‘ra va bayon etilganlardan kelib chiqib, biz soliq qonunchiligini buzganlik uchun yuridik javobgarlik tushunchasiga quyidagicha ta’rif berishni lozim topdik, ya’ni soliq to‘g‘risidagi qonun hujjatlari bilan qo‘riqlanuvchi, davlat va uning maxsus vakolatli organlari yoki mansabdor shaxslari tomonidan qo‘llanilib, soliq to‘g‘risidagi qonun hujjatlari talablarini buzganlik uchun soliqqa oid normalarda nazarda tutilgan sanksiyalar asosida aybdor shaxsga nisbatan muayyan salbiy oqibatlarni yuzaga keltiruvchi hamda tegishli protsessual shaklda amalga oshiriladigan davlat majburlovidir.

Ta’kidlash joizki, huquqshunos olima Yu.A. Kroxina soliqlar va yig‘imlar to‘g‘risidagi qonun hujjatlarini buzganlik uchun yuridik javobgarlik masalasiga to‘xtalib, turli qonun hujjatlarida nazarda tutilgan soliq sohasidagi yuridik javobgarlikni yagona tizimga keltirish, uning moliya huquqining boshlang‘ich g‘oyalari va soliq huquqining prinsiplariga asoslanib birlashtirish kerakligini ko‘rsatib o‘tganligini qayd etib o‘tish joiz [11].

Huquqshunos olim E.T. Hojiyevning fikricha, soliqlar va yig‘imlar to‘g‘risidagi qonun hujjatlarini buzganlik uchun yuridik javobgarlikni nazarda tutuvchi normalar (jinoiy javobgarlik normalaridan tashqari) yagona tizimga keltirilsa, huquqni qo‘llash jarayonini yengillashtiradi, qonunchilikda takrorlanuvchi normalarni bartaraf etadi [12].

Shu bilan birga, qayd etish lozimki, soliqdan bo‘yin tovlash nazariyasi (Tax evasion theory) vakillari M.G. Allingham va A. Sandmoning ta’kidlashicha, daromadlar to‘g‘risida deklaratsiya topshirish qarori noaniqlik sharoitida qaror qabul qilish hisoblanadi. Chunki daromadlar to‘liq taqdim etilmaganda, soliq organlari avtomatik jarima javobini qaytarmaydi. Soliq to‘lovchida ikkita qarordan birini tanlash imkoni bo‘ladi: 1) to‘liq daromadni ko‘rsatish; 2) daromadni kam ko‘rsatish. Agar ikkinchi qarorni tanlasa, soliq organi tomonidan tekshiruv o‘tkazilishi omadiga bog‘liq bo‘ladi, agar tekshiruv o‘tkazilmasa, uning holati birinchi qarordan ko‘ra ancha yaxshi bo‘ladi. Agar tekshiruv o‘tkazilsa, u ancha yomon holatda qoladi. Ushbu nazariya tekshirishning ehtimoliy ekanligi sabab soliq to‘lovchi doim ikki qarordan birini “qimor o‘yini” kabi tanlashi, qaror esa soliqdan qochishning aniqlanish ehtimoli va aniqlanganda, jazoning miqdoriga bog‘liq bo‘lishini nazariy isbotlaydi. Aniqroq aytganda, ushbu nazariyaning mohiyati soliq to‘lovchi yuqoridagi ikki qarordan birini doim tanlaydi, doim aldaydi va shu sababli soliq organlari tekshiruv o‘tkazib turishi lozimligida ifodalanadi [13].

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Material va metodlar

Tadqiqot jarayonida uchta savolga javob berishga harakat qilindi: 1) yuridik javobgarlik tushunchasi va bu borada mahalliy va xorijiy olimlarning fikrlari qanday; 2) soliq intizomini buzganlik uchun javobgarlikning yuridik javobgarlik tizimida tutgan o'rni qanday; 3) soliq intizomini buzganlik uchun javobgarlikning alohida xususiyatlari mavjudmi?

Mazkur savollarga javob tariqasida mualliflik pozitsiyasi ishlab chiqilib, soliq intizomini buzganlik uchun javobgarlikning bir qator muhim xususiyatlari alohida ta'kidlandi. Ushbu maqola xorijiy keng tarqalgan usullarni konseptual, nazariy, konstitutsiyaviy-huquqiy va amaliy tushunishga qaratilgan. Tadqiqotda ilmiy bilishning tahlil, umumlashtirish, qiyosiy-huquqiy, tizimli-tuzilmaviy, formal-yuridik o'rganish usullaridan foydalanildi.

Tadqiqot natijalari

Demak, oldimizda soliqlar va yig'imlar to'g'risidagi qonun hujjatlarini buzganlik uchun yuridik javobgarlik masalasi turli qonun hujjatlarida yoritilganligini hisobga olib, uni ayni paytda umumhuquq nazariyasida e'tirof etilgan yuridik javobgarlikning qaysi turi tarkibiga kirishi yoki alohida mustaqil turi sifatida e'tirof etish masalasi turadi. Shunga muvofiq, biz olimlarning yuqoridagi fikrlarini tahlil qilib, soliq qonunchiligini buzganlik uchun yuridik javobgarlik, asosan, soliq, moliya va iqtisodiyotning turli sohalari bilan bog'liq qonunchilik normalari buzilishi natijasida yuzaga kelishini e'tiborga olib, uni moliyaviy-iqtisodiy javobgarlik ko'rinishida yuridik javobgarlikning umumhuquq nazariyasida e'tirof etilgan alohida ko'rinishi sifatida ifodalash lozimligini ilgari suramiz.

Ko'pgina huquqshunos olimlar soliq qonunchiligini buzganlik uchun moliyaviy, ma'muriy va jinoiy javobgarlik choralari qo'llanilishini ta'kidlashadi. Ba'zi bir olimlar esa soliq qonunchiligini buzganlik uchun moliyaviy, ma'muriy va jinoiy javobgarlikdan tashqari, intizomiy javobgarlikni ham ko'rsatib o'tishadi.

Soliqlar bilan doimo birga yuradigan tushuncha soliqqa oid huquqbuzarlikdir. "Huquqbuzarlik – shaxsga, mulkka, davlatga yoki umuman jamiyatga zarar yetkazuvchi ijtimoiy xavfli, aybli, huquqqa zid harakatdir" [14].

Ko'plab huquqshunos olimlar huquqbuzarlik tushunchasi bilan bir qatorda, soliq huquqbuzarligi tushunchasiga ham o'z ta'riflarini berishgan. Masalan, huquqshunos olim L.B. Xvan o'zining soliq huquqi darsligida soliq huquqbuzarligi tushunchasini shunday ta'riflaydi: "Soliq huquqbuzarligi uchun huquqning turli sohasi qonunchilik hujjatlarining me'yorlari tomonidan yuridik javobgarlik ko'zda tutilgan, qonunchilik me'yorlarining bajarilmasligi yoki keraklicha bo'lmagan tarzda bajarilishida ifodalangan huquqqa xilof, aybdor qilmish (harakat, harakatsizlik)" [15].

V.A. Prokayev, T.A. Ilyushnikova va M.S. Esipovalarning fikricha, to'lash yoki to'lashdan bo'yin tovlash natijasi baribir soliq solish obyektlari, soliqlar miqdori, jismoniy yoki yuridik shaxs maqomi, tadbirkorlik faoliyatini amalga oshirayotganligiga bog'liq bo'lib, eng muhim jihat idrok etilgan javobgarlik darajasidir [16].

V.V. Kuzmenko, D.M. Bondarev va V.A. Molodixning fikricha, soliq to'lashdan bo'yin tovlashning kuchayishi jamiyatning strategik, siyosiy va iqtisodiy manfaatlariga tahdid solishi mumkin. Bu tadbirkorlik subyektlari va aholi tomonidan soliqqa oid huquqbuzarliklarning oldini olishning samarali vositalarini izlashni taqozo qiladi [17].

Soliqqa oid huquqbuzarlikda ham barcha huquqbuzarliklar uchun umumiy bo'lgan qilmishning huquqqa xilofligi, aybning mavjudligi, qilmishning jazoga sazovorligi kabi belgilarni ko'rishimiz mumkin.

Qilmishning huquqqa xilofligi sodir etilgan qilmishning soliq qonunchiligi norma-

lari bilan taqiqlanganini ifodalaydi. Agarda sodir etilgan qilmish jinoyat qonuni bilan taqiqlangan bo‘lsa, qilmishning huquqqa xilofligi jinoyat belgilaridan birini ifodalaydi yoki sodir etilgan qilmish ma’muriy tartibni belgilovchi qonun bilan taqiqlangan bo‘lsa, qilmishning huquqqa xilofligi ma’muriy huquqbuzarlik belgilaridan biri sifatida qaraladi.

Ayb – bu soliq huquqbuzarligi sodir etgan shaxsning sodir etgan qilmishi va uning oqibatiga bo‘lgan ruhiy munosabatini ifodalovchi soliq huquqbuzarligining belgisidir. Soliq huquqi, ma’muriy huquq va jinoyat huquqida ham aybning qasd va ehtiyotsizlik shakllari bor bo‘lib, ularni aniqlashda umumiylik mavjud.

Qilmishning jazoga sazovorligi – bu soliq huquqbuzarligi sodir etgan shaxsning g‘ayriqonuniy aybli qilmishi uchun qonunchilikda jazo mavjud ekanligini ifodalaydi.

Soliq huquqbuzarligining tizimi, odatda, soliq turlariga ko‘ra emas, balki huquqbuzarlik obyektlari, ularning xususiyati va yo‘nalishiga qarab quriladi. Shuni inobatga olgan holda, soliq huquqbuzarliklarini quyidagi turlarga bo‘lishimiz mumkin: davlatning moliyaviy manfaatlariga qarshi huquqbuzarliklar; soliq to‘lovchilarning erkinliklari, huquqlari va qonuniy manfaatlariga qarshi huquqbuzarliklar; faoliyati soliq solish bilan bog‘liq bo‘lgan davlat organlarining faoliyat ko‘rsatishi bilan bog‘liq huquqbuzarliklar; soliq tizimini ma’muriylashtirish bilan bog‘liq huquqbuzarliklar [15, 118-b.].

Shuni aytish kerakki, soliq sohasidagi ijtimoiy munosabatlar doirasi kengayishi munosabati bilan soliq huquqbuzarligi obyektlari va o‘z navbatida, soliq huquqbuzarligi turlari ham ko‘payib borishi mumkin. Shu sababli soliq huquqbuzarligi faqat yuqorida keltirilgan turlardan iborat, degan qarash o‘zini ko‘p ham oqlamaydi. Chunki soliq munosabatlari doimiy ravishda o‘zgarib turadi. Bu esa ba’zi qilmishlarning soliq huquqbuzarligi turlaridan olib tashlanishi yoki ba’zilarini soliq huquqbuzarligi turlariga kiritilishiga sabab bo‘ladi.

Biz esa yuridik javobgarlikning mazmunini quyidagicha yoritishimiz mumkin, ya’ni qonun bilan qo‘riqlanadigan davlat vakolatli organlari yoki uning mansabdor shaxslari tomonidan aybdor shaxsga nisbatan qo‘llaniluvchi davlat majburlov choralaridir.

Mahalliy huquqshunos olimlardan L.B. Xvan mazkur javobgarlikning mohiyatini davlat tomonidan soliq haqidagi qonun hujjatlari qoidabuzarlariga nisbatan soliq sohasidagi huquqiy munosabatlarda qo‘llaniladigan ta’sir etishning huquqiy choralari kompleksidan iborat deb hisoblaydi [15,116-b.].

R.T. Berdiyarov va Z.N. Qurbonovlar ham mazkur tushuncha xususida o‘z fikrlarini bildirish bilan birga, uning quyidagi xususiyatlarini ham keltirib o‘tishgan: soliq huquqiy normalarining buzilishi oqibatida yuzaga keladi; aybli harakat yoki harakatsizlik natijasida yuzaga kelib, sanksiyalarni qo‘llashni yuzaga keltiradi; sodir etilgan qilmish va huquqbuzarga nisbatan davlat nomidan yakuniy qaror qabul qilinib, tegishli protsessual shaklda amalga oshiriladi [18].

Bizningcha, soliq qonunchiligini buzganlik uchun yuridik javobgarlik – bu, avvalo, soliq qonunchiligi bilan muhofaza qilinuvchi ijtimoiy munosabatlarga aybdor shaxs tomonidan u yoki bu tarzda zarar yetkazilishi oqibatida unga nisbatan davlat organlari yoki ularning mansabdor shaxslari tomonidan qo‘llaniluvchi majburlov choralaridir.

Soliq qonunchiligini buzganlik uchun yuridik javobgarlik davlat majburlovining tarkibiy qismi bo‘lgani holda, uning barcha belgilarini o‘zida aks ettiradi va shuningdek, o‘zining quyidagi alohida xususiyatlariga ham ega bo‘ladi:

- soliq qonunchiligini buzganlik uchun yuridik javobgarlikka soliq sohasidagi qonun buzilishi sabab bo‘ladi;

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- aybdorlarga nisbatan ma'muriy, moliyaviy hamda jinoiy javobgarlikni qo'llashni nazarda tutadi;

- tegishli qonun buzilishi uchun javobgarlikka tortishning alohida tartibining belgilanganligi va boshqalar.

Shunday qilib, soliq qonunchiligini buzganlik uchun yuridik javobgarlikning mohiyati davlat tomonidan soliq haqidagi qonun hujjatlarini buzganlik uchun aybdorlarga nisbatan tegishli ta'sir choralari qo'llashni nazarda tutuvchi huquqiy choralar yig'indisidan iboratdir. Soliq qonunchiligini buzganlik uchun yuridik javobgarlikka tortishda qilmishning ijtimoiy xavfli xususiyati, ayblilik darajasi, yetkazilgan zarar miqdori, qonunda belgilangan tegishli og'irlashtiruvchi va yengillashtiruvchi holatlarni e'tiborga olgan holda, quyidagi ta'sir choralari tayinlanadi: ma'muriy javobgarlik, moliyaviy javobgarlik va jinoiy javobgarlik.

Soliq qonunchiligini buzganlik uchun yuridik javobgarlikka soliq to'lovchilar, xususan, fuqarolar, yakka tartibdagi tadbirkorlar, yuridik shaxslar va ularning mansabdor shaxslari tortiladi.

Shuningdek, davlatning vakolatli organlari hamda ularning mansabdor shaxslari ham soliq qonunchiligini buzganlik uchun yuridik javobgarlik subyekti bo'lishi mumkin [18, 241-b.].

Mamlakatimiz qonunchiligida, xususan, O'zbekiston Respublikasining Soliq kodeksi, Ma'muriy javobgarlik to'g'risidagi kodeks, Jinoyat kodeksida bu xususida normalar belgilangan. Masalan, O'zbekiston Respublikasi Soliq kodeksining 30-bobida davlat soliq xizmati organlarining qarorlari, ular mansabdor shaxslarining harakatlari va harakatsizligi ustidan shikoyat berish tartibi kafolatlangan bo'lib, unga ko'ra, har bir soliq to'lovchi davlat soliq xizmati organlarining qarorlari, ular mansabdor shaxslarining harakatlari yoki harakatsizligi ustidan shikoyat berish uchun davlat soliq xizmatining yuqori turuvchi organi (yuqori turuvchi mansabdor shaxsi) yoki sudga murojaat qilish huquqiga ega.

Xulosalar

Slippery Slope Framework (sirpanchiq qiyalik modeli) nazariyasi vakillari E. Kirchler, E. Hoelzl, I. Wahl ta'kidiga ko'ra, soliq intizomi soliq organlari va soliq to'lovchilar o'rtasidagi munosabatga bog'liqligi, agar ular o'rtasida "politsiya va o'g'ri" munosabati bo'lsa, soliqchilar soliq to'lovchilarni doim "o'g'ri" sifatida soliq to'lashdan bo'yin tovlashi va tekshirib turish lozim. Soliq to'lovchilar esa soliq organlari (politsiya) tomonidan doim ta'qib ostida ekanligi uchun yashirinishga harakat qiladi. Ushbu holatda taraflar o'rtasida hurmat yoki ijobiy munosabat bo'lmaydi, aksincha, soliq to'lovchi "ratsional o'lchov", ya'ni soliqdan bo'yin tovlashning daromadi va xarajatlarini o'lchab ko'rish prinsipida ishlaydi. Ushbu nazariya vakillari soliq organlari va soliq to'lovchilar "xizmat va mijoz" prinsipida ishlashi lozimligi, soliq organi soliq to'lovchilarga xizmat ko'rsatishi, natijada soliq to'lovchilar soliq tizimining adolatli ishlayotganligi va ishonganligi sababli ixtiyoriy soliqlarni to'lashga o'tishini ta'kidlaydi. Shuningdek, soliq to'lovchilarning ixtiyoriy to'lash prinsipi xarajatli bo'lgan soliq tekshiruvlarini kamaytirishi hamda "tekshiruvchilarni tekshirish" kabi ortiqcha xarajatlardan voz kechishga olib kelishini ta'kidlashadi [19].

Taxpayers service approach (Soliq to'lovchilar xizmati) nazariyasi vakillari G.P. Jenkins, E.N. Forlemu The Conventional Approach (An'anaviy yondashuv) sifatida soliq ma'muriyatchiligining soliq intizomiga erishishda qo'llaniladigan ikki usuli: birinchisi – tasodifiy tekshiruv va jarimalar orqali; ikkinchisi – soliq to'lovchilarning barcha deklaratsiyalarini ma'muriy baholash orqali soliq to'lovchilarning o'zini o'zi baholash bilan ixtiyoriy to'lov intizomiga erishish masalasini tahlil qilib, soliq to'lovchilarning o'z-o'zini baholash va ularga xizmat ko'rsatish prinsipini ilgari surishadi. Ushbu nazariyaning

mohiyati soliq intizomiga rioya qilish xarajatlari soliq intizomiga rioya qilmaslik xarajatlaridan oz bo‘lishi, buning uchun jarayonlarni elektronlashtirish, soliq qoidalarini soddalashtirish, soliq to‘lovchilarni o‘qitish va ularga soliqlarni hisoblash hamda to‘lashda yordam ko‘rsatish, onlayn axborot almashinuvi, to‘lovlarni soddalashtirishdan iborat [20].

Umuman, yuqoridagilarga muvofiq, soliq qonunchiligini buzganlik uchun yuridik javobgarlik umumhuquq nazariyasida yuridik javobgarlik shakllaridan mustaqil, alohida moliyaviy-iqtisodiy javobgarlik shaklidagi davlat majburlovining tarkibiy qismi bo‘lgani holda, uning barcha belgilarini o‘zida aks ettiradi. Shunga ko‘ra, u o‘zining quyidagi alohida xususiyatlariga ham ega bo‘ladi. Bular:

– soliq qonunchiligini buzganlik uchun yuridik javobgarlikka soliq sohasidagi qonun buzilishi sabab bo‘ladi;

– sodir etilgan qonun buzilishi natijasida davlatning moliyaviy-iqtisodiy manfaatlariga zarar yetgan bo‘lishi lozim;

– aybdor shaxslarga nisbatan ma’muriy, moliyaviy hamda jinoiy javobgarlikni qo‘llashni nazarda tutadi;

– tegishli jazo choralari davlat va uning maxsus vakolatli organlari yoki mansabdor shaxslari tomonidan protsessual tartibda qo‘llaniladi va boshqalar.

Soliq qonunchiligini buzganlik uchun yuridik javobgarlikka tortishning tavsiflovchi xususiyatlari quyidagilarda namoyon bo‘ladi:

– tegishli javobgarlik choralari yuridik va jismoniy shaxslarga nisbatan birdek qo‘llaniladi;

– ularga nisbatan tegishli javobgarlikning qo‘llanilishi soha qonunchiligi barqarorligini ta’minlash, shuningdek, soliqlarni to‘lash intizomiga rioya etishga qaratiladi;

– tegishli tartibda qo‘llaniluvchi moliyaviy, ma’muriy hamda jinoiy jazo choralari mazkur soha qonunchiligi bilan belgilanadi;

– tegishli javobgarlik uchun belgilangan tartibdagi davlat majburlov choralari maxsus vakolatli davlat organlari va ularning mansabdor shaxslari yoki sud tomonidan qo‘llaniladi;

– tegishli javobgarlik uchun belgilangan davlat majburlov choralarining asosiy maqsadi – soliq qonun hujjatlariga qat’iy amal qilish, soliqlar va yig‘imlarni davlat byudjeti hamda belgilangan maqsadli jamg‘armalariga to‘liq, o‘z vaqtida kelib tushishini ta’minlash;

- tegishli javobgarlik uchun belgilangan davlat majburlov choralari qo‘llashning asosiy tartibi ma’muriy va jinoiy-protsessual normalarda belgilab qo‘yilganligi va boshqalar.

Tashkil etish, ro‘yxatdan o‘tkazish, ustav fondini tashkil etishning o‘ziga xos tartibi, maxsus operatsiyalarni amalga oshirishda litsenziyaning zarurligi, iqtisodiyotdagi o‘rni va ahamiyati jihatidan bank soliq bo‘yicha javobgarlikning alohida subyekti [21].

Ta’kidlash joizki, soliqqa oid huquqbuzarlik, o‘z navbatida, soliqqa oid javobgarlikning faktik asosidir. Ammo amaldagi Soliq kodeksida soliqqa oid javobgarlik tushunchasining huquqiy mazmuni keltirilmagan.

Bizningcha, amaldagi Soliq kodeksida unga quyidagicha ta’rif berilgani holda, mazmuniy ifodasi keltirilishi maqsadga muvofiqdir. Ya’ni soliqqa oid javobgarlik soliq to‘g‘risidagi qonun hujjatlarini buzish natijasida soliqqa oid huquqbuzarlikni sodir etgan shaxsga nisbatan davlat vakolatli organlari va ularning mansabdor shaxslari tomonidan soliq to‘g‘risidagi qonun hujjatlarida nazarda tutilgan sanksiyalar asosida davlat majburlov choralarini qo‘llashdir.

Yuridik javobgarlikning mazkur ko‘rinishi mohiyati ham davlat tomonidan soliq haqidagi qonun hujjatlarini buzganlik uchun aybdorlarga nisbatan tegishli ta’sir choralari qo‘llashni nazarda tutuvchi huquqiy choralar yig‘indisidan iboratdir. Bunday javobgarlikka tortishda qilmishning ijtimoiy xavfli xususiyati, ayblilik darajasi, yetkazilgan zararning miqdori, qonunda belgilangan tegishli og‘irlashtiruvchi va

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yengillashtiruvchi holatlarni e'tiborga olgan holda, mamlakatimizning amaldagi qonunchiligiga muvofiq, quyidagi ta'sir choralari tayinlanadi:

– moliyaviy javobgarlik;
– ma'muriy javobgarlik;
– jinoiy javobgarlik.

Ushbu ta'sir choralarini qo'llashning huquqiy asoslarini mamlakatimizda amaldagi Soliq kodeksi, Ma'muriy javobgarlik kodeksi, Jinoyat kodeksi va boshqalar tashkil etgani holda, ularda javobgarlikka tortishning huquqiy mexanizmi belgilangan.

Fikrimizcha, O'zbekiston Respublikasining Ma'muriy javobgarlik to'g'risidagi kodeksiga "O'zbekiston Respublikasi Davlat soliq qo'mitasining yagona avtomatlashtirilgan axborot tizimi orqali qayd etilgan hollarda, huquqbuzarlikning takroriyligi hisobga olinmaydi" degan normani kiritish maqsadga muvofiq. Mazkur normaning kiritilishi axborot tizimi orqali aniqlangan soliqqa oid huquqbuzarlik yuzasidan ma'muriy bayonnoma rasmiylashtirilmasdan, to'g'ridan-to'g'ri elektron qaror chiqarilib, soliq to'lovchilarning shaxsiy kabinetlari orqali yuborgan holda, ortiqcha bosqichlar bekor qilinadi va ko'rib chiqish muddatlarini qisqartirish orqali ish yuritish tartibi soddalashtiriladi. Umuman olganda, soliqqa oid huquqbuzarliklar bo'yicha ishlarni yuritishda inson omilini kamaytirib, uning shaffofligini ta'minlaydi hamda davlat soliq xizmati organlarida korrupsiya holatlari va ma'muriy xarajatlarni kamaytirish imkonini beradi.

Fikrimizcha, O'zbekiston Respublikasining Ma'muriy javobgarlik to'g'risidagi kodeksining 164-moddasiga (Savdo yoki xizmat ko'rsatish qoidalarini buzish) tovarlar narxini oshirish yoki pasaytirishni belgilovchi quyidagi normani kiritish maqsadga muvofiq:

"164-modda. Savdo yoki xizmat ko'rsatish qoidalarini buzish.

"Tovarlar narxini oshirish yoki pasaytirish hamda ko'rsatilayotgan xizmatlar haqini naqd pul mablag'lari yoki plastik kartochkalar bo'yicha to'lash shakliga qarab, ularni sun'iy ravishda oshirish yoki pasaytirish bazaviy hisoblash miqdorining o'ttiz baravari miqdorida jarima solishga sabab bo'ladi".

Qayd etish lozimki, O'zbekiston Respublikasi Prezidentining 2017-yil 15-fevraldagi PQ–2777-sonli qarorida chakana savdo va xizmatlar ko'rsatish sohasidagi tadbirkorlik subyektlari sotilayotgan tovarlar narxi hamda ko'rsatilayotgan xizmatlar haqini naqd pul mablag'lari yoki plastik kartochkalar bo'yicha to'lash shakliga qarab, ularni sun'iy ravishda oshirgan yoki pasaytirgan taqdirda, bunday xatti-harakatlar plastik kartochkalar bo'yicha to'lovlarni qabul qilishda hisob-kitob terminallaridan foydalanish borasida o'rnatilgan tartibni buzish hisoblanadi va ularga nisbatan bazaviy hisoblash miqdorining 30 baravari miqdorida jarima solinishi belgilab qo'yilgan.

Muxtasar qilib aytganda, yuqoridagi tahlil va mulohazalar natijasida soliq qonunchiligini buzganlik uchun yuridik javobgarlik tushunchasining mazmuniy ifodasi, uning umumhuquq nazariyasidagi yuridik javobgarlikning boshqa ko'rinishlaridan moliyaviy-iqtisodiy javobgarlik tarzida mustaqil, alohida turi sifatidagi o'rni va boshqa jihatlari o'rganildi. Shuningdek, bayon etilganlarga muvofiq, soliq qonunchiligini buzganlik uchun yuridik javobgarlikka tortishni tavsiflovchi xususiyatlari quyidagilarda namoyon bo'ladi, deb hisoblaymiz:

– tegishli javobgarlik choralari yuridik va jismoniy shaxslarga nisbatan birdek qo'llaniladi;

– ularga nisbatan tegishli javobgarlikning qo'llanilishi soha qonunchiligi barqarorligini ta'minlash, shuningdek, soliqlarni to'lash intizomiga rioya etishga qaratiladi;

– tegishli tartibda qo'llaniluvchi moliyaviy, ma'muriy hamda jinoiy jazo choralari mazkur soha qonunchiligi bilan belgilanadi;

– tegishli javobgarlik uchun belgilangan tartibdagi davlat majburlov choralari maxsus vakolatli davlat organlari va ularning

mansabdor shaxslari yoki sud tomonidan qo'llaniladi;

– tegishli javobgarlik uchun belgilangan davlat majburlov choralarining asosiy maqsadi soliq qonun hujjatlariga qat'iy amal qilish, soliqlar va yig'imlarning davlat byudjeti hamda belgilangan maqsadli jamg'armalariga to'liq, o'z vaqtida kelib tushishini ta'minlash;

– tegishli javobgarlik uchun belgilangan davlat majburlov choralari qo'llashning asosiy tartibi ma'muriy va jinoiy-protsessual normalarda belgilab qo'yilganligi va boshqalar.

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WTO DISPUTE SETTLEMENT AND THE CHALLENGES AROUND IT

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Abstract. *The main issue considered in the present research work is the challenges that developing countries experience when participating in the Dispute Settlement Body (DSB) of the World Trade Organization (WTO). Developing countries and the least developed countries are faced with limitations of the DSB and, therefore, this research examines the most substantial aspects of these limitations. The current research discusses the financial and legal constraints encountered by developing countries and the least developed countries. This research also explains the need to ameliorate the Dispute Settlement Understanding (DSU). Moreover, the current work scrutinizes the disproportionate use of DSBs for developing countries. It is observed from WTO case law that rulings and proposals based on the DSU not only influence the parties of a dispute but also may impact a considerably broader group of countries. To maintain the progressive, foreseeable and liberal development of world trade, the DSB engages in resolving trade conflicts between the WTO member states. To reach this feasible goal, the integrity and impartiality among members should be increased.*

Keywords: *WTO, DSB, DSU, dispute settlement system, developing countries, least developed countries.*

NIZOLARNI JST BO'YICHA HAL QILISH VA MAVJUD MUAMMOLAR

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Annotatsiya. *Mazkur tadqiqot ishida rivojlanayotgan mamlakatlar Jahon Savdo Tashkilotining (JST) nizolarni hal qilish organida (DSB) ishtirok etish jarayonida duch kelayotgan muammolar tahlil qilingan. Rivojlanayotgan mamlakatlar va kam rivojlangan mamlakatlar DSB cheklovlariga duch keladi va shuning uchun ushbu cheklovlarni har jihatdan o'rganish muhim hisoblanadi. Xususan, mazkur ishda rivojlanayotgan mamlakatlar va kam rivojlangan mamlakatlar duch kelayotgan moliyaviy hamda huquqiy cheklovlar muhokama qilingan. Tadqiqotda, shuningdek, nizolarni hal qilish institutini soddalashtirish zarurati ham tushuntirib o'tilgan. Bundan tashqari, mazkur tadqiqotda rivojlanayotgan mamlakatlar DSBdan nomutanosib ravishda foydalanayotgani asoslab berilgan. JST sud amaliyotidan ko'rinib turibdiki, DSUga asoslangan qaror va takliflar nafaqat nizo tomonlari, balki ancha kengroq mamlakatlar guruhiga ham ta'sir qilishi mumkin. Jahon savdosining progressiv, tahlil qilinadigan va liberal rivojlanishini ta'minlash uchun DSB JSTga a'zo davlatlar o'rtasidagi savdo ziddiyatlarini hal qilish bilan shug'ullanadi. Amalga oshirilishi mumkin bo'lgan ushbu maqsadga erishish uchun a'zolar o'rtasida halollik va xolislikni oshirish zarur.*

Kalit so'zlar: *JST, DSB, DSU, nizolarni hal qilish tizimi, rivojlanayotgan mamlakatlar, kam rivojlangan davlatlar.*

УРЕГУЛИРОВАНИЕ СПОРОВ В РАМКАХ ВТО И СУЩЕСТВУЮЩИЕ ПРОБЛЕМЫ

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Аннотация. *В данной исследовательской работе анализируются проблемы, стоящие перед развивающимися странами в процессе участия в Органе по урегулированию споров (DSB) Всемирной торговой организации (ВТО). Развивающиеся страны и менее развитые страны сталкиваются с ограничениями DSB, поэтому важно подробно изучить эти ограничения. В частности, в исследовании обсуждаются финансовые и правовые ограничения, с которыми сталкиваются развивающиеся и менее развитые страны. Исследование также объясняет необходимость упрощения института разрешения конфликтов (DSU). Кроме того, в исследовании утверждается, что развивающиеся страны используют DSB непропорционально. Из прецедентного права ВТО следует, что постановления и предложения, основанные на DSU, не только влияют на стороны спора, но также могут влиять на значительно более широкую группу стран. Для поддержания поступательного, предсказуемого и либерального развития мировой торговли DSB занимается разрешением торговых конфликтов между государствами-членами ВТО. Для достижения этой реальной цели необходимо повысить честность и беспристрастность среди членов.*

Ключевые слова: *ВТО, DSB, DSU, система разрешения споров, развивающиеся страны, менее развитые страны.*

Introduction

Due to the rapid development of trade relationships, economic ties between countries are becoming increasingly paramount. In the worldwide economy, all countries across the globe are

interconnected, and international trade is a global force that affects each country in the world. In 1944, a conference on economic issues and smooth international trade cooperation among countries was held in New Hampshire. The conference contributed to the establishment of the General Agreement on Tariffs and Trade (hereinafter GATT) in 1947. To boost economic cooperation and curtail tariffs and other trade roadblocks in 1995, the GATT member states embraced the World Trade Organization (WTO) Agreement. During the WTO global tariff negotiation rounds, the negotiations in the Uruguay Round were particularly important [1].

WTO is one of the major international organizations and plays a vitally important role in international trade cooperation. The WTO established an effective dispute settlement institution that operates within the Dispute Settlement Body (hereinafter DSB). The DSB resolves international trade disputes of WTO Member states and is regulated by procedures outlined in the Understanding on Rules and Procedures (hereinafter DSU) [2]. Disputes regarding the legal rights and obligations of the states arising from the WTO Agreement are settled by the DSB. However, currently, a number of problems have appeared limiting the developing and least developed countries' (hereinafter DLDC) access to justice through the DSB and revealed the actual need to reform the dispute settlement system of the WTO.

The present research discusses and assesses the factors constraining DLDC participation in the WTO DSB. The formation of the WTO dispute settlement structure equipped both developing and less developed countries with a useful tool for resolving their trade disputes. However, concerns about the limitations of DLDC performance in the WTO have been raised, and researchers across the globe have conducted a myriad of studies. Therefore, this research aims to thoroughly investigate the most significant difficulties of the dispute resolution procedure used by DLDC, *i.e.*, the dearth of legal and financial sources, the expenses of lawsuits, retaliation, the implementation of the DSU, the length of the dispute settlement process and so on. The main objective of this research is to pinpoint the practical obstacles pertaining to dispute settlement and examine them through the prism of fairness.

Materials and methodology

The research methodology employed in this work is i) careful study of the current literature, research articles, books, WTO documents, and publications on dispute settlement related to DLDC and ii) the application of case law in this context. The dispute settlement arrangement of the WTO is discussed, and relevant case law is highlighted so issues related to practice can be better understood. This work also attempts to evaluate the indicated problems and reform suggested by scholars with respect to the participation of DLDC in the WTO dispute resolution process. Thus, the research analysis is theoretically paramount for understanding these issues by using a large dataset and crucial for understanding the shortcomings of the existing dispute settlement mechanism in practice. Moreover, this work is also believed to contribute to augmentation and will strengthen and enhance the existing knowledge of academia on the intricacies and plausible amelioration of dispute settlement in the WTO for DLDC.

Research findings

Development of International Trade Law

Until the twentieth century, many countries throughout the world promoted their own national industries by imposing tariffs on products imported from foreign countries. A tariff is defined as a tax on imported goods that increases the cost of the goods compared to those of local products. A tariff provides economically friendly revenue for the national government. At the

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beginning of the nineteenth century, some countries highlighted the need to reduce tariffs. The concept of *reciprocity* enabled countries to obtain equal advantages and maintain sustainable economic growth by reducing tariffs for each other's goods [3, p. 15]. The progressive development of free trade encouraged countries to negotiate for liberalized markets across the globe.

I) Evaluation of the GATT

Primarily, the GATT was an international trade contract signed on 27th October 1947; later, it became an international organization [4, p. 40]. Until 1960, GATT did not have any authority to implement tariffs and nontariff obstacles and was a small institution. More interestingly, only signatories of the GATT managed the structure, and the GATT did not consider any procedure to become a member. In 1995, the WTO treaty was initiated, and the GATT became a part of the organization.

The GATT envisaged unbiased and balanced free trade among members. The fundamental purpose of the GATT was to reduce tariffs and eliminate unfair trade practices. One of the basic features of the GATT was i) guidance for contracting parties and ii) special agreements on tariff reductions. There have been eight multilateral "rounds" on trade negotiations by the GATT to reduce tariffs and barriers (Table).

Table

Multilateral "rounds" on trade negotiations by the GATT to reduce tariffs and barriers

Geneva	1947
Annecy	1949
Torquay	1950
Geneva	1956
Dillon	1960-1961
Kennedy	1962-1967
Tokyo	1973-1979
Uruguay	1986-1994

Negotiations of the GATT were particularly aimed at tariff reduction. Admittedly, the objective of the Uruguay Round was to reduce nontariff barriers, and thus, it led to the formation of a completely new qualified international body, the WTO, on 15 April 1994 [5].

II) Review of the WTO

Numerous essential requisites and proposals clearly demanded the systematic formation of the WTO. The Uruguay Round negotiations led to the establishment of a new mechanism for healthier international trade regulation and dispute settlement. The foundation of the new trade organization, the WTO, was considered in negotiations related to the "Functioning of the GATT System". The WTO Agreement was embodied in the final agreement of the Uruguay Round and signed on 15th April 1994 in Marrakesh. The WTO Agreement became effective on 1st January 1995.

The WTO was founded as a new international organization with full legal capacity. The WTO is a legal body and has all required legal rights and immunities. The establishment of the WTO was an enormous leap to integrate world trade on a vast scale. It is true that the GATT 1947 was fully replaced by the WTO Agreement, and its basic function is to assist with "the implementation, administration, operation" and accomplish the subsequent ambition of the WTO Agreement [6]. There are three principal obligations of the WTO: 1) to offer a forum to negotiate existing and future issues among member states; 2) to ensure the proper functioning of the dispute settlement mechanism; and 3) to oversee the Trade Policy Review Mechanism and when necessary, collaborate with the World Bank and the International Monetary Fund.

Administrative bodies of the WTO:

1. Ministerial Conference;
2. General Council:

a) Dispute Settlement Body;
b) Trade Policy Review Body.

WTO Dispute Settlement Mechanism

a) WTO Dispute Settlement System

The WTO introduced dispute settlement mechanisms that were substantially different from those of the GATT. The system became less vulnerable to the influence of politics and more predictable due to the convergence of the "positive consensus" concept and rules-based mechanism of litigation [7]. In the Uruguay Round of Multilateral Trade Negotiations, the participants underlined the essence of the initiation of new dispute resolution system and strict compliance of the members' obligations under the WTO Agreement. Currently, the rational development of the global economy is based on a vigorous and vibrant binding system of resolving disputes under the auspices of the WTO.

The WTO DSB consists of Dispute Settlement Panels (hereinafter DSP) and the Appellate Body (hereinafter AB). In the first stage, the DSB is regarded as the "Consultations", while the DSP and AB are active in the judicial phase. The DSU outlines the provisions that regulate procedural aspects of the dispute settlement. [8] A trade lawsuit is filed by the DSB when one of the members of the WTO breaches its obligations by imposing new trade policy action and other members complain about it. Disputes filed by the DSB are mainly due to a breach of a deal. The WTO members agree to use multilateral system of dispute resolution rather than a unilateral system [9]. The DSU is designed to reduce the adverse effects of trade discords and alleviate international trade inequalities between richer and poorer states.

The DSU helps international trade systems eliminate uncertainties that might arise from trade-related governmental regulations and laws. Accordingly, the DSU provides a speedy, practical, reliable and rule-oriented approach to settle international trade disputes. [10] The DSB is an independent body that is effective and can impose presumable trade sanctions on non-implementing members. The DSB has the power to implement countermeasures against a member state that declines to enforce a decision. The AB of the DSB has the jurisdiction to formally inspect panel reports and has legal control over the implementation of panel decisions. To better comprehend the practice of the DSB, the following graphs illustrate the number of average active disputes per month (1995-2018) and annual disputes filed in the WTO, that are designated to a panel and the AB from 2008 to 2018:

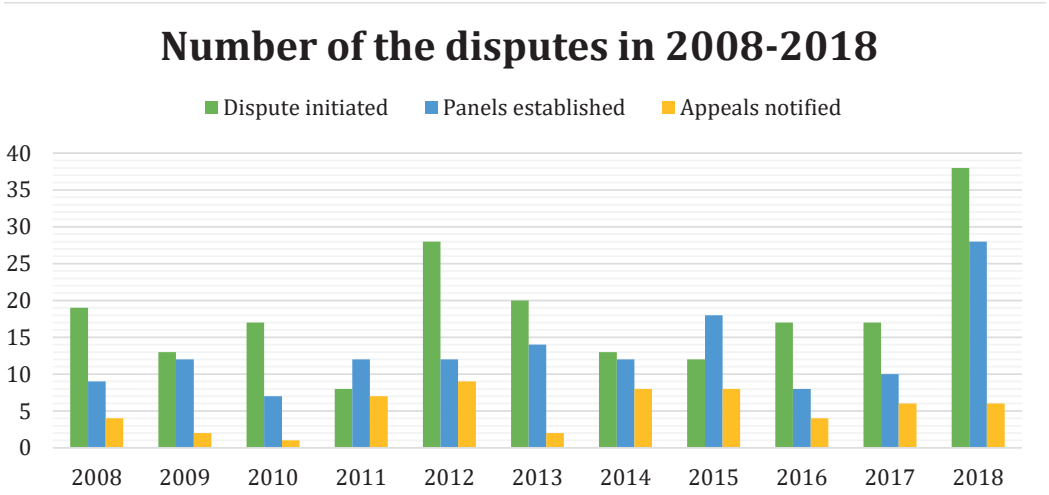

Figure 1. Number of disputes, panels initiated and notices of appeal in preliminary proceedings (1 January 2008 – 31 December 2018)*

* WTO dispute settlement statistics [11].

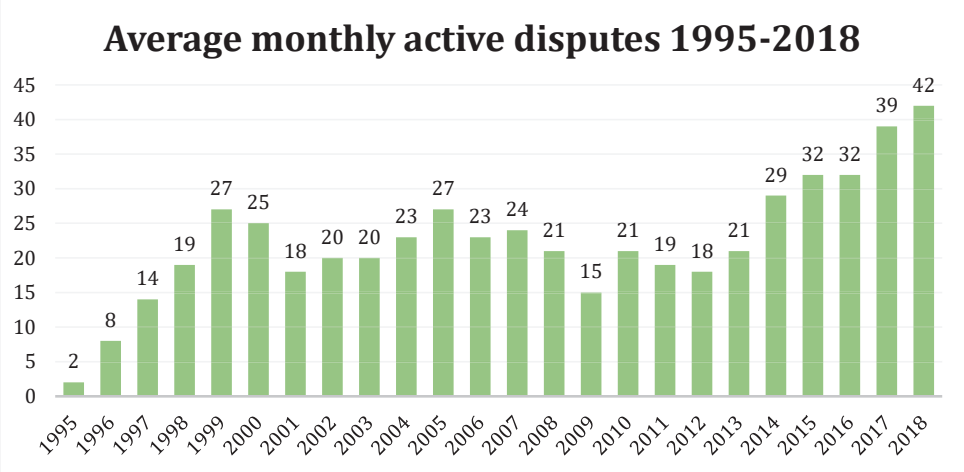

Figure 2. Annual average active disputes per month (1995-2018)*

* WTO dispute settlement statistics [12].

According to Article 3.3 of the DSU, the proper functioning of the DSB contributes to the effective operation of the WTO and ensures balance between member states. Article 3.7 of the DSU defines that the target of the dispute resolution procedure is to achieve mutually satisfactory settlement of the conflict. Article 17.4 of the DSU states that only parties of a dispute have the right to appeal panel reports [13]. The DSP and AB are tasked with the expeditious resolution of a particular dispute and should concentrate on settling the conflict. The *US-Shirts and Blouses* case overseen by the AB highlighted that resolving disputes "is fundamental feature of panel performance" [14]. The following graph 3 represents the volume of filed and completed cases per year.

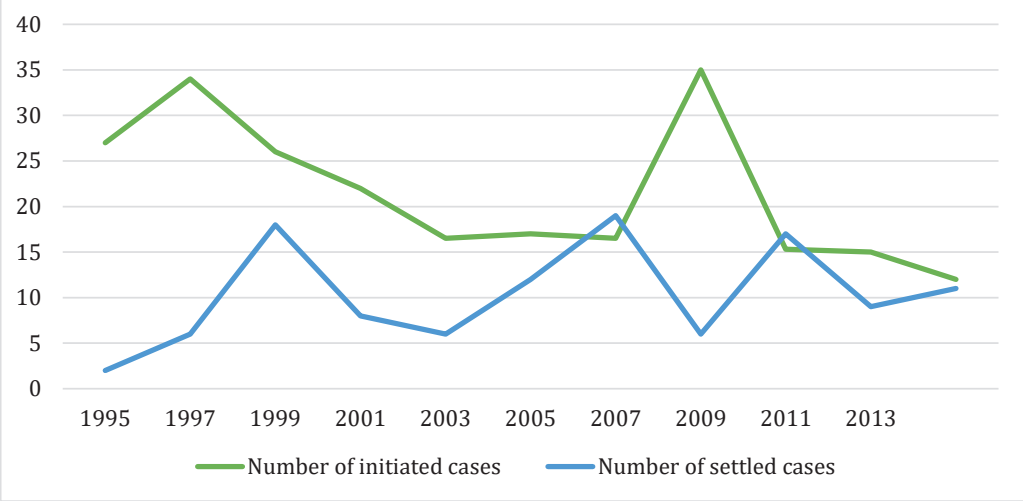

Figure 3. Annual number of filed and completed cases from 1995-2014

* WTO dispute settlement statistics [15].

Certainly, it is observed from WTO case law that rulings and proposals based on the DSU not only influence the parties of a dispute but also may impact a considerably broader group of countries. The AB stated in the *EC-Bananas* case that the "heightened interconnection of the universal economy is the result of member states stronger interest in applying WTO rules" [16]. Furthermore, the DSP stated that the scope of WTO

regulations affect not only member countries but also individuals. Consequently, the DSU should be used to settle controversies competently and expeditiously, and thus, WTO members can reinforce their rights and liabilities in covered transactions. To maintain the progressive, foreseeable and liberal development of world trade, the DSB engages in resolving trade conflicts between the WTO member states. To reach this feasible goal, the integrity and impartiality among members should be increased [17].

b) The status of DLDC in the WTO

A great number of member states of the WTO are DLDC; these countries are categorized as "developing countries" and "least developed countries". However, there is no specific interpretation of a "developing country". Thus, the countries can declare themselves "developed" or "developing" states [18]. At the same time, other countries can protest against the "developing country" status of some members.

Approximately 164 members of the WTO are classified as DLDC [19]. The international market is a crucial and powerful engine, especially for the advancement of DLDC. The economies of DLDC are highly diversified in terms of size, and these countries are improving and becoming a substantial market in the international economy. Therefore, DLDC have an influential role in the WTO. After the GATT mechanism led to the establishment of the WTO, DLDC experienced positive transformations. After the Uruguay Round, DLDC were granted a considerably stronger degree of guarantees within the structure of the WTO. Since that time, a number of DLDC have experienced intense prosperity and flourished by altering their economies, and this improvement may have been elated to the development of the WTO. Constructive changes in their economies ensured their active participation in international trade and strengthened their interests in the WTO. The line graph below demonstrates that from 1990 to 2008, the amount of exports from DLDC increased more rapidly than exports from advanced communities. Interestingly, from 2000 to 2008 the proportion of exports of developing countries increased approximately two-fold, while world exports expanded by merely 50% (Figure 4).

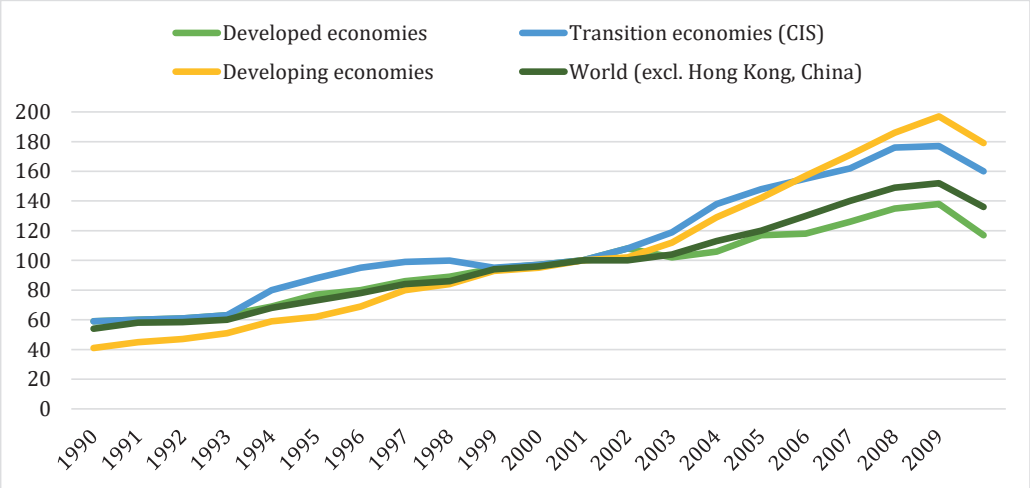

Figure 4. Total number of exports from 1990-2009*

* WTO Secretariat [20].

Trade exchanges between DLDC have climbed considerably, reaching 47% in 2008 compared to that in 1990 (Figure 5).

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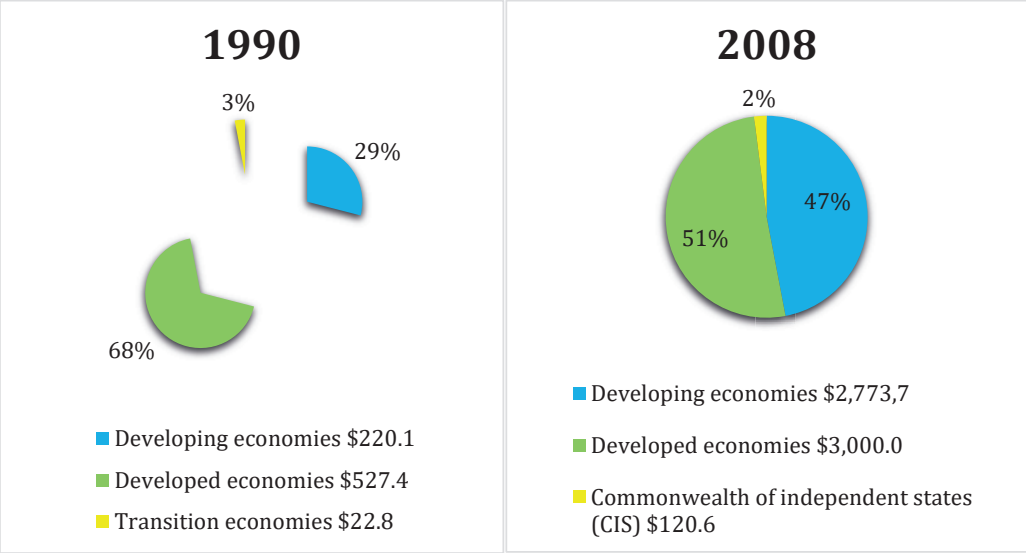

Figure 5. Destination of exports from developing countries (1990-2008) (billion dollars and percent)*

* WTO Secretariat [21].

Two-thirds of the WTO members are DLDC. Thus, the principal focus of the WTO should be to ensure that they receive an advantage by being part of the global market and multilateral business system. Accordingly, the WTO Agreement stated that "the demand for productive endeavors constructed to assure that developing countries, and specifically least developed states, get a stake in the expansion in universal trade which is compatible with the lacks of their economic progress." Therefore, according to DSU rules, the WTO engages in promoting the specific demands of DLDC. The DSU incorporates several arrangements that are undertaken to enhance the prospects for DLDC to gain favor of the WTO structure. For that reason, contemporary DSU procedures provide particular provisions for DLDC to benefit from.

It should be noted that even though there has been a progressive upsurge in international trade, not all DLDC equally contributed to it. Chart 6 below presents data on the DLDC share of global exports. From the graph, it is clear that Asia is the most significantly influential exporting territory in the developing world. Asia's share was approximately 10 percent in 1990 and this surged to 21 percent in 2009. Compared to Asia, Africa had the smallest percentage of global exports during the given period, with approximately 3 percent alone. Between 1990 and 2009, Latin America, the Middle East and Africa have not accomplished remarkable expansion in their proportion of global exports (Figure 6).

Conclusions

Overall, this research sought to highlight the most critical factors that constrain DLDC involvement in the dispute settlement procedure of the WTO. It should be noted that the DSB originally emerged as a rules-based dispute resolution mechanism, as low-income DLDC participation in the DSB is illustrated by their modest participation in the global market. The analytical evaluation indicates that virtually 85% of the disputes are made by developed states. Interestingly, DLDC participation constituted 15.7% of the DSB and represented merely 4.8% of the WTO members' trade exchange [23].

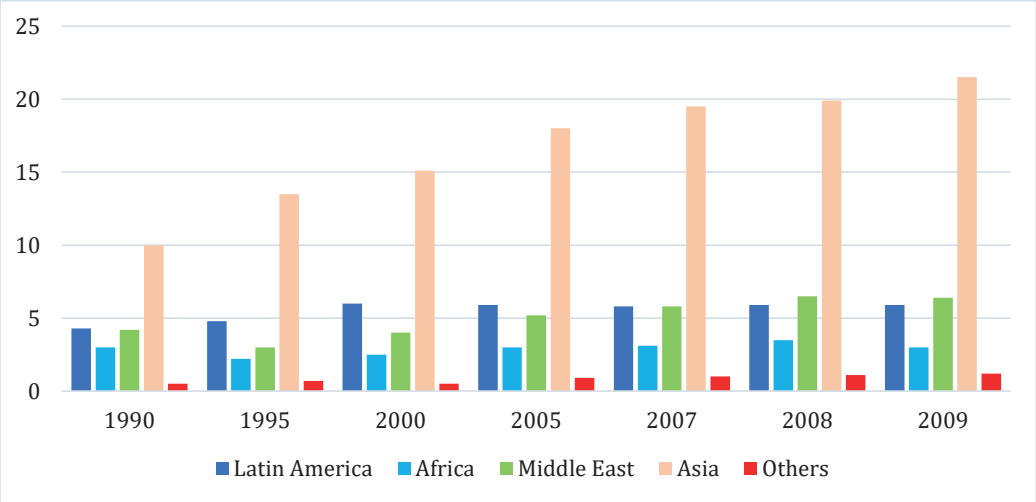

Figure 6. Regional contribution of the developing world to global exports*

* WTO Secretariat [22].

As we discussed above, there are several restraints on developing nations' participation in the DSB, and they have to deal with these vulnerabilities in the WTO. The DSB system should be more adjudicative and effective.

Notably, if a country has adequate legitimate reserves, has satisfactory retaliatory capability or is a member of the ACWL, it can protest against trade partners. The pressure of increasing amounts of established lawsuits might force the WTO to experience unusual difficulties, such as making the DSB accessible to all communities. The sixth Director General Roberto Azevêdo stated that "the structure is in extremely high demand" due to the volume of cases and the intricacy of each conflict arising [24]. A more powerful WTO can ensure the veracity of trade dispute settlement that could portray a key aspect of world trade practice.

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MITING, YIG‘ILISH VA NAMOYISHLAR O‘TKAZISHNI TARTIBGA SOLUVCHI NORMATIV-HUQUQIY HUJJATLARNING QIYOSIY TAHLILI

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Annotatsiya. *Demokratik jamiyatda yig‘inlar tashkil etish huquqi fuqarolarning asosiy siyosiy huquqlaridan biri bo‘lib, fuqarolarning demokratik boshqaruvda ishtirok etishining muhim kafolati hisoblanadi. Yig‘inlarning miting, yig‘ilish, namoyish, ko‘cha yurishi, piket, fleshmob va boshqa turlari bo‘lib, fuqarolar ularni tashkil etish orqali o‘z fikrlarini erkin namoyon etadilar. Bundan tashqari, fuqarolar ushbu tadbirlar orqali mamlakat siyosiy, iqtisodiy, ijtimoiy va madaniy hayotining turli masalalari bo‘yicha talab va takliflarni ilgari surishlari ham mumkin. Bugungi kunda O‘zbekiston Respublikasi Konstitutsiyasi bilan kafolatlangan mitinglar, yig‘ilishlar va namoyishlarni amalga oshirish huquqini samarali ro‘yobga chiqarish tartibini belgilovchi normativ-huquqiy hujjatning mavjud emasligi, shu o‘rinda miting, yig‘ilish va namoyishlarni o‘tkazish tartibi qonunchilikda belgilanmaganiga qaramasdan, mazkur tadbirlarni o‘tkazganligi uchun O‘zbekiston Respublikasi Jinoyat kodeksining 217-moddasi, Ma’muriy javobgarlik to‘g‘risidagi kodeksning 201-202-moddalariga asosan, javobgarlik belgilanganligi holatlari qonunchilikda bo‘shliq mavjudligini ko‘rsatmoqda. Mazkur ishda miting, yig‘ilish va namoyishlar o‘tkazishni tartibga soluvchi xalqaro va milliy normativ-huquqiy hujjatlar atroflicha o‘rganilgan. Bugungi kundagi milliy qonunchilik tomonidan miting, yig‘ilish va namoyishlar o‘tkazish huquqining qamrovi va kafolati, javobgarlik masalasining ahvoli tadqiq qilingan. Mamlakatimizda miting, yig‘ilish va namoyishlarni tartibga soluvchi qonunchilik yuzasidan olimlar va ekspertlar fikrlari, shuningdek, xorijiy davlatlar qonunchiligi qiyosiy tahlil qilinib, xulosalar berilgan hamda mamlakatimizda miting, yig‘ilish va namoyishlar o‘tkazishni tartibga soluvchi normativ-huquqiy hujjatning qabul qilinishi bugungi kunning dolzarb muammosi ekanligi yoritib berilgan.*

Kalit so‘zlar: *konstitutsiya, yig‘ilish o‘tkazish erkinligi, xalqaro normativ-huquqiy hujjatlar, xorijiy davlatlar qonunchiligi, Jinoyat kodeksi, Ma’muriy javobgarlik to‘g‘risidagi kodeks.*

СРАВНИТЕЛЬНЫЙ АНАЛИЗ НОРМАТИВНО-ПРАВОВЫХ АКТОВ, РЕГУЛИРУЮЩИХ ПРОВЕДЕНИЕ МИТИНГОВ, СОБРАНИЙ И ДЕМОНСТРАЦИЙ

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Аннотация. *Право на организацию собраний в демократическом обществе является одним из основных политических прав граждан и важной гарантией участия граждан в демократическом управлении. Граждане, организуя митинги, собрания, демонстрации, шествия, пикеты, флешмобы и другие виды массовых собраний, могут свободно демонстрировать свои идеи. Сегодня отсутствует нормативный правовой документ, определяющий порядок эффективной реализации права на проведение митингов, собраний и демонстраций,*

гарантированного Конституцией Республики Узбекистан, кроме того, установлена ответственность, в соответствии со статьей 217 Уголовного кодекса Республики Узбекистан, статьями 201, 202 Кодекса об административной ответственности, за проведение данных мероприятий, что указывает на наличие несоответствия в законодательстве. В исследовании были тщательно изучены международные и национальные нормативные правовые акты, регулирующие проведение митингов, собраний и демонстраций. Были исследованы ситуация с охватом и гарантией права на митинги, собрания и демонстрации в соответствии с современным национальным законодательством, а также вопрос об ответственности. Сравнительным методом проанализированы мнения ученых и экспертов о законодательстве, регулирующем митинги, собрания и демонстрации в нашей стране, а также законодательство зарубежных стран. Были сделаны выводы о том, что принятие в нашей стране нормативно-правового документа, регулирующего проведение митингов, собраний и демонстраций, является актуальной проблемой сегодняшнего дня.

Ключевые слова: *Конституция, свобода собраний, международные нормативно-правовые акты, законодательство зарубежных стран, Уголовный кодекс, Кодекс об административной ответственности.*

COMPARATIVE ANALYSIS OF REGULATORY LEGAL ACTS REGULATING THE HOLDING OF RALLIES, MEETINGS AND DEMONSTRATIONS

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Abstract. *The right to organize meetings in a democratic society is one of the basic political rights of citizens and is an important guarantee of citizens' participation in democratic governance. Citizens organizing rallies, meetings, demonstrations, processions, pickets, flash mobs, and other types of mass gatherings freely demonstrate their ideas. Today, although there is no regulatory legal document defining the procedure for the effective exercise of the right to organize rallies, meetings, and demonstrations guaranteed by the Constitution of the Republic of Uzbekistan, this responsibility is established following the article 217 of the Criminal Code of the Republic of Uzbekistan, and articles 201, 202 of the Code of Administrative Responsibility. Organizing these events indicate the presence of inconsistencies in legislation. In the course of this work, international and national regulatory legal acts regulating the organization of rallies, meetings, and demonstrations have been thoroughly studied. The situation with the coverage and guarantee of the right to rallies, assemblies, and demonstrations under modern national legislation, as well as the issue of responsibility has been investigated. The opinions of scientists and experts on the legislation regulating rallies, meetings, and demonstrations in our country, and the legislation of foreign countries, have been comparatively analyzed. Conclusions have been drawn that the adoption of a regulatory document managing the organization of rallies, meetings, and demonstrations in our country is an urgent problem today.*

Keywords: *Constitution, freedom of assembly, international normative legal acts, legislation of foreign countries, Criminal Code, Code of Administrative Responsibility.*

Kirish

Yig'inlarni amalga oshirish erkinligini huquqiy tartibga solish masalasi bugungi kunda ham o'z dolzarbligini yo'qotgani yo'q. Miting, yig'ilish, namoyish, ko'cha yurishlari va piketlar o'tkazish har bir demokratik davlat fuqarosining huquqiy statusi elementi hisoblanadi. Fuqarolarning siyosiy huquqlaridan biri bo'lgan miting, yig'ilish va namoyishlar o'tkazish konstitutsion huquq

hisoblanadi va fuqarolar mazkur huquqdan mamlakatning ijtimoiy-siyosiy hayotida yuz berayotgan jarayonlar hamda umumiy manfaatlar bilan bog‘liq muammolarni muhokama qilish, hukumat siyosatini qo‘llab-quvvatlash yoki unga qarshi fikr bildirish, ijtimoiy hayotning u yoki bu masalalarida o‘z pozitsiyasini ifodalashda foydalanadi.

Shu bilan bir qatorda, miting, yig‘ilish, namoyish, ko‘cha yurishlarining ko‘chalar, maydonlar, jamoat joylarida amalga oshirilishi fuqarolar va transport vositalari harakatlanishi hamda jamoat tartibini saqlashda qiyinchiliklarni keltirib chiqarishi mumkinligi bilan xarakterlanadi.

Material va metodlar

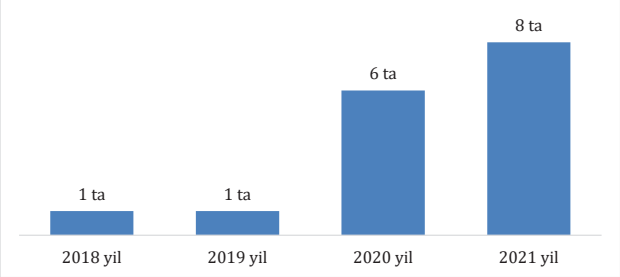
Yig‘inlar o‘tkazish insonning asosiy huquqlaridan biri bo‘lib, yakka yoki bir guruh shaxslar, birlashmalar va tashkilotlar ishtirokida amalga oshirilishi bilan tavsiflanadi. Shu o‘rinda yig‘inlar bir qator maqsadlarga, jumladan, ozchilikning fikri yoki noroziligini bildirish, madaniyatni saqlab qolish va rivojlantirishga xizmat qiladi. Yig‘inlar bir guruh insonlarning mushtarak manfaatlarini namoyon etish vositasi hisoblanadi [1, 15-b.].

Miting, yig‘ilish va namoyishlar – bu fuqarolarning siyosiy-ijtimoiy yoki iqtisodiy muammolarini hal etish uchun qilingan bir-birini to‘ldiruvchi tushunchalardir. Uni o‘tkazish madaniyati har bir xalqning milliy, diniy dunyoqarashi va ijtimoiy rivojlanish qonuniyatlari bilan bog‘liq bo‘lib, tarixiy davlatchilik tajribasini namoyon etadi. Bunda millatning dini, urf-odatlari, siyosiy ongi, davlatning rivojlanish bosqichi muhim o‘rin tutadi [2, 590-b.].

Tadqiqot natijalari

So‘nggi yillarda mamlakatimizda miting, yig‘ilish va namoyishlar o‘tkazish tartibi qonun bilan tartibga solinmaganiga qaramasdan, ularni amalga oshirish tendensiyasi ortib bormoqda.

O‘tkazilgan tahlillar natijasida miting, yig‘ilish va namoyishlarni o‘tkazish bilan bog‘liq jinoiy holatlar soni 2018-yilda 1 ta, 2019-yilda 1 ta, 2020-yilda 6 ta hamda 2021-yilda 8 tani tashkil etishi ma’lum bo‘ldi (rasm). Shuningdek, birgina 2021-yil davomida miting, yig‘ilish va namoyishlarni o‘tkazish tartibini buzish bilan bog‘liq ma’muriy huquqbuzarliklar soni esa 386 tani tashkil etgan.



Rasm. 2018–2021-yillarda miting, yig‘ilish va namoyishlar bilan bog‘liq jinoiy holatlar dinamikasi

Shuningdek, 2021-yilning o‘zidagina Internet ijtimoiy tarmoqlarida shov-shuvga sabab bo‘lgan bir qator miting, yig‘ilish va namoyishlar amalga oshirilganini ko‘rishimiz mumkin, jumladan:

– 2021-yilning 15-yanvar kuni 200 ga yaqin fuqaro tomonidan Qashqadaryo viloyati Qarshi shahar hokimligi tomonidan mingga yaqin mevali daraxtlar kesilgani yuzasidan norozilik bildirilib, avtomobil qatnov yo‘li to‘sib qo‘yilgan [3];

– 2021-yilning 28-mart kuni bloger Miraziz Bazarov anime (yapon animatsiyasi) va K-pop (koreys pop-musiqasi) muxlislarini ijtimoiy tarmoqlar orqali Toshkent shahridagi Amir Temur xiyobonida yig‘ilishiga chaqirganlik holatiga qarshi noqonuniy miting o‘tkazilgan [4];

– 2021-yilning 6-aprel kuni bir guruh fuqarolar yaylovlarning chorva mollari uchun xususiylashtirib berilayotganidan norozi bo‘lib, o‘z podasini Samarqand viloyatining Nurobod tumani hokimligi binosi oldiga haydab kelishgan [5];

– 2021-yilning 21-aprel kuni Qashqadaryo viloyatining Chiroqchi tumanida 1-sinf-

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da o‘qiydigan o‘quvchi qizning YTH oqibatida vafot etganligi oqibatida 23-aprel kuni bir guruh ayollar tomonidan Qarshi-Samarqand yo‘lining Xo‘jaobod qishlog‘i hududidan o‘tuvchi qismi norozilik tariqasida to‘sib qo‘yilgan [6];

– 2021-yilning 15-may kuni Toshkent viloyatining Chirchiq shahar hokimligi binosi yaqinida ish haqlari to‘lanmagan quruvchilar norozilik bildirib, namoyishga chiqqan [7];

– 2021-yilning 11-iyun kuni Navoiy viloyati Navbahor tumani “Xalovat Tepa” MFYda yashovchi fuqarolar tomonidan ularning noqonuniy ravishda olib qo‘yilgan chorva mollari va mol-mulkini qaytarib berish yuzasidan “Qalqon ota” qo‘rg‘oni hududidan o‘tadigan avtomobil qatnov yo‘li to‘sib qo‘yilgan [8];

– 2021-yilning 5-iyul kuni 13 nafar fuqaro tomonidan Qashqadaryo viloyati Chiroqchi tumanida elektr ta’minoti bilan bog‘liq muammoni hal qilish yuzasidan “Ayratom” stansiyasida “Afrosiyob” tezyurar poyezdi yo‘lini to‘sish harakati amalga oshirilgan [9];

– 2021-yilning 9-dekabr kuni Toshkent shahrida “Qo‘yliq” bozorining ko‘chirilishiga qarshi noqonuniy miting o‘tkazilgan [10];

– 2021-yilning 11-dekabr kuni “Qashqadaryo neft-gaz qurilish va ta’mirlash” AJning 30 nafarga yaqin ishchi xodimlari viloyat hokimligi oldida maoshsiz ishlayotgani bois oilasida muammo yuzaga kelganini aytib, namoyish o‘tkazgan [11];

– 2021-yilning 17-dekabr kuni Toshkent shahar Chilonzor tumani Obodonlashtirish boshqarmasi ishchilari bir necha oydan beri oylik maoshini to‘liq miqdorda olmayotgani, doimiy kechiktirilishi va qisqartirilishidan norozi bo‘lib, Chilonzor tumani hokimiyati oldida to‘planib, namoyish o‘tkazgan [12] va h.k.

Yuqoridagi misollardan ko‘rinib turibdiki, miting, yig‘ilish va namoyishlarni asosiy keltirib chiqaruvchi omillar, asosan, ijtimoiy-siyosiy sohada vujudga kelayotgan muammolar hamda ularning o‘z vaqtida ijobiy hal etilmayotgani hisoblanmoqda.

Bu esa yuzaga kelayotgan miting, yig‘ilish va namoyishlar to‘g‘ridan-to‘g‘ri jamoat xavfsizligiga turli tahdidlar keltirib chiqarishi mumkinligi bilan xarakterlanadi hamda mazkur tadbirlarni o‘tkazishda jamoat xavfsizligini ta’minlashni huquqiy tartibga solish masalasi qanchalik amaliy ahamiyatga ega ekanligini ko‘rish mumkin.

Shundan kelib chiqib, miting, yig‘ilish, namoyishlarni amalga oshirishni tartibga solish bo‘yicha normativ-huquqiy asoslarni shartli ravishda ikki guruhga bo‘lish mumkin:

1. Xalqaro (universal) normativ-huquqiy hujjatlar.

Miting, yig‘ilish va namoyishlarni tashkil etish va o‘tkazishga Inson huquqlari umumjahon deklaratsiyasi hamda Fuqarolik va siyosiy huquqlar to‘g‘risida xalqaro Paktni misol keltirish mumkin.

Barcha davlatlar va xalqlar erishishga harakat qilishi lozim bo‘lgan andoza sifatida qabul qilingan Inson huquqlari umumjahon deklaratsiyasi hozirgi kunda ko‘plab mamlakatlar tomonidan konstitutsiyalarining, inson huquqlariga oid turli qonunlari va hujjatlarining alohida qoidalarini ishlab chiqish uchun asosiy huquq manbalaridan biri bo‘lib qolmoqda [13].

1968-yilda inson huquqlari bo‘yicha Erondа bo‘lib o‘tgan BMTning Inson huquqlari bo‘yicha birinchi umumjahon anjumanida qabul qilingan Tehron konferensiyasi hujjatlarida shunday deyilgan: “Inson huquqlari umumjahon deklaratsiyasi jahon xalqlarining, xususan, har bir insonning ajralmas va mustahkam huquqlari bo‘yicha umumiy bitimni o‘zida namoyon qilib, xalqaro hamjamiyatning barcha a’zolari uchun majburiydir” [14].

Inson huquqlari umumjahon deklaratsiyasining 20-moddasida, har bir inson tinch yig‘inlar o‘tkazish va uyushmalar tuzish huquqiga eka ekanligi, hech kim biror-bir uyushmaga kirishga majbur qilinishi mumkin emasligi belgilangan [15].

Insonning siyosiy huquqini ifoda etuvchi mitinglar, yig‘ilishlar va namoyishlar har bir mamlakatda davlat hokimiyati tomonidan nazorat qilib turiladi. Chunki bunday tadbirlar o‘tkazilayotganda, ba’zi bir buzg‘unchi kuchlar mamlakatda siyosiy tartibsizliklarni keltirib chiqarishga harakat qiladilar. Mamlakatda osoyishtalikni saqlash maqsadida miting, yig‘ilish va namoyishlarning o‘tkazilishi kuzatib boriladi va qonunga zid ravishda o‘tkaziladigan bunday tadbirlarga yo‘l qo‘ymaslikka harakat qilinadi. Davlatning bu yo‘ldagi amaliy ishlari “Fuqarolik va siyosiy huquqlar to‘g‘risidagi Xalqaro Pakt”da ifodalangan [14, 121-b.].

Fuqarolik va siyosiy huquqlar to‘g‘risida xalqaro Paktning 21-moddasida tinch yig‘inlarga bo‘lgan huquqlarning tan olinishi, bu huquqdan foydalanishda hech bir cheklashga yo‘l qo‘yilmasligi, qonunga muvofiq qo‘yilgan va demokratik jamiyatda davlat yoki jamiyat xavfsizligi, jamoat tartibi, aholi salomatligi va ma’naviyatini muhofaza etish yoki boshqa shaxslarning huquq va erkinliklarini himoya qilish uchun zarur bo‘lgan cheklashlar bundan mustasno ekanligi belgilangan [16].

Inson huquqlari umumjahon deklaratsiyasining 20-moddasi hamda Fuqarolik va siyosiy huquqlar to‘g‘risida xalqaro Paktning 21-22-moddalarida har bir insonning osoyishta yig‘ilishlar o‘tkazish va uyushmalar tuzish huquqi mustahkamlanganligi, Konstitutsiyamizning 33-, 34- va 57-moddalarida yuqoridagi masalaga doir asosiy me’yorlar belgilab qo‘yilganligi, fuqarolarning ushbu huquqi “O‘zbekiston Respublikasida jamoat birlashmalari to‘g‘risida”, “Kasaba uyushmalari, ularning huquqlari va faoliyatining kafolatlari to‘g‘risida”, “Siyosiy partiyalar to‘g‘risida”, “Nodavlat notijorat tashkilotlari to‘g‘risida”gi qonunlarda o‘z ifodasini topganligi A.R. Muminov hamda M.A. Tillabayevlar tomonidan ta’kidlab o‘tilgan bo‘lsa-da [17, 227-228-b.], yuqorida sanab o‘tilgan normativ-huquqiy hujjatlar aynan miting, yig‘ilish va namoyishlarni tashkil etish va tartibga solishga xizmat qilmasligini ko‘rish mumkin.

Shuningdek, mintaqa doirasida amal qiladigan xalqaro normativ-hujjatlar ham mavjud. Bugungi kunda dunyoning turli mintaqalarida inson huquqlarini himoya qilishning o‘ziga xos modellari vujudga keldi. Bunday modellar ko‘p jihatdan o‘z samaradorligini ham ko‘rsatdi. Bunga 1950-yil 4-noyabrda qabul qilinib, 1953-yilda kuchga kirgan “Inson huquqlari va asosiy erkinliklarini himoya qilish to‘g‘risida”gi Yevropa konvensiyasi, 1969-yil 22-noyabrda qabul qilinib, 1978-yilda kuchga kirgan “Inson huquqlari to‘g‘risida”gi Amerika konvensiyasi, 1981-yil iyul oyida qabul qilinib, 1988-yil yanvarda kuchga kirgan Inson va xalqlar huquqlarining Afrika xartiyasi, 1990-yil 5-avgustda qabul qilingan Islomda inson huquqlari bo‘yicha Qohira deklaratsiyasi, 1995-yil 26-mayda qabul qilingan Inson huquqlari va asosiy erkinliklari bo‘yicha MDH konvensiyasi, 2004-yil 22-mayda qabul qilinib, 2008-yil 15-martda kuchga kirgan Inson huquqlari to‘g‘risidagi Arab xartiyasini misol keltirishimiz mumkin.

Inson huquqlari bo‘yicha Yevropa konvensiyasi (Inson huquqlari va asosiy erkinliklarini himoya qilish to‘g‘risidagi konvensiya)ning 11-moddasi yig‘ilishlar va uyushmalar erkinligi huquqi, shu jumladan, kasaba uyushmalarini tuzish huquqini qonunga muvofiq ayrim cheklovlarni hisobga olgan holda himoya qiladi [18].

Inson huquqlari bo‘yicha Amerika konvensiyasi (San-Xose Pakti)ning 15-moddasida qurolsiz tinch yig‘ilish o‘tkazish huquqi tan olingan bo‘lib, mazkur huquqni amalga oshirishda davlat, jamoat xavfsizligi, jamoat tartibi, fuqarolarning sog‘lig‘i va ma’naviyatini himoya qilish manfaatlarini ko‘zlab, demokratik jamiyatda zarur bo‘lgan qonun hujjatlariga muvofiq cheklashlardan boshqa hech qanday cheklovlar qo‘llanilishi mumkin emasligi nazarda tutilgan [19].

Inson va xalq huquqlari Afrika xartiyasining 11-moddasiga ko‘ra, har bir inson bosh-

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qalar bilan erkin yig‘ilish huquqiga ega ekanligi, ushbu huquqni amalga oshirishga faqat qonun hujjatlarida nazarda tutilgan hollarda, xususan, milliy xavfsizlik, tinchlik, sog‘liq, axloq normalari, shaxslarning huquq va erkinliklari manfaatlarini ko‘zlab, cheklovlar o‘rnatilishi mumkinligi belgilangan [20].

Mustaqil Davlatlar Hamdo‘stligining “Inson huquqlari va asosiy erkinlari to‘g‘risida”gi konvensiyasi 12-moddasida har bir inson tinch yig‘ilishlar o‘tkazish va uyushmalar tashkil qilish erkinligiga egaligi, shu jumladan, o‘z manfaatlarini himoya qilish uchun kasaba uyushmalarini tuzish va ularga qo‘shilish huquqi mavjudligi belgilangan. Shuningdek, davlat, jamoat xavfsizligi, jamoat tartibi, aholi salomatligi va ma’naviyatni muhofaza qilish manfaatlarini ko‘zlab, demokratik jamiyatda zarur bo‘lgan qonun hujjatlarida nazarda tutilgan boshqa hech qanday cheklovlar qo‘yilmasligi belgilangan. Shuningdek, davlatning Qurolli kuchlari, huquqni muhofaza qilish yoki ma’muriy organlari tarkibiga kiruvchi shaxslar uchun ushbu huquqlarni amalga oshirishda qonuniy cheklovlar o‘rnatilishi istisno etilmasligi ham nazarda tutilgan [21].

Miting, yig‘ilish va namoyishlar tashkil etish, o‘tkazish huquqini nazarda tutuvchi mintaqalararo normativ-huquqiy hujjatlar ham mavjud bo‘lib, 1975-yil 1-avgustda Xelsinkida qabul qilingan Yevropada xavfsizlik va hamkorlik kengashining Yakuniy akti, 1989-yil 15-yanvarda qabul qilingan Yevropada xavfsizlik va hamkorlik kengashining Vena uchrashuvi Yakuniy hujjati hamda 1990-yilda qabul qilingan Yangi Yevropa uchun Parij xartiyasi, shuningdek, 1990-yilgi Yevropada xavfsizlik va hamkorlik kengashining insoniylik mezonlari bo‘yicha konferensiyasi Kopengagen kengashining hujjati shunday normativ-huquqiy hujjatlar sirasiga kiradi.

2. Milliy normativ-huquqiy hujjatlar.

Demokratiyaning haqiqiy asoslaridan biri sifatida miting, yig‘ilish va namoyishlar o‘tkazish huquqi O‘zbekiston Respublikasi Konstitutsiyasi va boshqa qonun hujjatlari bilan mustahkamlangan.

Xususan, O‘zbekiston Respublikasi Konstitutsiyasida asosiy siyosiy huquqlardan biri – fuqarolarning mitinglar, yig‘ilishlar, namoyishlar tashkil etish va o‘tkazish, shuningdek, ularda ishtirok etish huquqi kafolatlangan. Mazkur huquq Konstitutsiyada quyidagicha bayon etilgan: “Fuqarolar o‘z ijtimoiy faolliklarini qonunga muvofiq mitinglar, yig‘ilishlar va namoyishlar shaklida amalga oshirish huquqiga egadirlar. Hokimiyat organlari faqat xavfsizlik nuqtai nazaridangina bunday tadbirlar o‘tkazilishini to‘xtatish yoki taqiqlash huquqiga ega”.

Mitinglar, yig‘ilishlar yoki namoyishlar siyosiy tadbirlar bo‘lib, ularni tashkil qilish va o‘tkazishning huquqiy kafolati mamlakatimiz Konstitutsiyasida mustahkamlangan. Konstitutsiyada bunday tadbirlarni mamlakatda amalda bo‘lgan qonunlarga qat’iy rioya qilgan holda o‘tkazish ko‘zda tutilgan. Qonun bilan taqiqlangan har qanday harakatlar yoki siyosiy tadbirlarga yo‘l qo‘ymaslik ham Konstitutsiya talablariga to‘la mos keladi [14, 121-b.].

O‘zbekiston fuqarolarining bunday huquqlardan foydalanishi respublikamizda huquqiy-demokratik jamiyat qurishda muhim ahamiyat kasb etadi. O‘z navbatida, demokratik jamiyat insonning siyosiy huquqlarini ta’minlashning zarur sharti hisoblanadi.

Fuqarolarning miting, yig‘ilish va namoyishlarda erkin ishtirok etishi ularning siyosiy ongini o‘stirish va siyosiy faolligini oshirishda muhim rol o‘ynaydi. Bugungi kunda O‘zbekistonda mazkur tadbirlarni amalga oshirish bilan bog‘liq inson huquqlarini toptash yo‘lidagi har qanday salbiy holatlarga yo‘l qo‘ymaslik choralari ko‘rib kelinmoqda. Bu esa Inson huquqlari umumjahon deklaratsiyasi va boshqa xalqaro normativ-huquqiy hujjatlar, shuningdek, mamlakatimiz Konstitutsiyasi talablariga to‘la mos keladi.

Kishilik jamiyati rivojining barcha davrlarida fuqarolarning ko‘cha namoyishlari, miting va yig‘ilishlari turli yo‘llar bilan bostirib kelingan. Totalitar va avtoritar siyosiy tuzumlar amalda bo‘lgan ko‘pchilik mamlakatlarda hozirgi kunda ham insonning siyosiy tadbirlarda qatnashishdan iborat siyosiy huquqlarini toptash yo‘lidagi urinishlar bunga misoldir.

Insonning ko‘cha namoyishlari, miting va yig‘ilishlarda ishtirok etishdan iborat siyosiy huquqlarini mutlaqlashtirish mumkin emas. Buning ma’nosi – har qanday namoyish yoki yig‘ilishlardan mamlakatda siyosiy tartibsizliklarni avj oldirish maqsadlarida foydalanmaslikdir. Chunki siyosiy tartibsizliklar mamlakat va jamiyat rivoji uchun og‘ir salbiy oqibatlarni keltirib chiqaradi. Shuning uchun ham bunday harakatlar dunyoning barcha mamlakatlarida qonun bilan taqiqlanadi. Bizning mamlakatimiz ham bundan mustasno emas. O‘zbekiston Respublikasi Konstitutsiyasida mamlakatimiz fuqarolari mitinglar, yig‘ilishlar va namoyishlarni O‘zbekiston Respublikasi qonunlariga muvofiq ravishda o‘tkazishlari va hokimiyat organlari bunday siyosiy tadbirlarni mamlakat xavfsizligi nuqtai nazaridangina to‘xtatish yoki taqiqlash huquqiga ega ekanliklari qayd qilingan [14, 113-114-b.].

O‘zbekiston Respublikasi Konstitutsiyasiga sharhlarda, siyosiy huquqlar tizimida fuqarolarning o‘z faolliklarini miting va namoyishlar tarzida amalga oshirish tajribasi, aslida, G‘arb davlatlari, jumladan, AQSh, Buyuk Britaniya, Fransiya, Italiya, Rossiya, Germaniya va boshqa davlatlarning milliy an’analariga xos tadbirlar hisoblanishi aytib o‘tilgan.

Shuningdek, davlat fuqarolarning bu huquqini amalga oshirish maqsadini ko‘zda tutib, ularga binolar, maydonlar va ko‘chalarni berish, axborotlarni keng tarqatish, ommaviy axborot vositalaridan foydalanish imkoniyati bilan ta’minlashi nazarda tutilgan.

Bundan tashqari, xorijiy mamlakatlar, xususan, Germaniya, Daniya, Islandiya, Ispaniya va Gretsiyada ochiq havoda o‘tkaziladigan yig‘ilishlar tartibsizliklar keltirib chiqarishi yoki xavfsizlikka tahdid solishi mumkinligi sababli politsiya tomonidan taqiqlanishi to‘g‘risida ma’lumot berilgan.

Hokimiyat organlari miting, yig‘ilish va namoyishlarning yo‘nalishlarini belgilashi hamda ularning boshlanish va tugash vaqtini nazorat qilishi, yig‘ilishlar, mitinglar yoki namoyishlar uyushtirish yoxud o‘tkazish tadbirlari ularning tashkilotchisi tomonidan buzilgan taqdirda, ular O‘zbekiston Respublikasining amaldagi ma’muriy va jinoyat qonunchiligida belgilangan javobgarlikka tortilishi, tinch yig‘ilishlar davlat va jamiyat, ommaviy tartib, aholi sog‘lig‘i, fuqarolarning huquq va erkinliklarini ko‘zlash maqsadida cheklanishi mumkinligi aytib o‘tilgan.

Sharhda O‘zbekiston Respublikasida amalga oshirilayotgan islohotlarning bosh maqsadi mamlakatimizda insonparvar demokratik huquqiy davlat barpo etish ekanligi ta’kidlanib, respublikada kechayotgan siyosiy-huquqiy jarayonlarning shiddat bilan rivojlanishi sharoitida ijtimoiy munosabatlarning shakllanishi va ularni huquqiy tartibga solishni taqozo etayotganligi, xususan, har qanday huquqiy demokratik davlatning asosiy vazifasi fuqarolarning huquq va erkinliklarini ta’minlashdan iborat ekanligi, jumladan, fuqarolarning ijtimoiy faolliklarini O‘zbekiston Respublikasi qonunlariga muvofiq miting, yig‘ilishlar va namoyishlar shaklida amalga oshirish huquqlarining ta’minlanishi muhim ahamiyat kasb etishi belgilangan [22, 151-152-b.].

Shuningdek, O‘zbekiston Respublikasida yig‘ilishlar, mitinglar, ko‘cha yurishlari yoki namoyishlar uyushtirish, o‘tkazish tartibini buzganlik uchun ma’muriy va jinoiy javobgarlik belgilangan bo‘lib, Jinoyat kodeksiga asosan, bazaviy hisoblash miqdorining ikki yuz baravaridan uch yuz baravarigacha miqdorda jarima yoki uch yuz oltmish soatgacha majburiy jamoat ishlari yoki bir yildan

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uch yilgacha ozodlikni cheklash yoxud uch yilgacha ozodlikdan mahrum qilish bilan, Ma'muriy javobgarlik to'g'risidagi kodeksning 201-moddasi 1-qismiga asosan, bazaviy hisoblash miqdorining oltmish baravaridan sakson baravarigacha miqdorda jarima solish yoki o'n besh sutkagacha muddatga ma'muriy qamoq jazosi bilan javobgarlikka tortilishi belgilangan.

Bundan tashqari, ruxsat etilmagan yig'ilishlar, mitinglar, ko'cha yurishlari va namoyishlar o'tkazish uchun sharoitlar yaratganligi uchun Ma'muriy javobgarlik to'g'risidagi kodeksning 202-moddasiga asosan, fuqarolarga bazaviy hisoblash miqdorining ellik baravaridan yuz baravarigacha, mansabdor shaxslarga esa bazaviy hisoblash miqdorining yetmish baravaridan bir yuz ellik baravarigacha miqdorda jarima solish jazosi bilan javobgarlikka tortilishi belgilangan.

Ma'lumot tariqasida M.X. Rustamboyev O'zbekiston Respublikasi Jinoyat kodeksi 217-moddasi (Yig'ilishlar, mitinglar, ko'cha yurishlari yoki namoyishlar uyushtirish, o'tkazish tartibini buzish) yuzasidan sharhida mazkur tadbirlar O'zbekiston Respublikasi Konstitutsiyasining 33-moddasiga asosan tashkil etilishi va o'tkazilishini ta'kidlagan.

Shuningdek, yig'ilishlar, mitinglar, ko'cha yurishlari yoki namoyishlarni g'ayriqonuniy uyushtirish bo'yicha harakatlar turli qilmishlarda, masalan, bunday tadbirlarni o'tkazishga davlat hokimiyat organining roziligi talab etilsa, bu haqda ularni xabardor etmasdan, bunday tadbirlarni tashkil etish jarayonini buzish va hokazolarda ifodalanishi to'g'risida so'z yuritgan.

Bundan tashqari, yig'ilishlar, mitinglar, ko'cha yurishlari yoki namoyishlar o'tkazish to'g'risida mahalliy ijro etuvchi hokimiyat va boshqaruv organiga yozma ravishda murojaat etilishi, mazkur murojaatda tadbirni o'tkazish maqsadi, shakli, joyi, boshlanish va tugash vaqti, harakatlanish yo'nalishi, nazarda tutilayotgan ishtirokchilar soni, tashkilotlar va jamoat tartibini saqlash uchun mas'ul bo'lgan shaxslar haqidagi ma'lumotlar, ariza topshirish sanasi kabilar ko'rsatilishi lozimligi, tadbirni o'tkazish jarayonida ishtirokchilar va tashkilotchilar jamoat tartibini saqlashga majburligi, ularga transport vositalari va piyodalarning harakatlanishiga to'sqinlik qilish, aholi punktining uzluksiz faoliyat yuritishiga tajovuz qilish, palatkalar qurish, yashil maydonlar, bino va inshootlarga zarar yetkazish, qurol yoki insonlarning hayoti va sog'ligiga zarar yetkazish maqsadida qurol sifatida ishlatilishi mumkin bo'lgan maxsus tayyorlangan buyumlarda bo'lish, fuqarolar va yuridik shaxslarga moddiy zarar yetkazish, tadbirlarni o'tkazish vaqtida jamoat tartibini saqlovchi davlat organlari vakillari faoliyatiga har qanday shaklda aralashish taqiqlanishi lozimligi to'g'risida ta'kidlab o'tilgan [23, 590-594-b.].

Ammo bugungi kunda mamlakatimizda miting, yig'ilish va namoyishlarni tashkil etish, o'tkazish bo'yicha normativ-huquqiy hujjatning mavjud emasligi miting, yig'ilish va namoyishlar o'tkazishda fuqarolar, davlat hokimiyati va boshqaruv organlarining huquq va majburiyatlari, ularning o'zaro munosabatlari tartibga solinmasdan qolishiga sabab bo'lmoqda.

Ta'kidlash joizki, Vazirlar Mahkamasining "Ommaviy tadbirlarni tashkil etish va o'tkazish tartibini yanada takomillashtirish chora-tadbirlari to'g'risida"gi Qarori bilan tasdiqlangan "Ommaviy tadbirlarni o'tkazish qoidalari"da: "ommaviy tadbir – yuz va undan ko'p kishilarning ishtirokida ijtimoiy-siyosiy (anjumanlar, konferensiyalar, syezdlar va boshqalar), madaniy-ommaviy va ko'ngilochar-tomosha dasturlari (musiqiy, adabiy va boshqa festivallar, konsert, teatr, sport, reklama tadbirlari, xalq sayillari, sirk, milliy namoyishlar va o'yinlar, ko'rik tanlovlar va boshqalar), shuningdek, umumxalq, diniy, kasb bayramlarini o'tkazish maqsadida ommaviy tadbirni o'tkazish obyektida tashkil qilinadigan fuqarolarning birgalikda qatnashishlari", – deb belgilangan.

Miting, yig‘ilish va namoyishlar o‘tkazishning mohiyati esa ijtimoiy ahamiyati dolzarb masalalar yuzasidan jamoatchilik fikrini ifodalash, davlat organlari e’tiborini jalb qilish maqsadida, ijtimoiy muhim ahamiyatga ega bo‘lgan masalalarni muhokama qilish, jamoatchilik e’tiborini ijtimoiy muhim masalalarga qaratish hamda ommaviy ravishda ifoda etishdan iborat.

Shu o‘rinda “Ommaviy tadbirlarni o‘tkazish qoidalari”ning 2-bandiga ko‘ra, ushbu Qoidalar yig‘ilishlar, mitinglar, ko‘cha yurishlari va namoyishlarni o‘tkazishga tatbiq etilmasligi belgilangan. Bundan ko‘rinib turibdiki, mazkur normativ-huquqiy hujjat mamlakatimizda miting, yig‘ilish yoki namoyishlarni tashkil etish hamda o‘tkazish tartibini qamrab olmaydi.

Tarixan O‘zbekistonda yig‘ilish, miting, ko‘cha yurishlari va namoyishlarni tashkil etish SSSR Oliy Kengashi Prezidiumining 1988-yildagi 9306-XI-sonli farmoni bilan tartibga solingan. Ammo O‘zbekiston Respublikasi Adliya vaziri ishtirokida 2021-yil 15-fevral kuni o‘tkazilgan matbuot anjumanida R. Davletov SSSR Oliy Kengashi Prezidiumining mazkur farmoni O‘zbekiston hududida amal qilmasligi, farmonda qayd etilgan organlar va munosabatlar tizimi bugungi kunda mavjud emasligi hamda qonunchilikka to‘g‘ri kelmasligi to‘g‘risida fikr bildirgan.

Shuningdek, R. Davletov bugungi kunda O‘zbekiston qonunchiligida yig‘ilishlar, mitinglar, ko‘cha yurishlari yoki namoyishlar uyushtirish, o‘tkazish tartibini buzish uchun ma’muriy va jinoiy javobgarlik belgilanganligi, ammo tartibning o‘zi qayd etilmaganligi, ya’ni miting, yig‘ilish, namoyish hamda ko‘cha yurishlarini tashkil etish va o‘tkazish tartibi tizimli ravishda tartibga solinmaganligi, Vazirlar Mahkamasining 2014-yil 29-iyuldagi ommaviy tadbirlarni tashkil etish va o‘tkazish to‘g‘risidagi qarori esa yig‘ilish, miting, ko‘cha yurishlari yoki namoyishlar uyushtirishga taalluqli emasligi bo‘yicha o‘z e’tirozlarini bildirib o‘tgan.

Mazkur huquqiy bo‘shliq hanuzgacha O‘zbekiston Respublikasi Konstitutsiyasining 33-moddasida ko‘rsatilgan qoidalarni to‘liq ro‘yobga chiqarishga imkon bermasdan kelayotganligi, davlat dasturi asosida Ichki ishlar vazirligi tomonidan “Miting, yig‘ilish va namoyishlar to‘g‘risida”gi qonun loyihalari ishlab chiqilgan bo‘lsa-da, huquqiy ekspertizadan qaytarilganligi va bugungi kungacha qabul qilinmasdan qolayotganligi, lekin ushbu qonunning qabul qilinishi dolzarb ahamiyatga egaligi ta’kidlangan [24-25].

Rossiya siyosatshunoslar jamiyati ijrochi direktori, M.V. Lomonosov nomidagi Moskva davlat universiteti Siyosatshunoslik fakulteti professori Igor Kuznetsov umumiy muhokamaga kiritilgan “Miting, yig‘ilish va namoyishlar to‘g‘risida”gi qonun loyihasiga izoh berar ekan, O‘zbekistonda namoyish va yig‘ilishlarni qonuniy yo‘l bilan tartibga solish zarurati allaqachon pishib yetilganligini ta’kidlagan [26].

Bundan tashqari, Yevropa xavfsizlik va hamkorlik tashkiloti qoshidagi Demokratik institutlar va inson huquqlari bo‘yicha byurosining 2019-yil 22-dekabrda mamlakatimizda o‘tkazilgan parlament saylovlari bo‘yicha yakuniy hisobotidagi kamchilik sifatida ham respublikamizda fuqarolarning ijtimoiy faolliklarini tartibga soluvchi birorta normativ-huquqiy hujjat mavjud emasligi ko‘rsatilgan [27].

“ASSA” – Markaziy Osiyo bo‘yicha tahliliy markaz tomonidan bildirilgan fikrga ko‘ra, Urganch fuqarolarining uy-joylari buzilishi uchun to‘lanishi kerak bo‘lgan pul kompensatsiyalarining to‘lab berilmaganligi yuzasidan o‘tkazilgan namoyishlar, Qashqadaryo viloyati Yakkabog‘ tumani hokimi o‘rinbosarining do‘konni buzilgan tadbirkor tomonidan yoqib yuborilishiga bo‘lgan harakatlari, Nukus shahrida yakka-yolg‘iz ayollar tomonidan o‘tkazilgan piket harakatlari O‘zbekistonda “Miting, yig‘ilish va namoyishlar to‘g‘risida”gi qonunni qabul qilish vaqti kelganidan dalolat bermoqda [28].

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Xususan, O‘zbekiston Respublikasining “Miting, yig‘ilish va namoyishlar o‘tkazish to‘g‘risida”gi Qonun loyihasi 2019-yil 12-sentabr kuni birinchi marotaba (ID 3875) hamda o‘zgartirish va qo‘shimchalar bilan 2020-yil 18-avgust kuni ikkinchi marotaba (ID 21021) normativ-huquqiy hujjatlar loyihalari muhokamasi portali “regulation.gov.uz” saytida xalq muhokamasiga qo‘yilganligiga qaramasdan, bugungi kunga qadar qabul qilinmasdan qolmoqda.

O‘zbekistonda miting, yig‘ilish va namoyishlar o‘tkazishni tartibga soluvchi normativ-huquqiy hujjatning mavjud emasligi yoki noto‘g‘ri talqin etilayotganligi turli hisobotlarda va inson huquqlari bo‘yicha dunyo reytinglarida quyi darajadagi ko‘rsatkichlarni namoyon etmoqda.

Jumladan, 2021-yilda Freedom House tashkilotining “Siyosiy va fuqarolik huquqlari darajasi bo‘yicha dunyo davlatlari reytingi”da O‘zbekiston 209 ta davlatdan 189-o‘rinni egallagan va mamlakatda “inson huquqlari mustaqil emas” deb topilgan [29].

World Justice Project tashkiloti tomonidan 2021-yilda qonun ustuvorligi indeksi bo‘yicha o‘tkazilgan tadqiqotlar natijasiga ko‘ra, O‘zbekiston yig‘ilishlar tashkil etish erkinligining kafolatlanganligi reytingida 139 ta davlat ichida 127-o‘rinni egallagan [30].

Tahlillarga ko‘ra, miting, yig‘ilish, namoyishlar, ko‘cha yurishlari, piketlar yoki boshqa harakatlarni amalga oshirish turli mamlakatlar konstitutsiyalarida o‘z aksini topgan bo‘lsa-da, ularni tashkil etish va o‘tkazish tartibi maxsus qonun bilan tartibga solinganligi hamda o‘ziga xos xususiyatga ega ekanligini ko‘rish mumkin.

Germaniyada “Yig‘ilishlar va ko‘cha yurishlari to‘g‘risida”gi qonun amalda bo‘lib, unga ko‘ra, tashkilotchilar mahalliy hukumatga kamida 48 soat oldin tadbir o‘tkazilishi rejalashtirilayotgani yuzasidan ariza bilan murojaat etishlari lozim. Ruxsat etilmagan yoki taqiqlangan yig‘ilishlarni o‘tkazganlik uchun, shuningdek, yig‘ilish va namoyishlar jarayonida tadbir ishtirokchisining yonida qurol yoki qurol sifatida foydalanish mumkin bo‘lgan predmet mavjud bo‘lgan taqdirda yoki rejalashtirilgan yig‘ilish yoki namoyish o‘tkazilishi arizada belgilangan maqsadga to‘g‘ri kelmagan taqdirda tadbir tashkilotchilari jinoiy javobgarlikka tortilishi belgilangan. Bundan tashqari, Germaniya qonunchiligi yig‘ilishlar o‘tkazishni tartibga solish bilan bir qatorda, tinch holda o‘tkazilayotgan yig‘ilish ishtirokchilarining jismoniy va huquqiy xavfsizligini ta’minlaydi [31].

Fransiyada yig‘ilish va namoyishlarni tartibga solish bo‘yicha normativ-huquqiy hujjat 1935-yilda qabul qilingan (1960- va 2000-yillarda o‘zgartirish kiritilgan) “Har bir yig‘ilish, ko‘cha yurishi va manifestlar to‘g‘risi”dagi Dekret hisoblanadi. Dekretning 2-moddasiga ko‘ra, tadbirni o‘tkazish bo‘yicha ariza 3 kundan kam bo‘lmagan muddatda hududiy hukumat organi (meriya)ga topshirilishi lozim. Arizada tadbir tashkilotchilarining to‘liq ism-sharifi va yashash manzili, tadbir maqsadi, o‘tkazilish joyi, vaqti va sanasi, taxminiy ishtirokchilar soni hamda boshqa ma’lumotlar qayd etilishi belgilangan. Tadbir tashkilotchisi (tashkilotchilari) tomonidan yig‘ilish yoki namoyish o‘tkazish bo‘yicha maxsus blank-deklaratsiya to‘ldirilib, blank-deklaratsiyani imzolovchi shaxsga yig‘ilish yoki namoyishni tinch ravishda o‘tishi uchun barcha chora-tadbirlarni amalga oshirishi, yig‘ilish va namoyishlar bo‘yicha barcha qonun hujjatlariga rioya etishi tushuntiriladi hamda javobgarlik zimmasiga yuklanadi [32].

Buyuk Britaniyada miting, yig‘ilish va namoyishlar o‘tkazish 1986-yilda qabul qilingan “Jamoat tartibini saqlash to‘g‘risida”gi qonun (Public Order Act) bilan tartibga solinadi. Mazkur qonunga qo‘ra, miting, yig‘ilish va namoyishlarni o‘tkazish faqatgina politsiya organlari ruxsati bilan amalga oshirilishi belgilangan. Shuningdek, tadbir tashkilotchilari 6 ish kunidan kechikmagan holda ariza taqdim qilishlari, arizada tadbir sanasi, vaqti, joyi, harakat marshruti, tashki-

lotchilar to‘g‘risida to‘liq ma’lumotlar qayd etilishi lozim. Ruxsat etilmagan yoki taqiqlangan miting, yig‘ilish, namoyish yoki shu kabi boshqa tadbirlar o‘tkazilgan taqdirda, shuningdek, ushbu tadbirlarning o‘tkazilishi davomida fuqarolar va transport vositalarining harakatlanishiga to‘sqinlik qilish holatlarida politsiya organlariga tadbirni to‘xtatishlari uchun zaruriy chora-tadbirlar ko‘rishi belgilangan, lozim topilganda, jismoniy kuch va maxsus vositalarni qo‘llash huquqi berilgan. Bundan tashqari, o‘tkazilishi ommaviy tartibsizliklarni keltirib chiqarishi xavfi bo‘lgan asosli ma’lumotlar bo‘lgan taqdirda hududiy politsiya organi rahbariga mazkur tadbirlarni o‘tkazilishini 3 oygacha taqiqlash vakolati berilgan [33].

Yaponiyada yig‘ilishlar o‘tkazish tartibi har bir hududiy birlik tomonidan ishlab chiqilgan nizom asosida amalga oshiriladi. Masalan, Tokio hududiy birligining “Miting, ommaviy yurish va namoyishlar o‘tkazish to‘g‘risida”ni Nizomi bo‘yicha mazkur tadbirlarni o‘tkazish Tokio Jamoat xavfsizligi qo‘mitasi ruxsati bilan amalga oshirilishi belgilangan. Hukumatda miting, yig‘ilish, namoyish va boshqa tadbirlarni o‘tkazish sanasi, vaqti, joyi yoki harakat marshrutini o‘zgartirish bo‘yicha talablar qo‘yish vakolati mavjud.

Shvetsiyada yig‘ilish va namoyishlar o‘tkazish 1956-yildagi “Ommaviy yig‘ilishlar to‘g‘risida”gi qonun hamda “Jamoat tartibi Nizomi” bilan tartibga solinadi. Miting, yig‘ilish, namoyish va shu kabi boshqa tadbirlarni o‘tkazishda qatnashchilar soni 15 nafar va undan ortiq bo‘lgan taqdirda, hududiy politsiya organlariga tadbir o‘tkazilishi rejalashtirilganidan yetti kundan kechiktirilmagan tarzda ariza berish orqali ruxsat olish tartibi belgilangan. Shu asosida politsiya tomonidan tadbir o‘tkaziladigan joyda jamoat xavfsizligini ta’minlash maqsadida to‘siqlar, piyoda va otliq politsiya xodimlari, zaxira kuchlari, avtotransport vositalari va texnik uskunalar jalb qilinadi.

AQShda miting, yig‘ilish va namoyishlar o‘tkazish politsiya ruxsati bilan amalga oshirilib, har bir shtat qonunchiligi bilan tartibga solinadi. Tadbir o‘tkazishga ruxsat olishda yong‘in hamda transport xavfsizligi xizmatlari bilan kelishiladi. Shundan so‘ng munitsipalitet (ma’muriyat) tashkilotchilariga belgilangan tadbir turi (miting, yig‘ilish, namoyish, piket, ko‘cha yurishi va b.)ni o‘tkazishlari uchun maxsus sertifikat taqdim qiladi. Ayrim shtatlarda miting, yig‘ilish va namoyishlar o‘tkazish taqiqlangan joylar ham mavjud. Ruxsat etilmagan miting, yig‘ilish yoki namoyishlar o‘tkazilganda yoki tadbirni o‘tkazish qoidalari buzilgan taqdirda politsiya xodimlariga jamoat tartibini saqlash hamda ommaviy tartibsizliklar kelib chiqishining oldini olish maqsadida tadbir qatnashchilariga nisbatan maxsus vositalar qo‘llash vakolati berilgan. Bundan tashqari, miting, yig‘ilish va namoyishlarni to‘g‘ri va qonuniy amalga oshirish yuzasidan ko‘plab nodavlat-notijorat tashkilotlari tomonidan maxsus trening mashg‘ulotlari o‘tkazilishi yo‘lga qo‘yilgan.

Xususan, Vashington shtatida miting, yig‘ilish va namoyishlarni o‘tkazish yuzasidan 15 kundan kechikmagan holda ariza taqdim etish; Nyu-York shtatida arizada ko‘rsatilgan ma’lumotlar yetarli yoki aniq bo‘lmasa, tadbirni o‘tkazishni taqiqlash; San-Fransisko shtatida tadbir o‘tkazish yuzasidan taqdim etiladigan arizada qanday texnik vositalardan (ovoz kuchaytiruvchi, yorug‘lik tarqatuvchi, sirena) foydalanilishi to‘g‘risida ma’lumotlarni qayd etish; Los-Anjeles shtatida tadbir o‘tkazilishidan 40 kundan kechikmagan holda politsiya organlariga ariza taqdim etish, shuningdek, ko‘cha yurishlari o‘tkazilishida marshrut uzunligi 5 km dan ortiq bo‘lmasligi kabi qoidalar belgilangan [34].

Bundan tashqari, miting, yig‘ilish va namoyishlar MDH davlatlaridan Rossiya Federatsiyasida “Yig‘ilishlar, mitinglar, namoyishlar, yurishlar va piket harakatlari to‘g‘risida”gi [35], Qozog‘iston Respublikasida “Tinch yig‘ilishlar tashkil etish va o‘tkazish to‘g‘risi-

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da"gi [36], Tojikiston Respublikasida "Yig'ilish, miting, namoyish va ko'cha yurishlari to'g'risida"gi [37], Turkmaniston Respublikasida "Yig'ilish, miting, namoyish va boshqa ommaviy tadbirlarni tashkil etish va o'tkazish to'g'risida"gi [38] hamda Qirg'iziston Respublikasida "Tinch yig'ilishlar to'g'risida"gi [39] qonun hujjatlari bilan tartibga solinadi. Yuqoridagilardan ko'rinib turibdiki, xorijiy demokratik davlatlarning miting, yig'ilish va namoyishlarni tartibga solish sohasidagi qonunchiligi hamda huquqni qo'llash amaliyotida ayrim farqlar mavjud bo'lsa-da, mazkur tadbirlarni tashkil etish va amalga oshirishning asosiy qoidalari o'rtasida deyarli farq mavjud emas.

Qanchalik demokratik hisoblanmasin, hukumatga faqatgina xabarnoma berish orqali miting, yig'ilish, namoyish, ko'cha yurishlari yoki piket harakatlarini tashkil etish va amalga oshirish mumkin bo'lgan davlat mavjud emas. Barcha mamlakatlarda hokimiyat u yoki bu shaklda yig'ilishlar o'tkazishga bo'lgan huquqni chegaralaydi. Shu bilan birga, aksariyat davlatlarda yig'ilish va namoyishlar o'tkazish yuzasidan arizalarda tadbirning o'tkazilish sanasi, vaqti, joyi, tashkilotchilar to'g'risidagi ma'lumotlar jamoat tartibini saqlash va xavfsizligini ta'minlash nuqtai nazaridan sinchkovlik bilan o'rganilib, tahlil qilinadi.

Xulosalar

Xulosa o'rnida shuni aytish kerakki, fuqarolar O'zbekiston Respublikasi Konstitutsiyasi bilan kafolatlangan mitinglar, yig'ilishlar va namoyishlarni amalga oshirish huquqiga egaligi, biroq ushbu huquqlarni samarali ro'yobga chiqarish tartibini belgilovchi "Miting, yig'ilish va namoyishlar to'g'risida"gi qonunning qabul qilinmaganligi, shuningdek, miting, yig'ilish va namoyishlarni o'tkazish tartibi qonunchilikda belgilanmaganligiga qaramasdan, mazkur tadbirlarni o'tkazganligi uchun O'zbekiston Respublikasi Jinoyat kodeksining 217-moddasi, Ma'muriy javobgarlik to'g'risidagi kodeksning 201-, 202-moddalariga asosan, javobgarlikka tortilishi belgilanganligi holatlari qonunchilikda bo'shliq mavjudligini ko'rsatmoqda. Bu esa, o'z navbatida, miting, yig'ilish va namoyishlar o'tkazishda huquqni muhofaza qiluvchi organlar tomonidan jamoat xavfsizligini ta'minlash faoliyatini samarali tashkil etishga o'zining salbiy ta'sirini ko'rsatmoqda.

Shu sababli bugungi kunda mamlakatimizda inson huquqlarini to'liq ta'minlash maqsadida miting, yig'ilish va namoyishlarni tashkil etish va o'tkazishni tartibga soluvchi normativ-huquqiy hujjatlar qabul qilinishi dolzarb ahamiyat kasb etmoqda.

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THE IMPACT OF PUBLIC COUNCILS ON THE PROCESS OF RULEMAKING

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Abstract. *The article analyzes the role of public councils in the rulemaking process. Additionally, the composition and functions of the Public Council have been studied. In this process, the extent to which they are affected is shown. The composition and functions of the Public Council and their role in the Council have been studied and provided with practical examples. The role of public councils in increasing the effectiveness of lawmaking and the importance of taking the suggestions made by them into account have been studied. The scientific works of national and foreign scientists have been studied and quoted. In addition, the article is written based on practical experience, and the activities of the relevant ministries, committees and public councils under the agency are identified. The survey data on the presence of public councils are given. Based on the research results, proposals and recommendations for the improvement of legislation are developed.*

Keywords*: public Council, public chamber, rulemaking, public control, transparency, public administration bodies, normative legal acts, civil society, public discussion.*

JAMOATCHILIK KENGASHLARINING NORMA IJODKORLIGI JARAYONIGA TA'SIRI

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Annotatsiya. *Maqolada norma ijodkorligi jarayonida jamoatchilik kengashlarining tutgan roli tahlil etilgan. Ushbu jarayonda ularning qanchalik ta'sir etishi ko'rsatib o'tilgan. Jamoatchilik kengashining tarkibi, vazifalari va ularning kengashda tutgan o'rni o'rganilgan va amaliy misollar keltirilgan. Bugungi kunda jamoatchilik kengashlarining norma ijodkorligi jarayonida samaradorlikni oshirishda tutgan o'rni, ular tomonidan berilgan takliflarning inobatga olinishi qay darajada ahamiyatga ega ekanligi tadqiq etilgan. Milliy va xorijiy olimlarning ilmiy ishlari o'rganib chiqilgan hamda ulardan iqtiboslar keltirilgan. Shuningdek, maqolada amaliy tajribadan kelib chiqib, tegishli vazirlik, qo'mita, idora huzuridagi jamoatchilik kengashlarining faoliyati aniqlangan. Ularning tarkibida jamoatchilik kengashlari bor yoki yo'qligi tadqiqot natijasida ko'rsatib berilgan. O'rganishlar asosida qonunchilikni rivojlantirish bo'yicha taklif va tavsiyalar ishlab chiqilgan.*

Kalit so'zlar: *jamoatchilik kengashi, jamoatchilik palatasi, norma ijodkorligi, jamoatchilik nazorati, ochiqlik, davlat boshqaruvi organlari, normativ-huquqiy hujjatlar, fuqarolik jamiyati, jamoatchilik muhokamasi.*

ВЛИЯНИЕ ОБЩЕСТВЕННЫХ СОВЕТОВ НА ПРОЦЕСС НОРМОТВОРЧЕСТВА

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Аннотация. *В статье проанализирована роль общественных советов в нормотворческом процессе, дополнительно изучены состав и функции общественного совета. При этом показана степень их воздействия на процесс. Изучены состав и функции общественного совета, их роль в нормотворчестве и приведены практические примеры. В наши дни значительна роль общественных советов в повышении эффективности нормотворчества, а также существует важность учета вносимых ими предложений. Изучены и процитированы научные труды отечественных и зарубежных ученых. Кроме того, в статье на основе практического опыта выявлены аспекты деятельности соответствующих министерств, комитетов, общественных советов при агентствах. Приведены данные опроса о наличии общественных советов. На основе исследования выработаны предложения и рекомендации по развитию законодательства.*

Ключевые слова: *общественный совет, общественная палата, нормотворчество, общественный контроль, прозрачность, органы государственного управления, нормативные правовые акты, гражданское общество, общественное обсуждение.*

Introduction

When it comes to public councils in rulemaking, it is advisable to analyze the role of public control initially. The main driving force of public control is public councils, one of the goals of which is to increase the effectiveness of the system of the practical application of the principle of "social agreement" in the rulemaking by involving them in the development of draft laws. In this regard, it is necessary to consider the theoretical and legal interpretation of the concept of "public councils", the organizational and legal basis, and the main tasks.

Public councils are a permanent structure of the advisory council, which works on a public basis, exercising public control over the development of draft normative legal acts. In addition, state, sectoral and regional development programs take into account the public interest and public opinion and ensure the implementation of legislation in the sphere of protection of the rights and legitimate interests of citizens, legal entities, public interest, tasks assigned to the state body, an advisory council that carries out public control over the activities of the state body and its officials on the implementation of functions, the provision of public services, the implementation of agreements, contracts, projects and programs implemented in the framework of social partnership.

Literature review

To ensure effectiveness in rulemaking, these days it is more important than ever to establish public councils under governmental agencies and increase their role, and as an integral part of the rulemaking system by the executive branch is the object of research.

As the President of the Republic of Uzbekistan Sh. Mirziyoyev noted in his Address to the Oliy Majlis in 2018, "it is necessary to introduce effective mechanisms for public control in public administration. In this regard, I propose to establish public councils under all governmental agencies. Public councils should act as a bridge to ensure the transparency of governmental agencies, connecting them directly with the population" [1, p. 36]. All of these are important steps toward enhancing the role of community councils.

In this regard, I.R. Bekov called for the establishment of public councils under the factions of the Legislative Chamber of the Oliy Majlis [2, p. 296], and A.E. Yuldashev considering the participation of civil society institutions in the formation of public councils under the ministries of Uzbekistan and foreign countries [3], and A. Dadasheva ensuring that the role of public control is important in order to increase the effectiveness of the public council [4].

Although the above scholars have expressed their position on the development of public councils, we believe that public councils should be established not only under the Oliy Majlis or ministries, but under all state bodies. A. Dadasheva emphasized the role of public control, in our opinion, it is necessary to develop clear mechanisms to increase the role of public councils.

As for the approaches of foreign scholars in this regard, E.G. Dyakova stated that the most important issues to increase the effectiveness of public councils are their representation, balance and independence from the state bodies in which they are formed [5, p. 99.], G.O. Spabekov noted that in the modern world, public councils should exist in almost every state governed by the rule of law [6], O.O. Vinnitsky stressed that the effective functioning of public councils with the executive branch should increase the level of interaction between the executive branch and civil society [7].

In our view, the activities of public councils should be studied in terms of two areas (one link in the consultation mechanism in the rulemaking process and the features of public control over decisions). The establishment of a public council in Uzbekistan is one of the modern democratic mechanisms, which does not interfere with the nomination of suitable candidates, taking into account the practice of foreign countries [3]. In the words of President Mirziyoyev, "civil society forms the state power, gives it the rights and powers necessary to regulate social relations, ensure social cohesion in the country, establish public control over the government, and creates mechanisms against abuse of power" [1, p. 36].

Recently, the principle of communication with the population has been promoted in the actions of the government. An important step in this direction was the introduction of the institution of the public council. It voluntarily serves as a permanent advisory body to governmental agencies. Their activity was, first of all, regulated by the Resolution of the President of the Republic of Uzbekistan, adopted on July 4, 2018. This act approved the Sample regulation on the public council under governmental agencies.

Despite the fact that the first public councils under public administration were officially established in 2012, the legal basis for their activities was determined by the President of the Republic of Uzbekistan on July 4, 2018, No. PP-3837.

As a result of the above-mentioned analysis of the legal basis and critical observation of the practice, it can be concluded that these days, the role of public councils is not significant enough. Although they participate in the adoption of the rulemaking process, they do not have a role in the change of opinion on the relevant cases. For example, the Law on Transparency of Public Bodies does not contain any article on bringing the activities of public councils to the attention of the general public as "open information". There are cases when proposals are ignored to ensure openness and transparency. In our opinion, in order to ensure transparency and increase the effectiveness of rulemaking, this law should include special articles regulating the coverage of the activities of the Public Council through the relevant "information portals".

Also, the role of public councils in exercising public control these days is not

strong enough. The resolution of July 4, 2018 "On the establishment of public councils under governmental agencies" contains almost nothing about the role of public councils. That is, there is no provision for the chairman of the council to protest. If the public council and its members object to the laws being passed, no information is given on what action to take. In my opinion, it is expedient to develop separate norms to take into account the suggestions and objections submitted by the public council, as well as to consider the issue of responsibility and, if their opinion is not taken into account, and to make changes in this case.

As an example, the local government is forming a norm for making changes in the sphere of education, but the adopted draft law is not relevant, in which case the public council may increase the issue of conclusion or suspension of project work.

By the way, if we pay attention to the articles of the Code of Administrative Responsibility, there is no responsibility for desecration of the control of the Public Council in ensuring public and transparency policy. We believe that the issue of responsibility should be considered if the views of the representatives of the public council on ensuring openness and transparency are not taken into account.

A number of foreign scholars have expressed their views on the issue of public councils and public control. In particular, according to G.O. Spabekov, public councils should be created in various forms and ranges of public life in order to achieve the political goals of state life [6]. I.V. Orlov studies the functions and activities of public councils as subjects of public control [8], as well as information on the rulemaking of public control and the activities of its subjects in the Russian Federation, we can see through the ideas cited by T.D. Sokolova [9].

O.O. Vinnitsky emphasizes that the public sector, which is involved in the formation and implementation of public policy, there is no exception [7]. The author develops and introduces factors of efficiency of work of public councils in executive bodies, in particular, general standards and forms of cooperation between public and state bodies; development of national mechanisms for the activities of public councils in executive bodies; systematization and generalization of decisions of public councils in executive bodies; systematic analysis of the activities of public councils and their results for public discussion; gives its opinion on issues such as the introduction of standards for public receptions.

Public councils should use their powers to monitor the activities of governmental agencies, public control, the development of normative legal acts, and public opinion. Councils respond effectively to constructive inquiries of citizens and are the most important link between the state and society, as problems in the state apparatus stem from the lack of public opinion among local authorities.

A number of scholars, such as Suzie Mat Nurusin, Rugayah Hashim, Shamsinar Rahman, Nursyahida Zulkifli, Ahmad Shah Pakeer Mohamed, Saidatul Akma Hamik, believe that public participation in rulemaking demonstrates governance transparency and is crucial for successful national development plans [10]. Mohammad Ikshan Nasir and Masran Sarushono believe that the public has the right to know and participate in rulemaking, in particular decisions that may affect the communities in which they live and work [11]. Citizen participation in the pursuit of sustainability is seen as one way to achieve this goal.

Materials and methodology

The object of this study is to research the theoretical and practical problems of inflation in the rulemaking of the Republic of Uzbekistan. The main goal of the study is to develop definitions regarding the research

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as well as decide whether determine the role of public counsel in legislation that how to affect this situation.

In order to achieve these goals, the author has applied methods of scientific research, such as statistical analysis, chronological, sociological analysis, synthesis, and comparative methods.

Research findings

While supporting the well-founded approaches of the above scholars, it is worth noting that the establishment of "feedback" between the activities of public councils and the public leads to a practical expression of the "theory of social contract".

A number of scholars point to the following three factors for making sustainable societies:

1) active participation of local citizens [12];

2) the ability of citizens to analyze their problems and give their solutions to them [13];

3) support for collective initiatives, all of which allow them to change themselves [14].

The British scholar Britton describes public participation as a process of direct rulemaking by the public [15]. T. Nabatchi recognized that public participation is an activity that includes many ways to unite people to solve problems of public importance [16].

The Public Council exercises public control over the activities of the state body and its officials to take into account the public interest and public opinion in the adopted normative legal acts and decisions, participates in the development and implementation of government and other programs, and monitors and analyzes work in this area.

Based on the above comments and regular observation of the practice, the following table (as of 13.10.2021) provides an analysis of the state of public councils under some ministries, committees, and agencies (table).

Table

Information about the Ministry, the committee, the Public Councils under these departments

№	Relevant ministry, committee, office	Official website	About the presence or absence of the Public Council
1	Presidential Administration	https://president.uz/uz	+
2	Ministry of Foreign Affairs	www.mfa.uz	+
3	Ministry of Justice	https://www.minjust.uz	+
4	Ministry of Defense	https://mudofaa.uz	+
5	Ministry of the Internal Affairs	https://iiv.uz	+
6	Ministry of Finance	https://www.mf.uz	–
7	Ministry of Health	https://ssv.uz	+
8	Ministry of Higher and Secondary Specialized Education	https://edu.uz	+
9	Ministry of Public Education	https://www.uzedu.uz	+
10	Ministry of Emergency Situations	www.fvv.uz	+
11	Ministry for Development of Information Technologies and Communications	https://mitc.uz/uz	+
12	Ministry of Economic Development and Poverty Reduction	https://mineconomy.uz	+
13	Ministry of Investment and Foreign Trade	https://mift.uz	–
14	Ministry of Employment and Labor Relations	https://mehnat.uz	+
15	Ministry of Agriculture	https://agro.uz	–

16	Ministry of Water Resources	https://water.gov.uz/uz	+
17	Ministry of Preschool Education	https://mdo.uz/	+
18	Ministry of Culture	http://www.madaniyat.uz/uz/	–
19	Ministry of Sports	https://minsport.uz/	–
20	Ministry of Innovative Development	https://mininnovation.uz/oz/council	+
21	Ministry of Construction	https://mc.uz/	+
22	Ministry of Transport	https://mintrans.uz/	+
23	Ministry of Energy	https://minenergy.uz/uz	+
24	Ministry for the Support of mahalla and the older generation	https://moqqv.uz/oz	–
25	State Statistics Committee	https://www.stat.uz	+
26	State Tax Committee	https://soliq.uz	–
27	State Customs Committee	https://www.customs.uz/oz	–
28	State Committee for Ecology and Environmental Protection of the Republic of Uzbekistan	https://www.uznature.uz/uz	+
29	Committee on Geology and Mineral Resources	https://www.uzgeolcom.uz/uz	+
30	State Committee for Land Resources, Geodesy, Cartography and State Cadastre of the Republic	www.ygk.uz	–
31	State Committee of the Republic of Uzbekistan for Tourism Development	www.uzbektourism.uz	–
32	State Committee of the Republic of Uzbekistan for Investments	www.invest.gov.uz	–
33	State Committee on Forestry of the Republic of Uzbekistan	www.urmon.uz	–
34	State Veterinary Committee of the Republic of Uzbekistan	www.vetgov.uz	+
35	State Committee for Industrial Safety of the Republic of Uzbekistan	www.scis.uz	–
36	State Committee for Defense Industry of the Republic of Uzbekistan	www.oboronprom.uz	–
37	State Statistics Committee	https://www.stat.uz	+
38	Uzarchive Agency under the Cabinet of Ministers of the Republic of Uzbekistan	www.archive.uz	+
39	Uzbek Agency for Technical Regulation	www.standart.uz	–
40	Intellectual Property Agency of the Republic of Uzbekistan	www.ima.uz	+
41	Uzbekkino National Agency	www.uzbekkino.uz	–
42	Capital Market Development Agency of the Republic of Uzbekistan	www.cmda.gov.uz	+
43	State Assets Management Agency of the Republic of Uzbekistan	www.davaktiv.uz	–
44	Export Promotion Agency under the Ministry of Investment and Foreign Trade of the Republic of Uzbekistan	www.epab.uz	–
45	Committee on Religious Affairs under the Cabinet of Ministers of the Republic of Uzbekistan	www.religions.uz	+
46	Antimonopoly Committee of the Republic of Uzbekistan	www.antimon.gov.uz	+
47	Committee on State Reserves Management under the Cabinet of Ministers of the Republic of Uzbekistan	www.udz.uz	–

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As a result of the observations, it was concluded that there are a total of 24 ministries, 4 of which do not have a public council, as well as 7 out of 12 state committees and 4 out of 7 agencies, that do not have a public council.

The results of the study showed by A.E. Yuldashev in 2020 that public councils have 61 bills, 75 draft presidential decrees and resolutions, 139 draft government resolutions, 1930 orders of heads of ministries and departments, 1930 orders of regional heads, 18 participated in the discussion of the decisions of local councils [3]. 838 resolutions of people's deputies and governors, 145 proposals for their improvement.

From the above figures, it can be seen that the activity of local community councils is increasing. The Public Council under the Bukhara Region Khokimiyat alone held public hearings in Shafirkan, Kagan Province, and Bukhara, involving more than 300 people. As a result, recommendations were developed and submitted to the regional administration and the local Council of People's Deputies. They were given suggestions and recommendations on the situation [17].

The Public Council under the Tashkent city administration has developed a draft normative legal act on the proactive formation of the budget [18-19]. This document significantly simplifies and systematizes the process of initiative budgeting in the districts of the capital.

Conclusions

In conclusion, first of all, the public council is an advisory council that makes its proposals and recommendations on the adopted normative legal document. That is, it is understood to include them, taking into account the views of citizens as well.

Second, public councils are a permanent advisory body that operates on a public basis, exercising public control over the adopted normative legal acts. It is also a council that monitors the activities of governmental agencies and officials to ensure compliance with the law in the sphere of protection of the rights and legitimate interests of citizens, legal entities, public interests, the implementation of tasks and functions assigned to the state body and affecting social and public interests.

Based on the above, it is advisable to make a number of changes and additions to the legislation as a proposal.

First of all, we think that paragraph 3 of the Resolution of the President of the Republic of Uzbekistan "On the establishment of Public Councils under state bodies" needs to be replaced.

Secondly, it is necessary to establish a mechanism in the Law of the Republic of Uzbekistan "On transparency of public administration" that clearly regulates the activities of the Public Council.

Thirdly, the Code of Administrative Liability should include requirements establishing administrative responsibility for cases where the rejection or disregard of the proposals of the public council leads to harm to the interests of the individual, society, and the state. We also consider it necessary to develop a procedure for compensation for damages.

Fourth, in order to ensure the scientific foundation of the activities of the factions in the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, we consider it practical to establish Public Councils with specialists with sufficient knowledge, skills, and experience. Therefore, we consider it necessary to amend Article 13.3 of the Law "On the Rules of Procedure of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan". Also, the Public Council under the factions should specialize in assisting in the norm-making activities of the faction. The near and long-term position of the faction can provide a basis for the approbation of the party electorate by the Council to provide a scientifically based opinion on the bill and provide expert analysis.

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SPECIFIC FEATURES OF AMENDMENT AND CANCELLATION OF ADMINISTRATIVE DOCUMENT AND THE NEED FOR ITS IMPROVEMENT

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Abstract. *The article provides a scientific and theoretical analysis of the procedures for amending, cancelling and invalidating an administrative document based on the experience of foreign countries and the current law of the Republic of Uzbekistan. The existing problems in the legislation and relevant aspects of their solution are disclosed when amending, cancelling or invalidating an administrative document. The experience of foreign countries has shown that various ways of amending, cancelling and invalidating an administrative document exist and are effectively used. A clear definition of these mechanisms makes it possible to resolve such disputes through a single procedure. This will avoid unnecessary spending of time and money of citizens, as well as save the resources of the state. Based on the legislation of foreign countries, the legislation of the Republic of Uzbekistan has developed proposals for specifying mechanisms for resolving administrative disputes, amending, cancelling and invalidating an administrative document, improving the procedure for applying the principle of trust protection. The implementation of these proposals in practice will contribute to the elimination of legal gaps in legislation and the establishment of unified legal mechanisms.*

Keywords: *administrative procedures, the principle of trust protection, administrative document, amending of an administrative document, cancellation of an administrative document or recognition as invalid.*

MA'MURIY HUJJATNI O'ZGARTIRISH VA BEKOR QILISH TARTIBINING XUSUSIYATLARI HAMDA UNI TAKOMILLASHTIRISH ZARURATI

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Annotatsiya. *Maqolada xorijiy davlatlar tajribasi hamda O'zbekiston Respublikasining "Ma'muriy tartib-taomillar to'g'risida"gi Qonuni asosida ma'muriy hujjatni o'zgartirish, bekor qilish va haqiqiy emas deb topish tartib-taomillari ilmiy-nazariy tahlil qilindi. Ma'muriy hujjatni o'zgartirish, bekor qilish yoki haqiqiy emas deb topishda qonunchilikdagi mavjud muammolar va hal qilishning dolzarb tomonlari ochib berildi. Xorijiy davlatlar tajribasi ma'muriy hujjatni o'zgartirish, bekor qilish va haqiqiy emas deb topishning turli usullari mavjudligi va samarali qo'llanib kelinayotganini ko'rsatdi. Ushbu mexanizmlarning aniq belgilanishi shu turdagi nizolarni yagona tartib orqali hal qilish imkonini beradi. Bu esa fuqarolarning ortiqcha vaqt va mablag' sarflashining oldini oladi, davlatning resurslari ham tejaladi. Xorijiy davlatlar qonunchiligidan kelib chiqib, O'zbekiston Respublikasi qonunchiligida ma'muriy nizolarni hal qilish, ma'muriy hujjatni o'zgartirish, bekor qilish va haqiqiy emas deb topish mexanizmlarini aniq belgilash, bunda ishonchni himoya qilish tamoyilini qo'llash*

tartibini takomillashtirish bo'yicha takliflar ishlab chiqildi. Ushbu takliflarning amaliyotga joriy etilishi qonunchilikda huquqiy bo'shliqlarni bartaraf etish hamda yagona huquqiy mexanizmlar belgilanishiga xizmat qiladi.

Kalit so'zlar: *ma'muriy tartib-taomillar, ishonchni himoya qilish, ma'muriy hujjat, ma'muriy hujjatni o'zgartirish, ma'muriy hujjatni bekor qilish yoki haqiqiy emas deb topish.*

ОСОБЕННОСТИ ПОРЯДКА ИЗМЕНЕНИЯ И ОТМЕНЫ АДМИНИСТРАТИВНОГО ДОКУМЕНТА И НЕОБХОДИМОСТЬ ЕГО СОВЕРШЕНСТВОВАНИЯ

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Аннотация. *В статье приводится научно-теоретический анализ порядка внесения изменений, отмены и признания недействительным административного документа на основе опыта зарубежных стран и действующего законодательства Республики Узбекистан. Раскрываются существующие проблемы в законодательстве и актуальные аспекты их решения при изменении, отмене или признании недействительным административного документа. Опыт зарубежных стран показал, что существуют и эффективно используются различные способы изменения, отмены и признания административного документа недействительным. Четкое определение этих механизмов позволяет разрешать такие споры в рамках единой процедуры. Это позволяет избежать ненужной траты времени и денег граждан, а также сэкономить ресурсы государства. На основе анализа законодательства зарубежных стран разработаны предложения по уточнению механизмов разрешения административных споров, изменению, отмене и признанию недействительным административного документа, совершенствованию порядка применения принципа доверительной защиты в законодательстве Республики Узбекистан. Реализация этих предложений на практике будет способствовать устранению пробелов в законодательстве и созданию единых правовых механизмов.*

Ключевые слова: *административные процедуры, принцип защиты доверия, административный документ, внесение изменений в административный документ, отмена административного документа или признание его недействительным.*

Introduction

Effective administrative reforms play an important role in the development of every state. In turn, the improvement of administrative procedures plays a tremendous role in the development of public administration and the economy of the Republic of Uzbekistan.

The relevance of the research topic is that there are legal gaps in the process of regulating the relationship between the administrative body and individuals and legal entities in the field of administrative procedures, amendment, cancellation or invalidity of the administrative document in a single piece of legislation the grounds for finding that are not fully established and their mechanisms are not defined.

These cases show that there is no single practice (mechanism) for the adoption of administrative documents by administrative bodies that give rights or obligations to citizens and businesses.

Undoubtedly, administrative relations in Uzbekistan are one of the developing legal spheres. Therefore, one of the most pressing issues today is to improve the existing legislation and law enforcement practices, to determine their effective mechanisms for amending, cancelling or invalidating an administrative document.

At present, amendments, cancellations or invalidations of administrative documents are carried out in accordance with various legislative acts. This is a problem for both government agencies and citizens. Therefore, the experience of foreign countries shows the need to improve these processes. The problems presented demonstrate the importance of the dissertation topic.

The purpose of the research is to develop theoretical guidelines for making amendments, cancellation or invalidation of administrative documents and proposals for improving the legislation in the field of administrative procedures.

The object of research is the administrative-legal relationship of administrative bodies (bodies authorized to manage in the field of administrative and legal activities, including public administration bodies, local executive authorities, citizens' self-government bodies, as well as other organizations authorized to carry out these activities and specially formed commissions) in relation to citizens and legal entities in connection with the amendment, cancellation or invalidation of the administrative document adopted in the case.

Materials and methodology

The methodological basis of the research is the general scientific (analogy, analysis and synthesis, comparative-legal) and scientific methods of cognition. Comparative analysis in terms of specific legal research (study of foreign theories of formal legal, historical and administrative dispute resolution).

A special place in the study belongs to the comparative legal method, which identifies and compares its advantages and disadvantages, including shortcomings in the legal regulation of administrative procedures in Uzbekistan and abroad, identifies future development trends, taking into account the experience of foreign countries. allowed to develop proposals for improving the legislation.

The subject of research is effective mechanisms of resolution as a sign of the legislation of national and foreign countries regulating administrative procedures related to the amendment, cancellation or invalidation of an administrative document, relations in the field of administrative dispute resolution, the rule of law in administrative relations

The legal basis of the scientific article includes the Law of the Republic of Uzbekistan "On administrative procedures" and other normative legal acts. The analysis shows that there is a lack of scientific research in this area in Uzbekistan.

During the preparation of the scientific article were studied scientific articles of A.E. Avritun, Y.A. Popov, V.D. Sorokin, O.V. Chikalina, M.O. Yefremov, N.B. Malyavina, O.V. Lukonkina, O.A. Kuznesova, G.A. Trofimova, L.B. Khvan, Y. Pudelka and issues and recommendations stated in them.

The scientific article reveals the current aspects of solving existing problems in the legislation in the field of amending, cancelling or invalidating an administrative document. Establishing a single legal basis for amending, cancelling or invalidating administrative documents will allow for the effective resolution of such disputes.

Resolving administrative disputes in accordance with the law and making fair decisions will increase the confidence of individuals and legal entities in the state and administrative bodies, and guarantee the rights of individuals and legal entities established by the Constitution and laws.

Research findings

Ensuring the rights, freedoms and legitimate interests of citizens is considered one the main tasks of the legal state. To this end, systematic reforms are being carried out in our country to improve the communication of state bodies with the population, to ensure reliable protection of the rights and freedoms of citizens.

After all, Article 2 of the Constitution of the Republic of Uzbekistan stipulates the responsibility of state bodies and officials to society and citizens, according to Article 30, all state bodies, public associations and officials in the Republic of Uzbekistan shall provide citizens with the opportunity to get acquainted with documents, resolutions and other materials, relating to their rights and interests, according to Article 43, the state is guaranteed to ensure the rights and freedoms of citizens strengthened in the Constitution and laws.

The Legislation on administrative procedures plays an important role in ensuring the active participation of citizens in public administration and the rule of law in relations with administrative bodies, as well as in making fair administrative decisions by administrative bodies. Obviously, the issue of amending, cancelling and invalidating an administrative document is an important element of administrative procedures in the implementation of administrative relations.

This process is directly related to the specific legal assessment of the administrative document, that is, the actions of the administrative body that adopted it.

For example, if a person obtaining a permit violates the law in the implementation of this right, the grantor must cancel the administrative document, and if the grantor obtained the documents on the basis of forged documents, it must be declared invalid.

The administrative document may also amend over time depending on external circumstances (including amends in legislation). That is, a decision that is lawful and expedient at the time of its adoption may subsequently amend its substance, which in turn requires that the relevant document be reviewed by an administrative body or court and brought into line with the law.

Cancellation of an administrative document is one of the ways to invalidate its validity and legal force [1].

The main difference between administrative procedures in comparison with the criminal code is that the "negative administrative document" is not considered a punishment. After all, the repeal of a legal document is not an arbitrary process, but a strictly regulated and controlled mechanism, in the process of which abuse cannot be tolerated. These actions are public legal relationships that have legal consequences.

According to P. Kvosta, "a state document that can be amended at will is meaningless and useless" [2].

In particular, the principle of "protection of trust" should work in the process of amending, cancelling and invalidating an administrative document, and this is very important in making a fair decision.

Let's look at the grounds for amending, cancelling and invalidating an administrative document in the current law and the legal gaps in it.

Article 16 of the Law of the Republic of Uzbekistan *"On Administrative Procedures"* (hereinafter referred to as the Law) is strengthened *"the principle of protection of trust"*. According to this article, the trust in the administrative document of interested persons acting on conscience is protected by law. Administrative bodies are obliged to respect the legally expected results of the administrative practice arising from the persons concerned. The transformation of the administrative practice that has arisen must be justified by the interests of the public, have a common feature and be sustainable.

Article 59 of this Law sets out only the general grounds for cancellation, amendment or invalidation of an administrative act.

In particular, an administrative document may be cancelled or amended by an administrative body that has received an administrative document according to the application or administrative complaint of the interested person, by a higher

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administrative body, as well as by other bodies in cases provided by law.

The need to cancel or amend the administrative document is accepted by the administrative body in cases where amendments in the legislation, prevention of threats to the public interest, inconsistency of the administrative act with the law and in other cases provided by law has the right to cancel or amend the administrative document on its own initiative.

In cases where the trust of the interested person is to be protected, the issue of cancellation or amendment of the administrative act is considered in the judicial procedure.

If the interested person believes in the legal force of the administrative document, used the property obtained on the basis of the administrative document, entered into an agreement to dispose of his property or otherwise used the benefits and privileges specified in the administrative document, his trust must be protected.

According to the current law, an interested person's trust is not protected in the following cases:

– the interested person has not fulfilled the additional obligations related to the administrative document;

– the interested person has not purposefully used the funds, items or rights provided to him on the basis of an administrative document;

– if the interested person know about the illegality of the administrative document or does not know about it due to his own fault;

– if the administrative document is received as a result of deception, threats or otherwise abnormal influence on the administrative body;

– if the law requires the abolition of administrative document without taking into account the protection of the trust of interested persons.

In Article 59 of the Law, it is established that an illegal administrative document can be canceled with the power of withdrawal, by determining the exact moment of its cancellation or elimination. However, it is not established in what order the administrative document will be cancelled by the power of withdrawal.

It is established in the law that the administrative document, which is found to be not in accordance with the law, regardless of the trust of the interested person, can be cancelled by the administrative body if its preservation threatens public interests. However, it is not established what grounds are considered "threats to the public interest".

The law provides for compensation to the interested person for property damage caused or inevitable due to trust in the legal force of the administrative document. However, it is not specified in what order and by whom (administrative body or official) the property damage should be covered.

The law sets a very short norm for invalidating an administrative document and does not disclose its mechanisms. In particular, it is established that an administrative document may be declared invalid by a court in accordance with the procedure established by law.

This document is considered invalid if it is adopted with serious violations of the law of foreign countries and its adoption does not lead to fair consequences. However, the illegality of the document does not automatically lead to its cancellation.

An administrative dispute is a dispute between those who have administrative power and those who do not have equal power, and it is governed by the state-legal relationship (power and subordination). That is, in this relationship, on the one hand, the citizen (or legal entity) on the other hand to ensure, protect or restore the rights, freedoms and legitimate interests of the citizen (or legal entity), to impose

legal obligations on them, to bring them to justice in public administration related administrative body.

The weak point of the conflict in this process is individuals and legal entities, and the state must ensure their rights and legitimate interests quickly and fairly.

The legislation of the CIS (Commonwealth of Independent States) states stipulates the procedure for citizens to appeal to state bodies, the procedural rules governing such appeals and the procedure for appealing against decisions of state bodies in a single document (law or Code) regulating administrative procedures.

The studied literature, the analysis of the legislation of foreign countries show that the bases of amendment, cancellation and invalidation of administrative documents are more extensive and clear than the Law of the Republic of Uzbekistan "On administrative procedures".

In particular, Article 44 of the *German Law* "On administrative procedures" (Verwaltungsverfahrensgesetz) sets out the grounds for invalidating an administrative document [3].

According to the Law, an administrative document is considered invalid if it contains a very significant error, which is clearly visible in the consideration of all the circumstances of the case, which must be taken into account. Also administrative document [3]:

– published in writing or electronically, but it is impossible to identify the administrative body that issued it;

– according to the legal norm, it can be submitted only by application, but this form is not enough;

– removed from its powers (by an unauthorized administrative body);

– if it is not possible to execute on factual grounds;

– if it's required to commit an offense that could be prosecuted or fined;

– if it violates good morals, the administrative document may additionally be declared invalid.

Article 44 also defines the circumstances in which an administrative document is considered invalid, including:

– non-compliance with the rules of territorial jurisdiction;

– the person excluded from the proceedings was present;

– the commission established in accordance with the rules of assistance has not made a decision on the issuance of an administrative document;

– if another administrative body does not provide the necessary assistance in the regulations.

Another important aspect of German law is that an administrative body can declare an administrative document invalid at any time on its own initiative. Also, if the applicant has a legitimate interest, the administrative document may be declared invalid on his application [3].

Article 48 of the law sets out the grounds for cancellation of an illegal administrative document, which may be cancelled in whole or in part by force of future occurrence or reversal. The article also specifies 5 cases in which the trust of an interested person is not protected. Articles 48 and 50 of the law clearly define the procedure for cancellation of an administrative document in separate articles. The law of the Republic of Uzbekistan does not disclose these relations.

Code of Administrative Procedure of the *Republic of Kazakhstan*, 2020 adopted on 29 June and entered into force on 1 July 2021. Previously, the Law on Administrative Procedures was in force [4].

Article 84 of the Code sets out the grounds for cancelling an illegal administrative document. According to this article, violation of the legislation on administrative procedures (if such an offense led or may lead to the adoption of an

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incorrect administrative document) is the basis for finding the administrative document illegal [4].

Separately, clear grounds must be established for the cancellation of existing legal documents on an individual basis, which will ensure legal certainty in legal relations, minimizing the facts of arbitrary termination of their activities by public authorities.

According to the Code of Administrative Procedure of the Republic of Kazakhstan, an essentially valid administrative document cannot be declared illegal only on official grounds [4]. For comparison, these rules also exist in the law of the Republic of Uzbekistan.

According to the code, the principle of trust protection is not applied to the participant of the administrative procedure in the following cases [4].

– the legal document adopted by the administrative document is found to be contrary to the Constitution;

– if the intentional insecurity of the documents or information provided by the participant of administrative procedures is detected;

– if the administrative document is received by the participant of the administrative procedure as a result of a judgment or a court decision that has entered into force legally, as a result of committing illegal acts established by the decision of the prosecutor;

- if the administrative document may affect the interests of the state or the public, state security, or may have irreversible consequences for the life and health of the people.

(For comparison, Article 59 of the Law of the Republic of Uzbekistan also lists 5 cases in which the trust of an interested person is not protected).

Article 84 of the Code establishes the general rule that an administrative document shall be declared invalid from the moment it is accepted and from the moment it is declared illegal. However, the basis of finding out that it is not true is not more clearly defined in the expanded form.

Article 85 of the code establishes the basis for the cancellation of legal administrative document. According to this article, an administrative document adopted in accordance with the requirements of the legislation of the Republic of Kazakhstan and in accordance with them is valid. A legal administrative document may be cancelled in whole or in part. That is, a legal administrative document can be cancelled only in the following cases:

– the possibility of cancellation of an administrative document is provided by the laws of the Republic of Kazakhstan and the administrative document;

– if the administrative document is accepted on condition and this condition is not fulfilled or is not fulfilled properly.

The Code establishes that the damage caused as a result of the cancellation of an illegal administrative document, the right of trust shall be reimbursed to the participant of the administrative proceedings protected by the laws of the Republic of Kazakhstan in accordance with the civil legislation of the Republic of Kazakhstan. It is also advisable to reflect this rule in the Law of the Republic of Uzbekistan "On Administrative Procedures". This will eliminate the legal gap in the law on compensation for damages.

Article 67 of the Law of the *Republic of Azerbaijan* "On Administrative Proceedings" defines the grounds for cancellation of an illegal administrative document. According to this Law, an administrative document adopted by an administrative body as a result of violation or improper of legal norms or substantive legal norms on administrative proceedings is considered illegal [5].

An illegal administrative document may be cancelled by the administrative body that adopted it or by a higher administrative body or court.

If the interested person believes that its content and this trust is protected by law, as well as does not harm the rights or legally protected interests of other persons, the state or public interests, implies one-time or current monetary or property obligations to the interested person or such obligations it is determined that the cancellation of an unlawful administrative document is not allowed.

An interested person may not use the right of trust protection in the following cases:

– if the adoption of an administrative document is achieved through bribery, threat or deception;

– if the adoption of an administrative document is achieved by providing documents that reflect incorrect or distorted information;

– if he knew that the administrative document was illegal or did not know because of gross negligence.

Article 68 of this Law provides the grounds for cancellation of a legal administrative document, the cancellation of a legal administrative document eliminates the legal consequences arising from the date of its entry into force, Article 69 establishes the grounds for invalidation or cancellation of a separate part of the administrative document.

Article 65 of the law also defines the grounds for invalidating an administrative document. It is obvious that the Law of the Republic of Azerbaijan contains more detailed grounds for the abolition of illegal administrative acts, and it is expedient to include its norms in our national legislation.

The Law of the *Kyrgyz Republic* "On the Fundamentals of Administrative Activity and Administrative Procedures" (July 31, 2015) is based on the German legislation in the field of administrative procedures, Chapter 9 of which is devoted directly to the cancellation of administrative document.

In particular, Article 55 of the Law provides for the grounds for the cancellation of administrative document, Article 56 provides for the grounds for the cancellation of legal and illegal administrative document, and the Article 57 establishes other rules for the cancellation of administrative document [6].

However, the Law of the Kyrgyz Republic does not stipulate the grounds for cancellation of an administrative document in favor of or against an interested party, cancellation of an administrative document with the power of withdrawal or for the next period.

In my opinion, although the Law of the Kyrgyz Republic is also quite well written, the grounds for revocation of an administrative document in favor of or against an interested person are not fully explained.

Article 77 of the law of the *Republic of Armenia* "On the basis of management and administrative proceedings" provides grounds for cancellation of an administrative document. According to the Law, the basis for cancellation of an administrative document may be a violation of procedural norms [7].

Article 62 also provides grounds for invalidating an administrative document, Article 63 defines the consequences of invalidating an illegal administrative document. According to this, an illegal administrative document may be declared invalid by the administrative body or its higher body that adopted the document, as well as in court.

Article 64 of the law defines the consequences of invalidating an illegal administrative document. According to this, an illegal administrative document may also lose its legal force, from the date of the decision to declare it invalid or from the date of adoption of the administrative document (with power of withdrawal).

If a part of an illegal administrative document is found to be invalid, the

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consequences of the invalidation of the administrative document will be applied to the part of the administrative document that is found to be invalid.

The Law of the Republic of Armenia defines the grounds for cancellation and invalidation of an administrative document and their consequences in separate articles.

In the law of the Republic of Armenia, the grounds for the cancellation of the administrative document and the finding that it is invalid and their consequences are revealed in separate articles.

It should be noted that the law of the Republic of Armenia defines invalidation as "gross, obvious errors" and they are defined by law.

Similar criteria are also established in the law on administrative procedures of the Republics of Latvia [8], Estonia [9], Tajikistan [10], Georgia [11], Belarus [12]. Analysis shows that the grounds for repealing and invalidating an administrative document in the legislation of these countries should be implemented in our national legislation.

In the UK, issues of cancellation and finding it invalid are formulated and resolved within the framework of judicial practice in relation to a variety of circumstances.

In France, the entire system of administrative justice is largely non-judicial. This is because the administrative justice system has developed as a separate institution of public administration. Therefore, it is different from Germany and the United States. Control over the legality of the activities of administrative bodies in France is entrusted to the heads of ministries.

In France, the Council of State for Administrative Disputes was established and established by law in 1872 as the supreme body of administrative justice. In these aspects it is different from the administrative justice system of Germany. The code of Administrative Justice calls the State Council the Supreme Administrative Court. Administrative courts do not have constitutional status, but the French Constitutional Council has given a constitutional character to the principle of independence of administrative judges. Decisions of the State Council on Administrative Disputes are final and will not be discussed. The French Council of State has established general legal principles for administrative procedures.

In France Administrative courts of appeal were established in 1987. They consider appeals against decisions of administrative courts.

French administrative law, unlike a number of other branches of law, is not codified. It is organized by publishing more than 30 laws and other documents. Administrative documents are issued by the President, Government, ministries and departments, as well as local authorities (mayors, chairmen of regional and general councils, prefects, etc.).

For example, Japan's Law on Administrative Procedures only provides for appeals against decisions of administrative bodies [13], in the law of South Korea there are no rules that determine invalidity [14]. However, we believe that it should be clearly defined by the law in the field of administrative procedures.

According to the above, it is impossible to equate the illegality and invalidity of an administrative document by putting a "hyphen" between them. That is, the illegality of an administrative document does not mean that it will be cancelled.

According to L. Hwan, one of our local scientists, in the legislation of European countries it is possible to see the cancellation of the administrative act and the cancellation of the administrative act, which is more likely to be found to be invalid [15].

Simply put, making decisions on issues that are not provided by law or on issues that do not fall within their competence

leads to the fact that this decision is not valid. On the contrary, the adoption of decisions that are not in accordance with the law on matters within its competence, will lead to the amendment or cancellation of this decision.

Legislation of the studied foreign states in the field of administrative procedures The bases of amendment, cancellation and invalidation of the administrative act are in many respects the Law of the Republic of Uzbekistan "On administrative procedures" was found to differ from the Act.

The study showed that the basis of the legislation of foreign countries in the field of administrative procedures to be amended, cancelled and found to be invalid differs in many aspects from the law of the Republic of Uzbekistan "On administrative procedures".

In almost all CIS countries, the procedure for citizens to apply to state bodies, all procedural rules governing such relations, and the procedure for appealing against decisions of state bodies are defined in a single document regulating administrative procedures.

Administrative procedures represent the order of actions of the government in the process of public administration, which is regulated by normative legal documents, the purpose of which is to implement the material norms of administrative law [16].

Conclusions

Analysis of normative-legal documents of foreign countries in the field of administrative procedures showed that it is necessary to improve the legislation of the Republic of Uzbekistan on administrative procedures and to coordinate with the general progressive rules of foreign practice.

Based on the above, *it is necessary to make the following amendments and improve the law of the Republic of Uzbekistan "On administrative procedures"* in order to improve the principles of amendment, cancelling and finding invalid administrative documents, to ensure reliable protection of the rights of individuals and legal entities.

*First***,** the "principle of protection of trust" protects trust in an administrative document, not trust in administrative practice. Therefore, interested parties have the right to arise from the presumption of the correctness of decisions of administrative bodies. The error made by an administrative body should not cause undesirable consequences for the person concerned acting on conscience.

It is also necessary to establish that the trust in the written statements and official statements of the administrative bodies of the interested parties is also protected by law *(Based on the experiences of Azerbaijan and Latvian countries)*.

Second, the grounds for cancellation and amendment of an administrative document in accordance with the rules of trust protection, the circumstances in which the trust is compulsorily protected and the trust is not protected should be clearly disclosed in a separate article (Article of Trust Protection). Specially:

- to determine whether the administrative body should protect the trust of the interested person when the administrative act is cancelled to the detriment of the interested person after the expiration of the possibility of filing an administrative complaint and (or) litigation in court;

- the interested person has used the property received on the basis of the administrative act in trust with the legal force of the administrative act, entered into an agreement to dispose of his property, incurred expenses or otherwise used the benefits and privileges granted by the administrative act if so, to determine whether his trust should be protected.

It is also necessary to specify that the trust of the interested person is not protected in the following cases:

- the interested person has not fulfilled

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the additional obligations related to the administrative act;

- the interested person has not used the items (property, money, objects) or rights provided to him on the basis of an administrative act for the specified purpose;

- if the interested person knew or should have known about the illegality of the administrative act;

- the administrative act was adopted as a result of fraud, threat or other unlawful influence on the administrative body;

- if the protection of trust is prohibited by law or the possibility of cancellation is directly provided for in the administrative act itself.

If the retention of an illegal administrative act threatens the public interest or disproportionately discriminates against the legitimate interests of other interested persons, the administrative act may be cancelled to the detriment of the interested person, regardless of the protected trust.

In case of cancellation of an administrative act despite the protected trust, the interested person must be compensated for the actual damage caused or inevitable due to the trust in the legal force of the administrative act.

Compensation for actual damage should not exceed the amount of benefits that the interested person should receive, according to the content of the administrative act. A claim for compensation for property damage may be filed within one year from the date when the interested person is duly notified of the cancellation of the administrative act.

This term does not apply to the request of the owner or possessor to eliminate violations of his rights.

Third, pre-trial appeal against administrative documents, other documents of the administrative body and administrative actions is considered to be an obligatory condition for settling disputes over administrative acts, other documents of the administrative body and administrative actions (except in cases when it is necessary to take urgent measures of initial judicial protection to eliminate the threat to the rights of the interested person).

To determine whether the administrative body can review, cancel or amend the complaint against the administrative document adopted by it. In this case, it is advisable to immediately notify the person who filed the administrative complaint, as well as interested persons whose rights and legitimate interests are affected by the administrative act, of the decision. This institution is important in maintaining legal stability in society.

If the protection of trust is not an obstacle to cancellation, then the administrative body is not only entitled, but also obliged to cancel the illegal administrative act.

Fourth, in contrast to the current law, the grounds for invalidation of an administrative document should be divided into a separate article, and the cancellation and amendment of an administrative document should be improved (clarified), taking into account the following:

- after the termination of the administrative complaint and (or) the possibility of a dispute in court, the administrative document may be cancelled or amended in accordance with this law by the administrative body or the administrative body in the higher standing instance that received it;

- the administrative body may, on duty, cancel or amend the administrative act adopted by it in accordance with the requirements of the law or when it is found to be illegal (except in cases where the protection of trust prevents it);

- amendments in the administrative document are made by adopting it in the new edition;

- in case of amendment of the administrative document it is recognized as valid in the new edition from the

moment specified in the new edition of the administrative document, if such time is not specified, it is valid from the moment of entry into force of the new edition of the administrative document that the previous version of the administrative document loses its force;

- it should be noted that the administrative document can be cancelled or amended on the basis of a protest of the prosecutor or on the recommendation of the competent state body.

In this case, these sitiations regulate the cancellation or amending of administrative documents, which opportunity of filing an administrative complaint and disputing in court is over, that is, they're applied when the possibilities of administrative comlaint (1 month) and dispute by suing (2 month) expire.

Fifth, it is necessary to clearly specify the circumstances in which the administrative body itself can cancel or amend the received administrative document on its own initiative and include in it the following:

when there is a need to eliminate the threat to the public interest;

when there is an opportunity to improve the situation of an interested person without compromising the rights and legitimate interests of other interested parties or jeopardizing public interests.

Sixth, the introduction of a new institution stating that an administrative document can be cancelled or amended in favor of an interested party or to the detriment of an interested party. In this case, if the cancellation or amendment of the administrative act is made in favor of one interested party, but to the detriment of another interested party, the rules governing the cancellation or amendment of the administrative act to the detriment of the interested person should be applied.

Seventh, it is necessary to establish legal mechanisms for the cancellation or amendment of the administrative document for the next period or by power of withdrawal. Such:

- when the administrative document cancelling or amending the previously adopted administrative document is adopted, what part of the administrative document is being cancelled or amended by the administrative body and from when it becomes invalid;

- if the cancelled administrative document does not specify the time of its cancellation, the cancelled administrative act shall become invalid from the moment of come into force of the administrative act of its cancellation;

- when the administrative act is cancelled by the power of withdrawal, it is established by which administrative act the cancellation is carried out, from the moment of the expiration of the period specified in the same administrative act.

Eighth, the issue of cancellation of a legal administrative document should be specified in a separate article, which should include the following:

The legal administrative document may be further cancelled in favor of the interested person (except in cases prohibited by law), in case of elimination of the circumstances that served as a basis for the adoption of a legal administrative document, which led to the permanent restriction of the rights of the interested person, administrative body must cancel the administrative document at the request of the relevant interested person from the moment the circumstances cease to exist.

In the following cases, a legal administrative act may be cancelled to the detriment of the person concerned:

- in accordance with the requirements of the law or directly provided for in the administrative document itself;

- to prevent the public interest from being harmed as a result of subsequent actual or legal circumstances;

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- if there are additional obligations related to the administrative act and the interested person has not fulfilled them;

- the interested person has not used the property (property, money, objects) or the right granted to him on the basis of an administrative act for the specified purpose.

Ninth, the issue of cancellation of an illegal administrative document should be specified in a separate article, which includes:

- the illegal administrative document may be cancelled in favor of the interested person by the next period or by power of withdrawal;

- it is necessary to specify that the illegal administrative document can be canceled by the force of the coming period or withdrawal to the detriment of the person concerned. In this case, the document must be cancelled on the basis of the principle of legality.

Tenth, the current law does not provide *for the grounds for reconsideration of an administrative act*. Therefore, it is necessary to clearly define in the legislation the grounds for revision of an administrative document that has entered into force. In particular:

- when determining the circumstances that are not known or could not be known to the administrative proceedings participant who initiated the revision, significant for the case;

- when the actual or legal circumstances that are important for the case amend in favor of the applicant;

- when new evidence is discovered that could lead to a more profitable decision for the applicant;

- when it is determined that a witness who has influenced the consideration and resolution of the case has knowingly given false testimony, that the expert has given a false conclusion, and that the documents or material evidence have been falsified, as determined by a court judgment which has entered into force;

- criminal actions of the participants of the administrative proceedings or persons who facilitate the resolution of the administrative case, determined by the judgment of the court entered into legal force, affecting the consideration and resolution of the case;

- it is necessary to establish that the administrative document may be reconsidered in the event of cancellation of the decision of the court, administrative body or other state body, which served as the basis for the adoption of this administrative document.

The introduction of these important amendments and additions to the Law of the Republic of Uzbekistan "On administrative procedures" serves to establish a single legal framework, reliable protection of the rights of individuals and legal entities, increase public confidence in government agencies, save the population time and money, eliminate legal gaps in the law, reduce the workload of administrative bodies and courts.

These mechanisms will be universal feature for all administrative relations.

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INTELLEKTUAL MULK OBYEKTLARIGA NISBATAN HUQUQLAR VA QONUNIY MANFAATLARNI SUD ORQALI HIMOYA QILISH INSTITUTSIONAL VA HUQUQIY TIZIMINING MOHIYATI, ZARURIYATI VA UMUMIY TAVSIFI

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Annotatsiya. *Fuqarolik huquqlari tizimida intellektual mulk obyektlariga nisbatan huquqlar va qonuniy manfaatlar an’anaviy fuqarolik huquqlari bo‘lgan mulk huquqi, majburiyat huquqi, delikt majburiyatlarga nisbatan yaqinda vujudga keldi, deb aytish mumkin. Intellektual mulk obyektlariga nisbatan huquq egalarining o‘zlari ham bu huquqlar mazmunini to‘laqonli anglab, ulardan samarali foydalanish ko‘nikmasini hali-hanuz anglab yetgani yo‘q. Agar intellektual mulkni ijtimoiy ma’naviy hayotimizda va iqtisodiy rivojlanishda asosiy drayver, ya’ni harakatlantiruvchi kuch ekanini e’tiborga olsak, bu sohada jiddiy, tizimli tadbirlarni amalga oshirishimiz lozim. Bu tizimli tadbirlar ichida intellektual mulk obyektlariga nisbatan sud orqali huquqiy himoya samarali amaliyoti va ko‘nikmalarini shakllantirish asosiy o‘rinni egallaydi. Tadqiqotda sudlarda intellektual mulk huquqlari va qonuniy manfaatlarini himoya qilish tizimini yanada takomillashtirish masalalari yuzasidan huquq normalari hamda huquqshunos olimlarning ilmiy-nazariy qarashlaridan foydalanildi. Mavzu yuzasidan tegishli xulosa va tavsiyalar berildi.*

Kalit so‘zlar*: intellektual mulk, ijodiy faoliyat natijalari, mutlaq huquqlar, mualliflik huquqi, patent huquqi, ilmiy suverenitet, sud orqali himoya, ma’muriy tartibdagi himoya, sudgacha himoya tartibi.*

ПРАВОВАЯ ПРИРОДА НЕОБХОДИМОСТИ И ОБЩАЯ ХАРАКТЕРИСТИКА ИНСТИТУЦИОНАЛЬНОЙ И ПРАВОВОЙ СИСТЕМЫ СУДЕБНОЙ ЗАЩИТЫ ПРАВ И ЗАКОННЫХ ИНТЕРЕСОВ НА ИНТЕЛЛЕКТУАЛЬНУЮ СОБСТВЕННОСТЬ

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Аннотация. *В системе гражданских прав можно отметить, что права и законные интересы на интеллектуальную собственность в последнее время возникли по отношению к имущественным, обязательственным, деликто-обязательственным правам, которые являются традиционными гражданскими правами. Сами обладатели прав интеллектуальной собственности еще не до конца осознали смысл этих прав и возможность их эффективного*

использования. Если принять во внимание, что интеллектуальная собственность является основным двигателем общественной и духовной жизни, экономического развития, необходимо предпринять серьезные, системные меры в этой области. Среди этих системных мер центральное место занимает формирование эффективных практик и навыков судебной защиты в отношении интеллектуальной собственности. По мнению автора статьи, среди этих системных мер центральное место занимает формирование эффективной практики и навыков правовой защиты интеллектуальной собственности в судебном порядке. В исследовании использованы законодательные нормы и научно-теоретические взгляды ученых-правоведов на дальнейшее совершенствование системы защиты прав интеллектуальной собственности и законных интересов в судах. В заключении автор делает соответствующие выводы и дает рекомендации.

Ключевые слова: *интеллектуальная собственность, результаты творческой деятельности, исключительное право, авторское право, патентное право, научный суверенитет, судебная защита, административно-правовая защита, разрешение споров досудебной защиты.*

ESSENCE, NEED AND GENERAL DESCRIPTION OF THE INSTITUTIONAL AND LEGAL SYSTEM OF RIGHT TO INTELLECTUAL PROPERTY AND PROTECTION OF LEGAL INTERESTS IN COURT

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Abstract. *In the system of civil rights, it can be said that the rights and legitimate interests concerning intellectual property have recently arisen in relation to property, obligations, and torts, which are traditional civil rights. The owners of intellectual property rights themselves have not yet fully realized the meaning of these rights and the possibility of their effective use. If we take into account that intellectual property is the main engine of our social and spiritual life and economic development, it is necessary to take serious, systemic measures in this area. Among these systemic measures, the formation of effective practices and skills of judicial protection in relation to intellectual property occupies a central place. According to the author of the article, among these systemic measures, the formation of effective practice and skills in the legal protection of intellectual property in court takes a central place. The study used legislative norms and scientific and theoretical views of legal scholars on the further improvement of the system for protecting intellectual property rights and legitimate interests in courts. In conclusion, the author draws appropriate conclusions and makes recommendations.*

Keywords: *intellectual property, results of creative activity, exclusive right, copyright, patent law, scientific sovereignty, judicial protection, administrative and legal protection, dispute resolution of pre-trial protection.*

Kirish

O‘zbekiston Respublikasi FKning 1-moddasida fuqarolik huquqlari va qonuniy manfaatlarining to‘sqinliksiz amalga oshirilishi, buzilgan huquqlar tiklanishi, ularning sud orqali himoya qilinishini ta’minlash zarurligiga fuqarolik qonun hujjatlari asoslanadi, deb ko‘rsatilgan. Fuqarolik huquqlari tizimida intellektual mulk obyektlariga nisbatan huquqlar va qonuniy manfaatlar an’anaviy fuqarolik huquqlari bo‘lgan mulk huquqi, majburiyat huquqi, delikt majburiyatlarga nisbatan yaqinda vujudga keldi, deb aytish mumkin. Milliy huquq tizimida intellektu-

al mulkning har bir obyekti bo‘yicha maxsus qonunlar qabul qilindi. Ularda turli subyektlarning huquqlari turlari, ularning mazmuni mustahkamlab qo‘yildi. Biroq shuni e’tirof etish kerakki, intellektual mulk obyektlariga nisbatan huquq egalarining o‘zlari ham bu huquqlar mazmunini to‘laqonli anglab, ulardan samarali foydalanish ko‘nikmasini hali-hanuz anglab yetgani yo‘q. Intellektual mulk obyektlaridan foydalanish bilan bog‘liq bo‘lgan boshqa ishtirokchilar huquqiy ongi va madaniyatining bu sohadagi holati haqida gapirmasa ham bo‘ladi. Biroq shunga qaramasdan, vaziyat jiddiy ravishda o‘nglanayotganini e’tirof etish lozim. Huquqni qo‘llash amaliyotida ham, sud amaliyotida ham bu sohada muayyan jonlanish sezilmoqda.

Agar intellektual mulkni ijtimoiy ma’naviy hayotimizda va iqtisodiy rivojlanishda asosiy drayver, ya’ni harakatlantiruvchi kuch ekanini e’tiborga olsak, bu sohada muhim tizimli tadbirlarni amalga oshirish lozim. Bu tizimli tadbirlar ichida intellektual mulk obyektlariga nisbatan sud orqali huquqiy himoya samarali amaliyoti va ko‘nikmalarini shakllantirish asosiy o‘rinni egallaydi. Mazkur sohada o‘z huquqlarini o‘zi himoya qilish, ma’muriy tartibda himoya qilish, nosud tartibida himoya qilish bo‘yicha har qanday xatolar, bahs-munozaralar faqat sud orqali himoya tizimida adolatli va qonuniy yechim topishi mumkin.

Sud orqali himoya qilishning samarali tizimini shakllantirishda intellektual mulk obyektlarining huquqiy rejimi, xususan, ularni vujudga keltiruvchi intellektual faoliyat, ijodiy faoliyatning o‘ziga xos xususiyatlari muhim ahamiyatga ega.

Material va metodlar

Tadqiqotda sudlarda intellektual mulk huquqlari va qonuniy manfaatlarini himoya qilish tizimini yanada takomillashtirish masalalari yuzasidan huquq normalari hamda huquqshunos olimlarning ilmiy-nazariy qarashlari, shuningdek, qiyosiy-huquqiy usul, tahlil, sintez va boshqa usullardan foydalanildi.

Tadqiqot natijalari

Ijod erkinligi inson huquqlarining tarkibiy qismi sifatida BMT Bosh Assambleyasi tomonidan 1948-yilda qabul qilingan Inson huquqlari umumjahon Deklaratsiyasining 27-moddasida mustahkamlab qo‘yilgan [1]. Unga ko‘ra, har bir inson jamiyatning madaniy hayotida erkin ishtirok etish, san’atdan bahramand bo‘lish, ilmiy taraqqiyotda qatnashish va uning ne’matlaridan foydalanish huquqiga ega. Har bir insonning o‘zi muallifi bo‘lgan ilmiy, adabiy yoki badiiy asarlari yuzasidan ma’naviy va moddiy manfaatlari himoya qilinadi. BMT Bosh Assambleyasi tomonidan 1966-yilda qabul qilingan “Iqtisodiy, ijtimoiy va madaniy huquqlar to‘g‘risida”gi xalqaro Paktda [2] ham ijod erkinligi va uning natijalariga bo‘lgan huquq mazmuni inson huquqlari umumjahon Deklaratsiyasi mazmun-mohiyatini o‘zida mujassamlashtirgan. Xalqaro Paktning 15-moddasiga ko‘ra, ushbu Paktda ishtirok etayotgan davlatlar har bir insonning quyida bayon etilgan huquqini e’tirof etadi:

a) madaniy hayotda qatnashish;

b) ilmiy taraqqiyot va uning amalda qo‘llanish natijalaridan foydalanish;

d) o‘zi muallif bo‘lgan ilmiy, adabiy yoki badiiy asarlar munosabati bilan ma’naviy va moddiy manfaatlar himoyasidan foydalanish.

Ushbu Paktda ishtirok etayotgan davlatlar tomonidan mazkur huquqning to‘la amalga oshirilishi uchun ko‘rilishi kerak bo‘lgan tadbirlar ilm-fan va madaniyat yutuqlarini asrash, rivojlantirish va yoyish uchun zarur bo‘lgan choralarni qamrab oladi.

Mazkur Paktda ishtirok etuvchi davlatlar ilmiy tadqiqotlar va ijodiy faoliyat uchun so‘zsiz zarur bo‘lgan erkinlikni hurmat qilish majburiyatini oladilar.

O‘zbekiston Respublikasi Konstitutsiyasi inson huquqlari bo‘yicha xalqaro standartlar darajasida shakllantirilganini e’tirof etish joiz. Konstitutsiyaning 42-moddasida har kimga ilmiy va texnikaviy ijod erkinligi, madaniyat yutuqlaridan foydalanish kafolat-

lanadi. Davlat jamiyatning madaniy, ilmiy va texnikaviy rivojlanishiga g‘amxo‘rlik qilishi belgilab qo‘yilgan. Ayni paytda shuni ta’kidlash o‘rinliki, bugungi kunda mamlakatimizda konstitutsiyaviy islohotlarni amalga oshirish jarayoni ketmoqda. O‘zbekiston Respublikasi Prezidenti Shavkat Mirziyoyev lavozimga kirishish tantanali marosimga bag‘ishlangan Oliy Majlis Palatalari qo‘shma majlisidagi yig‘ilishda so‘zlagan nutqida Yangi O‘zbekiston taraqqiyot strategiyasining mazmunini ochib berib, bu muhim konseptual hujjatda islohotlarimizning uzviyligi va davomiyligini ta’minlash maqsadida Harakatlar strategiyasidan taraqqiyot strategiyasi sari degan tamoyil asosiy g‘oya va bosh mezon sifatida kun tartibiga qo‘yildi. Biz ushbu strategiyada yurtimizda yashayotgan har bir fuqaroning huquq va erkinliklari, qonuniy manfaatlarini eng oliy qadriyat deb belgiladik.

Ma’lumki, bu oliy qadriyatni tom ma’noda qaror toptirish, biron-bir manzilga yetib borib to‘xtash degani emas. Inson huquqlarini himoya qilish uzluksiz davom etadigan jarayon ekanini barchamiz chuqur anglaymiz. Jahon tarixi va demokratik davlat tajribasi ham shundan dalolat beradi [3]. Shu ma’noda yuqoridagi ko‘rsatmadan kelib chiqib, konstitutsiyaviy islohotlar jarayonida Konstitutsiyaning ijod erkinligiga bag‘ishlangan normasi mazmunini qayta ko‘rib chiqish maqsadga muvofiq. Inson huquqlari umumjahon Deklaratsiyasida ham, iqtisodiy ijtimoiy va madaniy huquqlar to‘g‘risidagi xalqaro Paktda ham ijod erkinligi keng ma’noda talqin etiladi. Ya’ni ilmiy, texnikaviy, adabiy va badiiy ijod erkinligi. Biroq Konstitutsiyaning 42-moddasida faqat ilmiy va texnikaviy ijod erkinligiga urg‘u berilgan.

Ijod insonning intellektual salohiyatini ro‘yobga chiqaruvchi faoliyat sifatida ilmiy, texnikaviy, adabiy va badiiy ijod turlariga bo‘linadi. Binobarin, ijod erkinligi ijodning hamma turlariga taalluqli bo‘lishi lozim va ijodning hamma turlari Asosiy Qonunda aks etishi shart. Konstitutsiyada faqatgina ijod erkinligini to‘la kafolatlashning o‘zi yetarli emas. Ijod erkinligi natijalari ne’matlarning yangi turi, mulkiy manfaatlar va shaxsiy huquqlarni o‘zida mujassamlashtiruvchi intellektual mulk huquqini vujudga keltiradi. Intellektual mulk huquqi va moddiy obyektlarga nisbatan mulk huquqi o‘rtasida muayyan umumiyliklar bo‘lishi bilan birgalikda, muayyan o‘ziga xosliklar ham mavjud. Binobarin, Asosiy Qonunda intellektual mulk egalarining huquqlari va qonuniy manfaatlari har tomonlama huquqiy himoya qilinishi, davlat bu huquqlarning amalga oshirilishi uchun to‘liq sharoit yaratib berishi haqidagi normani ham shakllantirish lozim.

Intellektual mulk obyektlariga nisbatan huquqlar va qonuniy manfaatlar e’tirof etilishi va himoyasining asosiy shartlari sifatida ijod erkinligi chegarasini aniqlab olish g‘oyat muhim ahamiyatga ega. Ijod erkinligi ham, o‘z navbatida, muayyan turlarga bo‘linishi yuqorida qayd etilgan edi. Xususan, ilmiy ijod erkinligi g‘oyat muhim ahamiyatga ega bo‘lgan kategoriyadir. Nafaqat ilm-fan, balki butun insoniyat tamadduni tarixida ijod erkinligini muayyan darajada cheklash oxir-oqibatda xato bo‘lib chiqqanligi hammaga ma’lum bo‘lgan haqiqatdir. Masalan, Jordano Bruno va Galiley yerning shar shaklida ekanligi haqidagi ilmiy g‘oyasi uchun gulxanda yoqilgan yoki inkvizitsiya sudi oldida javob bergan.

Sovet davrida genetika va kibernetika kabi fan sohalari marksizm aqidalariga to‘g‘ri kelmagani uchun soxta fan deb e’lon qilingan va uning namoyondalari quvg‘in etilgan. Oxir-oqibat bu sovet fanining ushbu yo‘nalishlar sohasida keskin orqada qolishiga olib keldi. Mazkur satrlar muallifi bir vaqtlar ilmiy suverenitet haqidagi g‘oyalarni ilgari surgan edi [4]. Albatta, u o‘z davrida milliy suverenitet, davlat suvereniteti kabi g‘oyalar keng urf bo‘lgan paytda ilgari surilgan zamonasozlik qarashining ko‘rinishi hisoblanishi ham mumkin. Biroq uning muayyan ratsional mag‘zi bor deb hisoblaymiz. Ilmiy suve-

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renitet, o‘z navbatida, quyidagi tamoyillarga asoslanadi:

birinchidan, har qanday ilmiy g‘oya yashashga haqli;

ikkinchidan, hech qanday ilmiy g‘oyaning to‘g‘ri yoki noto‘g‘ri ekanligi davlat hokimiyati yoki sud orqali belgilanmasligi lozim;

uchinchidan, yangi ilmiy g‘oya muallifi ijtimoiy jihatdan ta’qib ostiga olinmasligi kerak.

Albatta, yuqoridagi ilmiy suverenitet konsepsiyasidan ilm-fanda har kim o‘zi xohlagan g‘oyani ilgari suraveradi, degan anarxistik yondashuv tushunilmasligi lozim. Olimning fan, jamiyat oldidagi mas’uliyati uning ilmiy ijodiy faoliyati uchun ham muayyan majburiyat yuklaydi. O‘zbekiston Respublikasi “Ilm-fan va ilmiy faoliyat to‘g‘risida”gi Qonunining 14-moddasida ijod erkinligini suiiste’mol qilishning muayyan chegaralari belgilab qo‘yilgan. Unga ko‘ra, ilmiy faoliyat yurituvchi shaxslar inson hayoti va salomatligi, atrof tabiiy muhitga zarar yetkazishi mumkin bo‘lgan ilmiy faoliyatda qatnashishni rad etish, inson hayoti va salomatligi atrof tabiiy muhitga zarar yetkazmaslik, ko‘chirmachilikka yo‘l qo‘ymaslik, o‘zgalarning ilmiy ishlanmalarini o‘zlashtirmaslik va yolg‘on ma’lumotlarga asoslanmaslik, intellektual mulk huquqlari ilmiy odob-axloq qoidalariga rioya qilishga majburdirlar.

Bugungi kunda olimlarda yuksak mas’uliyat tuyg‘usi mavjudligi to‘g‘risida dadil aytish mumkin. O‘tgan asrning 90-yillarida hayvonlarni klonlashtirish bo‘yicha tadqiqotlar muvaffaqiyatli yakunlandi. Navbatdagi masala – insonni klonlashtirish kun tartibiga chiqdi. Ayni paytda bu sohada huquqiy va axloqiy muammolar ham ko‘ndalang turibdi. Shu sababli ham butun dunyo olimlari yakdillik bilan insonni klonlashtirishni to bu sohadagi huquqiy va axloqiy yechimlar topilmaguncha to‘xtatib turishga qaror qildilar. Lekin, afsuski, xitoylik bir olim 2017-2018-yillarda insonni klonlashtirish bilan bog‘liq tadqiqotlarni amalga oshirgani ma’lum bo‘ldi. Shu munosabat bilan ilmiy jamoatchilikda keng muhokama bo‘lib o‘tdi va olimlar insonni klonlashtirish bo‘yicha tadqiqotlarga nisbatan maratoriyga qat’iy rioya qilish bo‘yicha o‘z ahdlariga sodiq ekanliklarini yana bir bor ta’kidladilar.

Ilmiy faoliyatdan farqli ravishda adabiy-badiiy faoliyat ommaviy axborot vositalar orqali o‘zini namoyon qiladi. Binobarin, badiiy ijod erkinligi adabiy ijod erkinligi, so‘z erkinligi, axborotlarni izlash, topish va tarqatish erkinligi bilan uzviy bog‘liq. Konstitutsiyamizning 67-moddasida “Ommaviy axborot vositalari erkindir va qonunga muvofiq ishlaydi. Ular axborotning to‘g‘riligi uchun belgilangan tartibda javobgardirlar. Senzuraga yo‘l qo‘yilmaydi”, deb belgilab qo‘yilgan.

Ayni paytda shuni ta’kidlash o‘rinliki, Konstitutsiyaning ba’zi normalarida taqdim etilgan erkinlikni amalga oshirish doiralari ham o‘z ifodasini topgan. Masalan, Konstitutsiyaning 20-moddasiga ko‘ra, fuqarolar o‘z huquq va erkinliklarini amalga oshirishda boshqa shaxslarning davlat va jamiyatning qonuniy manfaatlari va erkinliklariga putur yetkazmasligi shartligi, 29-moddasida fikrlash erkinligi, so‘z erkinligidan amaldagi konstitutsion tizimga qarshi qaratilgan axborot va qonun bilan belgilangan boshqa cheklashlarni buzish maqsadida foydalanmasliklari belgilab qo‘yilgan. Konstitutsiyaning 57-moddasida esa konstitutsiyaviy tuzumni zo‘rlik bilan o‘zgartirishni maqsad qilib qo‘yuvchi, respublikaning suvereniteti, yaxlitligi va xavfsizligi, fuqarolarning konstitutsiyaviy huquq va erkinliklariga qarshi chiquvchi urushni ijtimoiy, milliy, irqiy va diniy adovatni targ‘ib qiluvchi, xalqning sog‘lig‘i va ma’naviyatiga tajovuz qiluvchi jamoat birlashmalari, shu jumladan, ommaviy axborot vositalari va asarlar yaratishga nisbatan taqiq qo‘yilgan deb aytish mumkin.

2007-yil 5-yanvarda qabul qilingan O‘RQ–78-sonli “Ommaviy axborot vositalari to‘g‘risida”gi Qonunning 6-moddasida ommaviy axborot vositalarining erkinligini

suiiste'mol qilishga yo'l qo'yilmasligi belgilab qo'yilgan. Ommaviy axborot vositalaridan:

- O'zbekiston Respublikasining mavjud konstitutsiyaviy tuzumi, hududiy yaxlitligini zo'rlik bilan o'zgartirishga da'vat qilish;
- urush, zo'ravonlik va terrorizm, shuningdek, diniy ekstremizm, separatizm va aqidaparastlik g'oyalarini targ'ib qilish;
- davlat siri bo'lgan ma'lumotlar yoki qonun bilan qo'riqlanadigan boshqa sirni oshkor etish;
- milliy, irqiy, etnik yoki diniy adovat qo'zg'atuvchi axborot tarqatish;
- agar qonunda boshqacha qoida nazarda tutilmagan bo'lsa, giyohvandlik vositalari, psixotrop moddalar va prekursorlarni targ'ib qilish;
- pornografiyani targ'ib etish;
- qonunga muvofiq, jinoiy va o'zga javobgarlikka sabab bo'ladigan boshqa harakatlarni sodir etish maqsadida foydalanilishiga yo'l qo'yilmaydi.

Ommaviy axborot vositalari orqali fuqarolarning sha'ni va qadr-qimmati yoki ishchanlik obro'sini tahqirlash, shaxsiy hayotiga aralashish taqiqlanadi.

Prokuror, tergovchi yoki surishtiruvchining yozma ruxsatisiz surishtiruv yoki dastlabki tergov materiallarini e'lon qilish, muayyan ish bo'yicha sud qarori chiqmasdan yoki sud qarori qonuniy kuchga kirmay turib, uning natijalarini taxmin qilish yoxud sudga boshqacha yo'l bilan ta'sir ko'rsatish taqiqlanadi.

Mualliflik huquqi va turdosh huquqlar to'g'risidagi qonunning (2006-yil 20-iyulda qabul qilingan O'RQ 42-sonli Qonuni) mualliflik huquqi obyektlari hisoblanmaydigan materiallar ro'yxati belgilangan.

Binobarin, ilmiy ijod erkinligi va adabiy badiiy ijod erkinligini suiiste'mol qilish natijasida yaratilgan obyektlar, shuningdek, intellektual mulk obyekti hisoblanmaydigan predmetlarga nisbatan uning yaratuvchilarida intellektual mulk obyektlariga nisbatan huquqlar bo'lmaydi. Ular ehtimol tutilgan huquqlarini na ma'muriy va na sud tartibida himoya qilinishini talab qila oladi.

Intellektual mulk obyektlariga nisbatan huquq egalari bu huquqlarni himoya qilish uchun ularning legitimligi asos hisoblanadi. Ya'ni bunday huquqlar biror yuridik fakt asosida (patent, guvohnoma, yaratilish fakti, faktik monopol holat va sh.k.) mavjud bo'lishi lozim.

Huquq egalari intellektual mulk obyektlariga nisbatan o'z huquqlari himoya qilinishi usullari, tartibini belgilashda tanlash huquqiga ega bo'lgan holatlar bilan birga imperativ asosda muayyan tartibga rioya qilish majburiyati yuklangan holatlar ham mavjud. Bu holda ular o'z holicha emas, balki belgilangan tartibga rioya qilgan holda harakat qilishlari lozim. Bu o'rinda shuni ham ta'kidlash o'rinliki, vaziyat imkon bergan taqdirda huquq egasi huquqlarni shaxsan o'zi himoya qilishga haqli. Faqat bunda FKning 13-moddasida belgilanganidek, fuqarolik huquqlarini shaxsning o'zi himoya qilish usullari huquqni buzishga mutanosib bo'lishi hamda huquq buzilishining oldini olish uchun zarur harakatlar doirasidan chiqib ketmasligi zarur.

Huquq egalari o'z huquqlarini himoya qilishning keng tarqalgan tartibi vakolatli davlat idorasiga murojaat qilgan holda, o'z huquqlarini himoya qilishni amalga oshirish hisoblanadi. Ma'muriy tartib asosida huquqlarni himoya qilish asosida O'zbekiston Respublikasining ma'muriy tartib-taomillar to'g'risidagi Qonuni alohida ahamiyatga ega. Shuningdek, alohida huquqlarni amalga oshirish va himoya qilish bo'yicha maxsus reglamentlar ham mavjud. Intellektual mulk obyektlariga nisbatan huquqlarni amalga oshirish va himoya qilish tizimida Adliya vazirligi huzuridagi intellektual mulk Agentligi alohida funksiyalarni bajaradi. Bu sohada agentlikning vakolatlari, ularni amalga oshirish xususiyatlari O'zbekiston Respublikasi Prezidentining 2019-yil 8-fevraldagi PQ–4368-sonli "Intellektual mulk sohasida davlat boshqaruvini takomillashtirish cho-

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ra-tadbirlari to‘g‘risida”gi, 2019-yil 1-iyuldagi PQ–4380-sonli “O‘zbekiston Respublikasi Adliya vazirligi huzuridagi intellektual mulk agentligi faoliyatini tashkil etish chora-tadbirlari to‘g‘risida”gi va 2021-yil 28-yanvardagi PQ–4965-sonli “Intellektual mulk obyektlarini muhofaza qilish tizimini takomillashtirish chora-tadbirlari to‘g‘risida”gi Qarorlarida belgilab qo‘yilgan. Huquq egalari qonuniy manfaatlarini himoya qilish bo‘yicha Agentlik huzuridagi Appelatsiya kengashi samarali faoliyat yuritayotganini qayd etish lozim.

Intellektual mulk bo‘yicha huquqlarni amalga oshirish va himoya qilishda notariat, mualliflik va turdosh huquqlarni jamoaviy boshqarish tashkilotlari ham katta imkoniyatlarga ega. Xususan, yangi belgilangan tartibga ko‘ra, notariat idoralari mualliflik yoki turdosh huquqlar obyektlarining taqdim etilgan sanasini guvohlantiradilar. Ushbu holat amaliyotda nizolar vujudga kelgan taqdirda ustuvorlik sanasi bo‘yicha huquq egasini aniqlashga imkon beradi.

Mamlakatimizda ziyolilarning ko‘plab jamoat birlashmalari faoliyat yuritmoqda. Jumladan, yozuvchilar, bastakorlar, teatr arboblari, rassomlar, jurnalistlar, olimlar ijodiy uyushmalari kabi. Bunday uyushmalarning ta’sis hujjatlarida uyushma a’zolari huquqlarini himoya qilishga ko‘maklashish choralarini ko‘rish belgilab qo‘yilgan. Biroq shuni ta’kidlash o‘rinliki, bunday uyushmalar bu sohada zarur darajada faollik ko‘rsatayotgani yo‘q.

Mamlakatimizda huquqlar va qonuniy manfaatlarni himoya qilish bo‘yicha nizolarni sudgacha va nosud hal etish institutsional tizimi mavjud. Jumladan, talabnoma asosida hal etish, nizolarni mediatsiya tartibida ko‘rib chiqish, hakamlik sudlari va xalqaro tijorat arbitraj sudlari orqali hal etish tizimi shular jumlasidandir.

Huquqlarni himoya qilishning eng mukammal tartibi sud orqali himoya qilishdir. Bunda ma’muriy, fuqarolik, iqtisodiy, jinoiy, konstitutsiyaviy sudlar orqali intellektual mulk obyektiga nisbatan huquq egalari huquqlari va qonuniy manfaatlari himoya qilinadi. Umuman, har qanday himoyani amalga oshirishda ikki huquqiy asosga tayaniladi: a) moddiy huquqiy asos; b) protsessual huquqiy asos.

Shu o‘rinda ta’kidlash o‘rinliki, moddiy huquqiy asos har qanday himoya negizini tashkil etadi. Moddiy huquqiy asoslar tizimini O‘zbekiston Respublikasi Konstitutsiyasi, Fuqarolik Kodeksi, Mehnat Kodeksi, shuningdek, maxsus qonunlar, ya’ni mualliflik va turdosh huquqlar to‘g‘risidagi, ixtirolar, foydali modellar va sanoat namunalari to‘g‘risidagi, elektron hisoblash mashinalari uchun dasturlar va ma’lumotlar bazalari to‘g‘risidagi, seleksiya yutuqlari to‘g‘risidagi, integral mikrosxemalar topologiyalar to‘g‘risidagi, firma nomlari to‘g‘risidagi, tovar belgilari, xizmat ko‘rsatish belgilari, tovar kelib chiqish joyiga bo‘lgan huquq to‘g‘risidagi, geografik ko‘rsatkichlar to‘g‘risidagi qonun va boshqalar tashkil etadi. Ushbu qonunlarda intellektual mulk obyektlarining huquqiy rejimi, unga nisbatan huquqlarning vujudga kelish asoslari, huquqlarning turlari va mazmuni, ularni buzganlik uchun javobgarlik asoslari va shakllari aks etgan.

Protsessual huquqiy asoslarda esa sud jarayonini tashkil etish va amalga oshirish, protsess ishtirokchilarining huquqiy holati, sud tomonidan qarorlar qabul qilish tartibi belgilab qo‘yiladi. Sud protsessi ishtirokchilari va sud muayyan formal taomillarga amal qilgan hollarda, moddiy normalarni qo‘llash orqali buzilgan huquqlarni himoya qilish va qo‘llash, huquqbuzarlarga nisbatan tegishli qonuniy va adolatli choralar qo‘llash imkoniyatiga ega bo‘ladi.

Intellektual mulk obyektlariga nisbatan huquq subyektlari doirasi ham nihoyatda keng ekanligini e’tirof etish lozim. Jumladan, ijodkor muallif huquqlari, mutlaq huquq egalari subyektlari, shaxsiy huquq egalari, turli shartnomalar, shuningdek, litsenziya

shartnomalari ishtirokchilarini qayd etish mumkin.

Shou-biznes, innovatsiya va intellektual mulk obyektlari qo‘llaniladigan tadbirkorlik sohasida vujudga kelgan nizolarni sud orqali hal etish imkoniyatlari belgilab qo‘yilgan. Umuman, huquqlarni sud orqali himoya qilish universal institutsional tizim hisoblanadi. Bu Konstitutsiyaning 44-moddasida belgilab qo‘yilgan. Ushbu normaga ko‘ra, har bir shaxsga o‘z huquq va erkinliklarini sud orqali himoya qilish, davlat organlari, mansabdor shaxslar, jamoat birlashmalarining g‘ayriqonuniy xatti-harakatlari ustidan sudga shikoyat qilish huquqi kafolatlanadi, deb ko‘rsatilgan.

Xulosalar

Shu munosabat bilan ilmiy tadqiqot sohasida huquqlarni sud orqali himoya qilish masalalari bo‘yicha muayyan tahlilga sazovor masalalar bor deb aytish mumkin. Bu, ayniqsa, ilmiy darajalar va unvonlar berish tartib-taomillari va dissertatsiyalarga qo‘yiladigan talablar bilan bog‘liq. O‘zbekiston Respublikasi Vazirlar Mahkamasi huzuridagi OAK Rayosatining qarori bilan tasdiqlangan va O‘zbekiston Respublikasi Adliya Vazirligi tomonidan 2017-yil 23-iyunda ro‘yxat raqami 2894 bo‘yicha ro‘yxatdan o‘tkazilgan “Ilmiy darajalar berish tartibi to‘g‘risidagi” Nizomda tadqiqotchi bilan boshqa tegishli tuzilmalar o‘rtasidagi ilmiy daraja berish yoki uni rad etish to‘g‘risidagi qaror bo‘yicha nizolarni hal etish tartibi belgilab qo‘yilgan. Nizomning 47-bandiga ko‘ra, OAK Rayosati ekspert kengashining xulosasiga asosan, Ilmiy Kengashning ilmiy daraja berish to‘g‘risidagi qarorini tasdiqlaydi yoki rad etadi. Rad etish asoslari ko‘chirmachilik, soxta hujjatlar taqdim etganlik, dissertatsiya ekspertizasi noxolis o‘tkazilgani kabi holatlar hisoblanadi. Nizomning 54-bandiga ko‘ra, OAK Rayosati qarori yuzasidan OAKga appelatsiya berishi mumkin. OAK Rayosati va ilmiy kengash qarorlari yuzasidan berilgan appelatsiya bo‘yicha Ilmiy Kengash xulosasi OAK tartib-qoida komissiyasi tomonidan ko‘rib chiqiladi. OAK tartib-qoida komissiyasi appelatsiyani ko‘rib chiqishni ekspert kengashiga topshirishi mumkin. Zarur hollarda OAKda mazkur masalani ko‘rib chiqishning avvalgi bosqichlarida ishtirok etmagan mutaxassis olimlardan iborat appelatsiya komissiyasi tuziladi. Appelatsiya komissiyasi OAK rayosati qarori bilan kamida besh nafar a’zodan iborat tarkibda tuziladi. OAK Rayosati tomonidan tartib-qoida komissiyasi, ekspert kengashi yoki appelatsiya komissiyasi xulosalari ko‘rib chiqiladi va appelatsiya bo‘yicha yakuniy qaror qabul qilinadi (57-band). Bu o‘rinda ushbu tartib-taomillarda noaniqliklar bordek tuyuladi. OAK Rayosati qarori ustidan berilgan shikoyat bo‘yicha appelatsiya OAK tartib-qoida komissiyaga berilishi ko‘rsatilgan. Biroq tartib-qoida komissiyasi xulosalari OAK Rayosati tomonidan ko‘rib chiqiladi va yakuniy qaror qabul qilinadi. Ma’muriy tartib-taomillar bo‘yicha belgilangan tartib-qoidaga ko‘ra, ustidan shikoyat qilingan organga ushbu shikoyat yuborilishi mumkin emas va u ushbu shikoyatni ko‘rib chiqish vakolatiga ega emas. Shu sababli ham yuqoridagi holatlar qayta ko‘rib chiqilishi lozim. Ilmiy darajalar bilan bog‘liq tartib-taomillar buzilgan taqdirda tegishli manfaatdor shaxs uning ustidan sudga shikoyat qilish huquqiga ega bo‘lishi kerak. Bu Konstitutsiyaning 44-moddasidagi norma bo‘yicha kafolatlangan.

Tartib-taomillar buzilmagan taqdirda manfaatdor shaxs sudga shikoyat qilish huquqiga egami, degan savol tug‘iladi. Ma’lumki, ilmiy muammo shu soha bo‘yicha malakali mutaxassislar tomonidan hal etiladi. Sudning bu masalaga aralashuvi maqsadga muvofiq bo‘lmagan bo‘lar edi. Biroq qonuniy huquq manfaatlari buzilgani iddao qilingan shikoyat sudga berilgan taqdirda sud bu masalani mazmunan ko‘rib chiqishi shart. Biroq har qanday holatda ham sud professional mutaxassislardan iborat ilmiy organ qarorini mazmunan o‘zgartirishga vakolatli emas. Bunday holatda sud faqat qarorni bekor qilish yoki haqiqiy emas deb topish

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bo‘yicha qaror qabul qilishi mumkin. Ammo sudlarda shu masala bo‘yicha o‘zi mazmunan qaror qabul qilish vakolati yo‘q. Chunki sudlar chuqur bilim, malaka talab etadigan va shu bo‘yicha maxsus tuzilmalar faoliyat yuritadigan organ vakolatlarini o‘zlashtirishga haqli emas. Ilmiy suverenitet mohiyatidan ushbu holat anglashiladi.

So‘nggi vaqtlarda ilmiy jamoatchilik tomonidan grant tadqiqotlari bo‘yicha tanlovlarni amalga oshirish va qarorlar qabul qilish sohasida Konstitutsiyaning 44-moddasida berilgan imkoniyatlardan foydalanish mumkinmi, degan masala qizg‘in muhokama qilinmoqda. Bu o‘rinda shuni aytish lozimki, O‘zbekiston Respublikasi Prezidentining ilmiy tadqiqot muassasalarining infratuzilmasini yanada mustahkamlash va innovatsion faoliyatni rivojlantirish chora-tadbirlari to‘g‘risidagi 2017-yil 1-noyabrdagi PQ–3365-son Qarori va O‘zbekiston Respublikasi Vazirlar Mahkamasining 2020-yil 9-martdagi “Ilmiy tadqiqot va innovatsion faoliyatni rivojlantirishning normativ huquqiy bazasini yanada takomillashtirish chora- tadbirlari to‘g‘risida”gi 133-sonli Qarori va ilmiy tadqiqot ishlariga davlat buyurtmasi to‘g‘risida Nizom normalarida bu masalalar yetarli darajada tartibga solingan.

Ma’lumki, grant kontraktlari o‘zining huquqiy tabiatiga ko‘ra, ham fuqarolik, ham mehnat huquqiy xarakterga ega bo‘lgan aralash shartnomalar hisoblanadi. Shartnomalarni tuzish jarayonida, shuningdek, shartnomalar ijrosi bilan bog‘liq masalalarda vujudga kelgan har qanday nizolar bo‘yicha huquq va qonuniy manfaatlar sud orqali himoya qilinishi mumkin. Shu o‘rinda ta’kidlash o‘rinliki, advokatura xizmati, yuridik xizmat, patentshunoslar xizmati, patent vakillari xizmati intellektual mulk bo‘yicha huquqlarni sud orqali himoya qilish faoliyatini jonlantirishda juda katta potentsial imkoniyatlarga ega. Chunki ular huquq egalariga tegishli tushuntirish berishi lozim va sudga murojaat qilish jarayonini faollashtirish imkoniyatiga ega.

Intellektual mulk obyektlariga nisbatan huquqlari va qonuniy manfaatlarini sud orqali himoya qilish samarali tizimini yaratishda asosiy vazifalardan biri sudyalar korpusining bu sohadagi bilim va malaka ko‘nikmalarini shakllantirish, bu borada rivojlangan mamlakatlar tajribasini mamlakatimizda joriy etish hisoblanadi. Faqat malakali sudyalar korpusigina sud orqali himoya tizimini harakatga keltiradi va muvaffaqiyatli amalga oshiradi.

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РАСТОРЖЕНИЕ БРАКА ПО ЗАЯВЛЕНИЮ ОБОИХ СУПРУГОВ ПО ЗАКОНОДАТЕЛЬСТВУ РЕСПУБЛИКИ УЗБЕКИСТАН: ОСОБЕННОСТИ И ПУТИ СОВЕРШЕНСТВОВАНИЯ

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Аннотация. *В статье подход к рассмотрению вопросов расторжения брака по заявлению обоих супругов осуществлен на основе положения, определяющего, что расторжение брака в органах ЗАГСа должно учитывать определенные моменты и направления осуществления профилактической работы по укреплению как моральных, так и материальных ценностей семьи. На основе проведенного анализа норм семейного законодательства Республики Узбекистан дано определение расторжению брака, а также рассмотрена процедура расторжения брака по заявлению обоих супругов в административном порядке. Приведены обоснование и определенные преимущества процедуры расторжения брака в административном порядке, то есть в органах ЗАГСа. Высказано мнение относительно пассивности органов ЗАГСа при процедуре расторжения брака в изучении причин желания супругов расторгнуть брак. Рассмотрены положительные моменты применения досудебного урегулирования вопросов расторжения брака на основе применения процедуры медиации как способа, направленного на быстрое и квалифицированное улаживание споров между лицами, расторгающими брак. Рассмотрен зарубежный опыт правового регулирования расторжения брака в административном порядке. Сформулированы предложения по совершенствованию норм семейного законодательства, регулирующих государственную регистрацию расторжения брака в административном порядке.*

Ключевые слова: *брак, расторжение брака, развод, административный развод, орган ЗАГСа, расторжение брака по заявлению обоих супругов.*

O‘ZBEKISTON RESPUBLIKASI QONUNCHILIGI BO‘YICHA ER-XOTINNING ARIZASIGA KO‘RA NIKOHNI BUZISH: XUSUSIYATLARI VA TAKOMILLASHTIRISH YO‘LLARI

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Annotatsiya*. Maqolada FHDY organi tomonidan nikohdan o‘tgan shaxslar, ya’ni er-xotinning arizasiga muvofiq nikohdan ajratishga oid masalalarning oldini olish, nikohni saqlab qolishga oid profilaktik chora-tadbirlar tahlil qilinadi. O‘zbekiston Respublikasi oila qonunchiligi normalarining tahlili asosida nikohni bekor qilish asoslari ushbu maqolada yoritib berilgan bo‘lib, bunda er-*

xotinning iltimosiga ko‘ra nikohni ma’muriy tartibda bekor qilish tartibi ko‘rib chiqiladi. Nikohdan ajratishga oid ishlar qanday holatlarda FHDYO organi tomonidan ko‘rib chiqilishi va qanday sabablar ushbu organ tomonidan nikohdan ajratishga oid masalalarni ko`rib chiqishini istisno etishi maqolada aks ettirilgan. Shuningdek, olib borilgan tadqiqot natijasida ajralishni ma’muriy tarzda huquqiy tartibga solishning xorijiy tajribasi ko‘rib chiqilgan. Ajralishni ma’muriy tarzda davlat ro‘yxatidan o‘tkazishni tartibga soluvchi oila qonunchiligi normalarini takomillashtirish bo‘yicha takliflar shakllantirilgan.

Kalit so‘zlar: *nikoh, nikohni bekor qilish, ajralish, ma’muriy ajralish, ro‘yxatga olish idorasi, taraflarning iltimosiga binoan nikohni bekor qilish.*

DIVORTION OF MARRIAGE AT THE APPLICATION OF BOTH SPOUSES UNDER THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN: FEATURES AND WAYS OF IMPROVEMENT

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Abstract. *In the article, the approach to considering the issues of divorce at the request of both spouses was carried out based on a provision that determines that divorce in the registry office should take into account certain points and directions for the implementation of preventive work to strengthen both the moral and material values of the family. The definition of divorce is given based on the analysis of the norms of the family legislation of the Republic of Uzbekistan, as well as the procedure for dissolution of marriage at the request of both spouses in an administrative manner. The rationale and certain advantages of the divorce procedure in the administrative order, that is, in the registry office, are given. An opinion was expressed regarding the passivity of the registry office in the procedure for dissolution of marriage in the study of the reasons for the desire of spouses to dissolve the marriage. The positive aspects of the use of pre-trial settlement of divorce issues based on the use of the mediation procedure as a method aimed at quick and qualified settlement of disputes between persons dissolving a marriage are considered. The foreign experience of legal regulation of divorce in the administrative order is also considered. Proposals have been formulated to improve the norms of family law governing the state registration of divorce administratively.*

Keywords: *marriage, dissolution of marriage, divorce, administrative divorce, registry office, divorce at the request of both spouses.*

Введение

Рассмотрение вопросов процедуры расторжения брака по заявлению обоих супругов в органах ЗАГСа, особенностей его оформления, а также и некоторых проблемных аспектов, которые возникают при применении данного института, является актуальным и необходимым в современный период. Это объясняется тем, что исследование определенных актуальных проблем, которые возникают в процессе расторжения брака в органах ЗАГСа, имеет и практическое, и теоретическое значение.

В статье 63 Конституции Республики Узбекистан закреплено, что «семья является основной ячейкой общества и имеет право на защиту общества и государства». Для процветания страны необходимо укрепление семьи как ее первичной ячейки, поэтому вопросы гармонично развитого поколения, нравственности, воспитания и культуры являются одними из основных в политике нашего государстве.

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В центре вышеперечисленных вопросов находится проблема крепкой и благополучной семьи. И противоположностью этим двум понятиям является ее разрушение – расторжение брака.

Президент Республики Узбекистан Ш.М. Мирзиёев затронул вопрос разводов и выразил сожаление, что такие серьезные последствия, как расторжение брака, происходят по мелким бытовым причинам [1]. «Эта негативная ситуация должна всех нас беспокоить, она должна вызывать серьезные опасения» [2].

Также в Указе Президента Республики Узбекистан «О мерах по коренному совершенствованию деятельности в сфере поддержки женщин и укрепления института семьи» подчеркнуто наличие системных проблем и недостатков, препятствующих укреплению и оздоровлению духовно-нравственной среды в семьях, в частности остается на низком уровне результативность мер по предупреждению ранних браков, конфликтных ситуаций в семьях и разводов. В Концепции укрепления института семьи в Республике Узбекистан изменения в демографическом развитии семьи, увеличение количества семейных разводов, недостаточность исследований, обосновывающих причины негативных тенденций и проблем в этой сфере, а также несовершенство законодательных основ укрепления института семьи, отсутствие прочной правовой основы в сфере защиты и поддержки семьи на основе изучения правоприменительной практики указываются как основные недостатки, препятствующие полноценной реализации реформ. Поэтому приведенные проблемы в сфере укрепления института семьи требуют не только скорейшего, но и правильного правового и практического разрешения.

По данным Государственного комитета по статистике, в 2021 году в Узбекистане было зарегистрировано 39 227 разводов. Согласно этим данным, больше всего пар расторгли свой брак в Ташкенте – 5,6 тыс., а также в Ферганской области – 4,3 тыс. Самый высокий коэффициент разводов на 1 000 жителей наблюдался в столице (2,0 промилле) и Сырдарьинской области (1,6 промилле). При этом число заключенных браков достигло 305 082. По данным Госкомстата, по итогам первого квартала 2022 года в Узбекистане распалось более 12 тыс. браков. Наибольшее количество разводов пришлось на Ташкент (почти 1,5 тыс.). Также много разводов случилось в Ташкентской и Самаркандской областях (около 1,2 тыс.). Наименьшее количество браков распалось в Навоийской области (347).

Расторжение брака как юридическое прекращение брачно-семейных отношений существует и рассматривается почти во всех законодательствах современных стран. Но, по нашему мнению, в настоящий период времени, когда проводится определенная законодательная работа, направленная на укрепление семьи, охрану прав женщин, улучшение материальных и жилищных условий молодых семей, к рассмотрению расторжения брака нужно подходить не с точки зрения негативной тенденции существования отношений в обществе, а как к следствию несовершенства и упущения важных моментов в проведении профилактической работы не только по изучению, но и практическому укреплению моральных, этических, материальных и правовых ценностей семьи и применению этих положений на практике. Лицо, вступающее в брак, должно знать об ответственности за создание и сохранение семьи. В том числе работа в таком направлении сделает возможным сокращение разводов в стране. Предложения по совершенствованию семейного законодательства в области расторжения брака по заявлению обоих супругов в органах ЗАГСа могут найти при-

менение в правоприменительной практике, а также для конструктивного анализа в целях дальнейшего совершенствования семейного законодательства Республики Узбекистан.

Эти аспекты и определяют *актуальность темы исследования.*

Целью исследования является рассмотрение особенностей и проблем, которые возникают или могут возникнуть при расторжении брака по заявлению обоих супругов именно в органах ЗАГСа, и на основе определенного анализа возникающих при этой процедуре теоретических и практических вопросов сформулировать некоторые предложения рекомендательного характера по их разрешению.

Для всестороннего раскрытия цели исследования необходимо решение определенных задач, имеющих теоретическое значение:

- рассмотреть порядок и особенности расторжения брака по заявлению обоих супругов в административном порядке, то есть в органах ЗАГСа;
- изучить особенности проведения государственной регистрации расторжения брака в органах ЗАГСа;
- определить основные направления развития национального семейного законодательства в данном направлении;
- на основе рассмотрения законодательных и теоретических основ данного аспекта высказать некоторые обоснованные предложения по совершенствованию законодательства, регулирующего расторжение брака в органах ЗАГСа.

Научная новизна. При изучении вопросов государственной регистрации расторжения брака по заявлению обоих супругов проведено комплексное исследование правовых основ и теоретических понятий данной административной процедуры, выявление общих закономерностей осуществления данных процедур, также определены перспективы не только развития, но и совершенствования данного института.

Исходя из положений Указа Президента Республики Узбекистан «О мерах по коренному совершенствованию деятельности в сфере поддержки женщин и укрепления института семьи», Концепции укрепления института семьи в Республике Узбекистан, существующих теоретических и практических проблем в сфере расторжения брака в органах ЗАГСа видится необходимым совершенствование законодательства в данной сфере.

В Стратегии развития Нового Узбекистана на 2022–2026 годы как одно из направлений обеспечения духовного развития общества определено обеспечение непрерывной взаимосвязи духовного воспитания именно в семье, а также укрепление взаимодействия семьи, школы и махалли. И только на основе такого комплексного подхода будет происходить формирование навыка обеспечения взаимосвязи духовного воспитания, который должен оказать воздействие на укрепление семьи и уменьшение количества расторжения браков.

Теоретическая основа исследования базируется на научных разработках как зарубежных, так и отечественных авторов. Для полного раскрытия рассматриваемого вопроса важно рассмотреть определенную полемику, охватывающую основания, условия и процедуру государственной регистрации расторжения брака по заявлению обоих супругов.

Среди работ отечественных авторов необходимо отметить труды таких авторов, как У.Ш. Шарахметова, работы которой посвящены правовому регулированию брачных отношений [3-4], Э.Х. Эгамбердиев, который в своих исследованиях рассматривал особенности расторжения брака в органах ЗАГСа по заявлению одного из супругов по семейному законодательству Республики Узбекистан, а также

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расторжение брака в системе оснований прекращения брака [5-6], Д.М. Караходжаева, которая осветила вопросы расторжения брака в контексте семейных отношений [7], Л.М. Бурханова, которая исследовала последствия расторжения брака на примере общей совместной собственности супругов, влияние правоспособности физических лиц при расторжении брака [8-20] и других.

Среди исследований зарубежных авторов, посвященных рассматриваемой проблематике, можно назвать работы Ю.В. Байгушевой, которая исследует основные вопросы прекращения брака [21], Н.А. Темниковой, рассматривающей процедуры расторжения брака в органах ЗАГСа [22], Е.В. Вершининой, которая провела сравнительно-правовой анализ расторжения брака в России и некоторых зарубежных странах [23], З.С. Пуцко, рассматривающей особенности расторжения брака в органах ЗАГСа по заявлению обоих супругов по российскому законодательству [24] и других авторов. Вопросам правового регулирования расторжения брака и их особенностям в зарубежных государствах посвящены исследования В.В. Измайлова [25], рассматривающего порядок расторжения брака при достижении согласия между супругами в европейских странах, М.В. Антокольской [26], которая провела анализ норм российского законодательства о разводе в свете западноевропейского законодательства, О.Г. Уенковой [27], определяющей некоторые тенденции развития законодательства о разводе в административном порядке на примере ряда зарубежных стран, Е.Г. Стрельцовой, определившей соотношение частных и публичных начал по делам о расторжении брака, разделе совместно нажитого имущества, спорам о детях и в интересах детей [28].

В работах, опубликованных в базе Скопус, также уделено внимание вопросам расторжения брака, но такие вопросы рассматриваются косвенно, в порядке проведения профилактической работы или рассмотрения проблемных вопросов различного порядка [29-31].

Материалы и методы

Вопросы, касающиеся расторжения брака по заявлению обоих супругов и его государственной регистрации в органах ЗАГСа, урегулированы *нормами и положениями нормативно-правовых актов,* среди которых первостепенное значение имеют Семейный кодекс Республики Узбекистан, Гражданский процессуальный кодекс Республики Узбекистан, Гражданский кодекс Республики Узбекистан, Постановление Кабинета Министров Республики Узбекистан «Об утверждении правил регистрации актов гражданского состояния» и другие.

В отношении международно-правовых актов, которые регламентируют порядок установления и признания процедуры расторжения брака, можно назвать Гаагскую конвенцию о признании разводов и решений о раздельном жительстве супругов 1 июня 1970 г., которая применяется к признанию в одном государстве разводов и решений о раздельном жительстве супругов, вынесенных в другом государстве. Присоединение Республики Узбекистан к данной Конвенции позволит комплексно урегулировать порядок расторжения брака.

При исследовании рассматриваемых вопросов были применены *методы* анализа и обобщения правового законодательного и теоретического материала, методы сравнения и системный анализ.

Результаты исследования

Расторжение брака представляет определенную правовую процедуру, которая имеет такую конечную цель, как прекращение существования юридического факта – совместной жизни супругов на основе выдачи особым уполномоченным госу-

дарственным органом (ЗАГСом) особого документа – свидетельства о прекращении брака. Важно в целях сохранения семьи, семейного воспитания подрастающего поколения проводить систематическую и целенаправленную работу, направленную на выяснение и устранение причин расторжения брака. При этом необходимо обращать внимание и на теоретические, и на практические аспекты, позволяющие разграничить разводы, исходя из причин их возникновения. Исходя из анализа положений практической деятельности, можно сделать определенные выводы относительно того, что существующие ограничения и препятствия в расторжении брака смогут и помогут сохранить семью и примирить супругов. Поэтому такие практические аспекты, тесно связанные с расторжением брака и определенные в законодательстве, как сроки для примирения супругов, отказы и их причины в удовлетворении исковых требований супругов и другие действия и процедуры, которые предшествуют расторжению брака, в том числе и в административном порядке, должны быть не только изучены и проанализированы, но и систематизированы.

Расторжение брака в органах записи актов гражданского состояния по заявлению обоих супругов, то есть посредством определенных административных процедур, имеет определенные преимущества. Такие преимущества выражаются в том, что при расторжении брака в органах ЗАГСа не возникает необходимость раскрывать обстоятельства, сложившиеся в личной жизни супругов, иные причины, лежащие в основе конфликта между супругами, как это происходит при рассмотрении дела о расторжении брака в судебном порядке.

На практике процедура расторжения брака по заявлению обоих супругов происходит следующим образом: сотрудник органа ЗАГСа принимает заявление от супругов о расторжении брака. Но для того чтобы было принято заявление, необходимо наличие определенных условий, прямо установленных в законодательстве и носящих исчерпывающий характер. Такими условиями являются отсутствие имущественных споров между супругами; супруги не имеют общих совместных несовершеннолетних детей, также это условие касается и совместно усыновленных детей супругами [25].

Отдельно считаем целесообразным рассмотреть процедуры, связанные с расторжением брака по взаимному согласию супругов, по законодательству зарубежных государств. Если рассматривать законодательство стран СНГ, то правовое регулирование расторжения брака по взаимному согласию супругов происходит в органах записи гражданского состояния. При анализе законодательства зарубежных государств можно определить допуск такой процедуры, как применение административного порядка расторжения брака при наличии согласия обоих супругов. Такой порядок присутствует в законодательстве Португалии, Дании, Норвегии, даже в том случае, когда у обращающихся обоих супругов с заявлением о расторжении брака есть общие несовершеннолетние дети. В зарубежных государствах, если супруги не живут вместе и не хотят сохранить семью, они вольны обратиться в компетентные учреждения, составив заявление о расторжении заключенного между ними брака [26, с. 25].

Иностранный правопорядок почти всех европейских государств преследует цель разрешения конфликта между супругами быстро, без применения особых процессуальных и материальных издержек [30]. Поэтому административному порядку расторжения брака при взаимном согласии супругов на его расторжение отдается больше предпочтений на основе

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норм законодательства иностранных государств. Возможность введения административного развода рассматривается в законодательстве Голландии, Франции и Германии [27, с. 174].

По законодательству ряда зарубежных государств возможность расторжения брака по взаимному согласию супругов зависит и от того, к какому типу относится данный брак – церковному, гражданскому или заключенному в уполномоченном органе государства [28, с. 23].

Основываясь на результатах исследования, можно констатировать, что расторжение брака при взаимном согласии обоих супругов представляет собой самый быстрый по времени и простой по процедуре из всех возможных бракоразводных процессов. Такой способ расторжения брака можно считать и наиболее цивилизованным способом расставания.

Анализ результатов исследования

Весьма проблематичным и спорным моментом можно назвать нежелание изучения и выяснения причин расторжения супругами брака по заявлению обоих супругов в органах ЗАГСа. Работа сотрудников ЗАГСа, которые на основе соблюдения требований и положений правил регистрации актов гражданского состояния осуществляют процедуру расторжения брака по заявлению обоих супругов, носит формальный характер. Но совершение таких действий официально не закреплено за сотрудниками органов ЗАГСа законодателем. Поэтому с этой позиции нельзя утверждать, что сотрудники органов ЗАГСа поступают неправильно. Скорее всего, это объясняется определенной недоработкой законодателя. Ввиду того, что органы ЗАГСа являются подчиненной государственной структурой, в их деятельности возможны изменения, когда для этого на законодательном уровне будет проработана и закреплена административная процедура.

Поэтому необходимо отметить, что в своей деятельности органы государственной власти должны работать не в направлении сокращения статистики разводов, а в изучении причин, лежащих в основе разводов. Необходимо уделить особое внимание и аспектам именно практического характера разграничения причин возникновения разводов.

Следовательно, органы ЗАГСа, другие государственные органы и общественные организации, направлениями деятельности которых являются в том числе укрепление семейных ценностей, поднятие авторитета семьи и приоритета семейного воспитания подрастающего поколения, должны проводить активную работу по оказанию помощи и содействию супругам, которые находятся на начальной стадии расторжения брака. Это затрагивает разрешение различного рода конфликтных вопросов самой разной направленности, таких как имеющиеся жилищные проблемы, отсутствие работы, невозможность иметь детей, злоупотребление спиртными напитками и другие причины. В таком процессе определенная роль должна быть отведена медиаторам, осуществляющим свою деятельность при хокимиятах и оказывающим на безвозмездной основе свою посредническую помощь супругам.

Как показывает практика, некоторые супруги могут договориться о решении некоторых проблемных вопросов, если при проведении таких переговоров будут присутствовать и оказывать помощь квалифицированные специалисты – юристы, врачи, психологи [4, с. 34].

Административная процедура развода, которая осуществляется в органах ЗАГСа, при соблюдении определенных законодательно закрепленных условий представляет собой наиболее демократичный и удобный вид развода. Такая процедура расторжения брака является и определенным достижением в законодательстве от-

носительно свободы разводов [5, с. 8].

В юридической науке существуют дискуссии о необходимости официально запретить административный способ расторжения брака по заявлению обоих супругов, чтобы сократить количество разводов [6].

Некоторые ученые считают такие тенденции развития законодательства о расторжении брака социально необходимыми. Рассматривая и анализируя процедуру расторжения брака в органах ЗАГСа по заявлению обоих супругов, можно сделать вывод, что упразднение такой процедуры и замена ее расторжением брака только в судебном порядке может иметь самые различные последствия правового, социального и материального характера.

Административный порядок расторжения брака по заявлению обоих супругов требует не только систематического и постоянного изучения, но и его совершенствования, касающегося таких направлений, как работа органов записи актов гражданского состояния с лицами, которые расторгают брак, и с лицами, которые вступают в брак.

Применение на законодательном и практическом уровне только расторжения брака в судебном порядке будет сопряжено с проблемами материального, организационного и правового характера. Такая практика, по нашему мнению, сделает процесс расторжения брака затруднительным, что будет иметь негативные последствия и даже физическую и психологическую опасность для тех из супругов, которые подвергаются домашнему, психологическому, физическому, сексуальному насилию или другому влиянию со стороны другого супруга, которые носят неправомерный характер.

В целом институт расторжения брака по заявлению обоих супругов остается востребованным и достаточно часто применяется. Ввиду того, что вступление в брак влечет изменения в юридическом положении лица, то каждый из супругов при его расторжении связывает с прекращением брака наступление определенных причин и обстоятельств, которые не приводят к сохранению семьи и, соответственно, семейных отношений.

Другим актуальным практическим аспектом реализации административного способа расторжения брака является применение процесса медиации. Следует отметить, что медиация представляет определенный метод, который призван обеспечивать взаимодействие и согласованность сторон, направлен на оказание помощи в реальных моментах и вопросах существующего спора, а также выработку и предложение соответствующих вариантов для решения проблем, которые были бы в интересах обоих супругов. Поэтому медиация функционирует как определенная посредническая процедура, которая помогает устранить определенные разногласия, которые оказывают влияние на решение сторон. Но сам процесс медиации не является заменой получения юридической помощи. Медиация представляет процедуру, которая призвана обеспечивать взаимодействие сторон спора или конфликта. При решении семейных споров или конфликтов при помощи медиации важная роль отводится третьему участнику – медиатору, то есть лицу, представляющему интересы обеих сторон. Метод урегулирования семейных споров, возникающих между супругами, с использованием медиации имеет не только возрастающую востребованность, но и определенный положительный эффект как с правовой, так и моральной, и материальной точек зрения.

В настоящее время задачами такого института досудебного порядка урегулирования споров, как медиация, является эффективность и быстрота процедуры рассмотрения семейных споров и конфликтов.

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Применение сторонами медиации дает им возможность не только сократить расходы на судебный процесс или даже их избежать, но и сэкономить время рассмотрения спора. Согласование условий, которые наиболее взаимовыгодны для сторон семейного конфликта, в процессе медиации дает супругам возможности разрешения конфликта конфиденциально, в любое удобное для них время.

Досудебное регулирование вопросов, возникающих при расторжении брака по заявлению обоих супругов, на основе и с использованием медиации, является современным и актуальным процессом, не связанным с серьезными организационными, временными или материальными затратами.

Применение института медиации при расторжении брака является актуальным в Республике Узбекистане, и ввиду его недостаточной усовершенствованности представляет теоретический и практический интерес.

Выводы

На основании проведенного исследования можно сделать определенные выводы.

Первое. Ввиду того, что расторжение брака по заявлению обоих супругов представляет определенную правовую процедуру, которая имеет своей целью прекращение действия такого юридического факта как совместная жизнь супругов на основе вынесения специального документа – свидетельства о прекращении брака, то процедура расторжения брака, в том числе и по заявлению обоих супругов, как и заключение брака, остается достаточно часто применяемой. Признавая тот факт, что заключение брака меняет правовой статус лиц, вступающих в брак, то, соответственно, каждый из супругов связывает с его расторжением наличие определенных причин и наступление обстоятельств, имеющих правовое значение.

По законодательству ряда зарубежных государств расторжение брака в органах ЗАГСа по заявлению обоих супругов квалифицируется как расторжение брака в административном порядке. На наш взгляд, такое определение обосновано. Но на данный момент времени *необходимо расширение функциональных полномочий органов записи актов гражданского состояния в направлении проведения профилактических бесед с лицами, которые только вступают в брак, но также и с супругами, которые по определенным причинам расторгают брак по обоюдному согласию*. Это можно объяснить тем, что на практике такие процедуры происходят не только быстро, но и часто просто формально, с отсутствием внимания к выяснению правовых и социальных условий, оснований, специфики создания или прекращения семьи. Но при проведении таких бесед важным и необходимым моментом является применение принципа неразглашения тайны семейной и личной жизни супругов. Поэтому такие полномочия работников органов ЗАГСА должны носить ознакомительный, а также профилактический и предупредительный характер.

Хорошо иллюстрирующими и объясняющими для предупреждения и профилактики расторжения брака, в том числе и по заявлению обоих супругов, будет подготовка кинофильмов, социальных роликов и программ по такой тематике, как «образцовая семья», «обстоятельства, содействующие и препятствующие развитию семьи», «ответственность за детей», «случаи расторжения браков и их разграничение». Хорошим примером является объявление конкурса на лучший сценарий для короткометражных роликов, посвященных проблемам заключения ранних браков и ранних родов, объявленный в Ташкентском государственном юридическом университете. В конкурсе могут принять

участие все желающие, которые посредством приведения конкретных примеров, рассмотрения определенных причин, дачи комментариев в качестве юристов могут рассмотреть определенные негативные моменты, возникающие при заключении ранних браков и ранних родах, и указать пути из решения.

Публикации научной и социальной направленности по вопросам расторжения брака также будут способствовать разрешению существующей проблемы. Но публикации такого характера не имеют таких ярко выраженных последствий, как донесение в активной форме через телевидение, СМИ необходимой информации, и не только о том, как заключить брак, но и как не довести ситуацию до расторжения брака.

Второе. Расторжение брака в административном порядке представляет особый способ расторжения брака. Данный способ расторжения брака ввиду того, что брак может быть расторгнут по заявлению обоих супругов и по заявлению одного из супругов при наличии определенных условий, требует не только постоянного изучения с теоретической и практической точек зрения, но и совершенствования. Большое значение в этом направлении должно быть отведено работе органов ЗАГСа с лицами, которые расторгают брак, в том числе и по обоюдному согласию, и с лицами, которые только вступают в брак.

Правовая процедура расторжения брака в административном порядке требует дальнейшего совершенствования. При этом изменения в законодательстве *должны затрагивать и регулировать неразрешение расторжения брака в органе записи гражданского состояния, если отсутствует согласие одного из супругов. Исключение представляют случаи, при которых не учитывается желание второго супруга.*

Третье. В соответствии с нормами законодательства процедура расторжения браков, особенно это касается расторжения повторных браков, в органах ЗАГСа происходит при уплате государственной пошлины, то есть сопряжена с определенными материальными расходами. Это в определенной мере заставляет лиц, расторгающих брак, подходить более ответственно к правовому статусу супругов. Но применение исключительно только материальных ограничений при расторжении брака не принесет желаемого результата по сохранению семьи. При решении данного вопроса необходимо проводить определенную информационную и разъяснительную работу, прежде всего юридической направленности.

Четвертое. При осуществлении подготовительных действий и самой процедуры расторжения брака в органах ЗАГСа по заявлению обоих супругов возникают определенные вопросы не только организационного, но и правового характера. Такие вопросы требуют определенного изучения, проработки и научного оформления. Но возложение такого направления работы исключительно на органы ЗАГСа с учетом их специфики и напряженного графика работы не представляется целесообразным. Поэтому к работе в таком аспекте можно привлечь высшие учебные заведения юридического профиля, которые в том числе и ведут определенную научно-исследовательскую работу по обобщению практического и научного материала, разработке рекомендаций, носящих правовой характер. Это в свою очередь обогатило бы юридическую науку в области изучения семейного законодательства.

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TO‘LOVGA QOBILIYATSIZLIKNI TARTIBGA SOLISHGA DOIR ZAMONAVIY TENDENSIYALAR

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Annotatsiya*. Ushbu maqolada to‘lovga qobiliyatsizlikni huquqiy tartibga solishga doir yondashuvlar o‘rganilgan. Xususan, davlat tomonidan qabul qilingan prokreditor va prodebitor rejimlari tahlil qilingan, ularning o‘ziga xos xususiyatlari va farqlari bayon qilingan. Shuningdek, O‘zbekistonning to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchiligi qaysi rejimga taalluqli bo‘lishi, ushbu qonunchilik fuqarolik muomalasining qaysi ishtirokchilari manfaatlariga xizmat qilishi haqida ilmiy xulosalar berilgan. To‘lovga qobiliyatsizlik rejimlarini o‘rnatishda kredit siyosatining maqsadlariga alohida e’tibor berilgan bo‘lib, rejimlar zamirida ikkita maqsad – xatarlarni adolatli taqsimlash va qarzdorning aktivlari qiymatini maksimal darajada oshirish yotishi asoslantirildi. To‘lovga qobiliyatsizlikni tartibga solish modellari Yevropa mamlakatlari va AQSh misolida tahlil qilindi, ularning tajribasi O‘zbekiston amaliyoti bilan solishtirildi. Ayniqsa, reabilitatsiya normalarining* AQSh *qonunchiligida paydo bo‘lishi va keyinchalik Yevropa davlatlarida ushbu normalardan namuna sifatida foydalanilganligi, hozirda ko‘plab davlatlar qarzdorni reabilitatsiya qilish maqsadida qonunchiligini takomillashtirayotganligi aniqlandi. Shuningdek, O‘zbekistonda to‘lovga qobiliyatsizlik huquqi konsepsiyasini ishlab chiqish zaruriyati va unda aks etishi lozim bo‘lgan ustuvor vazifalar haqida tahliliy fikrlar, xulosalar va tavsiyalar ishlab chiqildi.*

Kalit so‘zlar: *“cram down” prinsipi, prokreditor, prodebitor, to‘lovga qobiliyatsizlik, qarzdor, reabilitatsiya, bankrot.*

СОВРЕМЕННЫЕ ТЕНДЕНЦИИ РЕГУЛИРОВАНИЯ НЕПЛАТЕЖЕСПОСОБНОСТИ

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Аннотация*. В данной статье исследуются подходы к правовому регулированию неплатежеспособности. В частности, анализируются принятые государством прокредиторский и продебиторский режимы, описываются их особенности и отличия. Также приводятся научные выводы о режиме, на который распространяется законодательство Узбекистана о неплатежеспособности, и какое законодательство служит интересам участников гражданского оборота. Особое внимание было уделено целям кредитной политики при установлении режимов неплатежеспособности исходя из двух целей: справедливого распределения рисков и максимизации стоимости активов должника. Проанализированы модели регулирования неплатежеспособности на примере стран Европы и США, их опыт сопоставлен с практикой Узбекистана. В частности, установлено, что реабилитационные нормы появились в законодательстве США и впоследствии использовались в качестве образца в европейских странах, а законодательство многих стран в настоящее время совершенствуется*

в направлении реабилитации должника. Также были разработаны аналитические заключения, выводы и рекомендации о необходимости разработки концепции неплатежеспособности в Узбекистане и приоритетах, которые должны быть в ней отражены.

Ключевые слова: *принцип "cram down", прокредитор, продебитор, неплатежеспособность, дебитор, реабилитация, банкрот.*

CONTEMPORARY TRENDS IN INSOLVENCY REGULATION

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Abstract. *This article examines approaches to the legal regulation of insolvency. In particular, the procreditor and prodebitor regimes adopted by the state are analyzed, and their features and differences are described. There are scientific conclusions about the regime of insolvency based on the legislation of Uzbekistan, and the type of legislation that serves the interests of participants in civil attitudes. Particular attention has been paid to the objectives of the credit policy when establishing insolvency regimes, based on two goals – fair distribution of risks and maximizing the value of the debtor's assets. The models of insolvency regulation are analyzed from the example of the countries of Europe and the USA, their experience is compared with the practice of Uzbekistan. In particular, it has been established that rehabilitation norms appeared in US legislation and were subsequently used as a model in European countries, and the legislation of many countries is currently improving its legislation on the rehabilitation of the debtor. Analytical conclusions, ideas, and recommendations have also been developed on the need to improve the concept of insolvency in Uzbekistan and the priorities that should be reflected in it.*

Keywords: *the principle of "cram down", procreditor, prodebtor, insolvency, debtor, rehabilitation, bankrupt.*

Kirish

Erkin iqtisodiy munosabatlar va raqobat muhiti sharoitida tadbirkorlik subyektlari o‘z majburiyatlarini odatiy tartibda bajarish qobiliyatini yo‘qotishi mumkin. Pul majburiyatlari yoki majburiy to‘lovlar bo‘yicha qarzlarni to‘lash to‘xtaganda, qarzdorlar to‘lovga qobiliyatsizga aylanganda, ular va kreditorlar tegishli huquqiy munosabatlar ishtirokchilari manfaatlarining oqilona muvozanatini ta’minlashga xizmat qiladigan to‘lovga qobiliyatsizlik huquqi doirasiga tushadilar. To‘lovga qobiliyatsizlik taomillari ozchilik kreditorlarning ko‘pchilik tomonidan bo‘ysundirishni o‘z ichiga olmasligi, faqat ommaviy-huquqiy xarakterga ega bo‘lib qolmasligi lozim. Bunday sharoit yuzaga kelsa, kreditorlar yakdil fikrga kelishi imkonsiz bo‘lib qoladi. Bankrotlik to‘g‘risidagi ishda qatnashuvchi shaxslarning huquqiy holati turlicha bo‘lishi, manfaatlar qarama-qarshiligi bois qonun chiqaruvchi ishtirokchilarning huquqlari va qonuniy manfaatlari muvozanatini kafolatlashi kerak.

Bankrotlik to‘g‘risidagi ishda turli nizoli munosabatlar vujudga kelishi mumkin: kreditor – kreditor, ta’minlanmagan kreditorlar – ta’minlangan kreditorlar, kreditorlar – qarzdorning xodimlari, kreditorlar – jamiyat, kreditorlar – qarzdor. To‘lovga qobiliyatsizlik huquqining tabiati kreditorlar va qarzdor o‘rtasidagi munosabatlar hamda ular o‘rtasidagi *manfaatlar to‘qnashuvida* namoyon bo‘ladi. Agar kreditorlar va qarzdorning manfaatlari o‘rtasidagi muvozanatni ta’minlash lozim bo‘lsa, ushbu zarurat aniq va tushunarli bo‘lsa, bu balans nimada yoki qayerda bo‘lishi kerakligi haqidagi savol munozarali bo‘lib qolmoqda. Milliy iqtisodiyotning barqaror ishlashi va rivojlanishini ta’minlash nuqtai nazaridan kreditorlarning manfaatlarini himoya qilish yoki qarzdorning manfaatlari-

ni hisobga olishga qaratilgan qanday tartib afzalroq, degan savolga yakuniy javob berilmaganligi mavzuning nihoyatda *dolzarbligini* ko‘rsatadi.

Prokreditor va prodebitor tizimlar

Dunyo tajribasida to‘lovga qobiliyatsizlik tizimlarini tasniflashda qarzdorni qo‘llab-quvvatovchi (prodebitor), kreditorni qo‘llab-quvvatlovchi (prokreditor) yoki neytral *yondashuvlar* mavjud. Mansublik to‘lovga qobiliyatsizlik to‘g‘risidagi milliy qonunchilik qoidalari yoki uni qo‘llash natijalariga qarab belgilanadi. Ayrim ekspertlar prodebitor yoki prokreditor huquqiy tizimlarga mansublikni qarzdorning boshqaruv organlari bankrotlik to‘g‘risidagi ishda o‘z vakolatlarini saqlab qolishi yoki qolmasligi, kreditorlar bilan muzokara olib borish imkoni mavjudligi yoki mavjud emasligiga qarab belgilaydi. Ba’zilar qarzdorning boshqaruv organlari chetlashtirilishi va qarzdor boshqaruvchilari almashtirilishidan qat’i nazar, qarzdorning biznesi saqlab qolinishi yoki qolinmasligi, ish o‘rinlarini saqlashga imkon beradigan mexanizmlarning mavjudligiga qarab baholaydi. Boshqalar esa ta’minlangan va ta’minlanmagan kreditorlarning manfaatlari muvozanatiga qarab tasniflaydi. Ushbu tizimda ta’minlangan kreditorlar prokreditor rejimining asosiy benefitsiarlari sifatida qaraladi va tugatish taomillari qisqa muddatlarda amalga oshiriladi. O‘z navbatida, ta’minlanmagan kreditorlar ham qarzdorning aktivlari, shu jumladan, garov predmeti bo‘lmagan aktivlar qiymatini oshirishga imkon beradigan sanatsiya taomilidan ko‘proq foyda ko‘rishlari mumkin.

Material va metodlar

Tadqiqotning asosiy mazmuni to‘lovga qobiliyatsizlikni tartibga solishga doir yondashuvlar, rejimlar va ularning O‘zbekiston huquq tizimi uchun maqbulligini aniqlashdan iborat. AQSh qonunchiligi qiyin moliyaviy vaziyatdagi qarzdorning manfaatlarini himoya qilishga ko‘proq e’tibor beradi hamda Buyuk Britaniya va aksariyat Yevropa mamlakatlari qonunchiligi, aksincha, kreditor manfaatlarini ifodalaydi [1, 66-67-b.]. Rossiya va boshqa ittifoqdosh respublikalarning to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchiligi haqida gapirganda, ba’zi ekspertlar “*oltin o‘rta*”da deb bilishadi. Chunki taomillardan qaysi biri – sanatsiya yoki tugatishni tanlash qarzdorga nisbatan kuzatuv taomil natijalariga qarab hal qilinadi. Ushbu taomil davomida qarzdorning moliyaviy holati va uning to‘lov qobiliyatini tiklash imkoniyati baholanadi [2, 14-18-b.]. Boshqalar Rossiya qonunchiligini biron-bir toifaga to‘liq kiritish mumkin emasligi, aksariyat normalar hali ham tadbirkorlik subyekti faoliyatini tugatish emas, balki uning to‘lov qobiliyatini tiklash va saqlab qolishga qaratilganini ta’kidlaydi [3, 4-8-b.].

Mavzuning batafsil mazmunini ochib berishga xalqaro tashkilotlar tomonidan e’lon qilingan hisobotlar, xorijiy davlatlarda bankrotlik ko‘rsatkichlari va milliy sud hujjatlari imkon beradi. Jahon banki tomonidan e’lon qilinadigan “Doing Business-2020” hisobotida “To‘lovga qobiliyatsizlikni hal qilish” indikatori bo‘yicha O‘zbekiston 100-o‘rinda qayd etilgan va ushbu indikatorlar ham milliy rejimning prokreditor yoki prodebitorligi mansubligini belgilay olmaydi. Getting the Deal Through nashri tomonidan har yili to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchiligi nisbatan samarali bo‘lgan davlatlar, ularda amal qilayotgan qarzdorning bankrotligi va reabilitatsiyasi haqidagi asosiy qoidalar e’lon qilib boriladi. Unda 84 ta davlat qonunchiligi tahlil qilingan bo‘lib, O‘zbekistonning ko‘rsatkichlari kiritilmasdan kelmoqda [4].

Qo‘llanilgan metodlar sifatida qiyosiy, induksiya va deduksiya metodlarini ko‘rsatish mumkin. Jumladan, to‘lovga qobiliyatsizlikni tartibga solishga doir normativ hujjatlar o‘zaro taqqoslanadi, milliy va xorijiy davlatlar qonunchiligi normalari solishtiriladi. Har bir to‘lovga qobiliyatsizlik rejimi alohida tahlil qilinadi.

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Tadqiqot natijalari

Ilmiy xulosalar va takliflar to‘lovga qobiliyatsizlik sohasida yuridik fan, yuridik ta’lim, qonun ijodkorligi va huquqni qo‘llash amaliyotini takomillashtirishga xizmat qiladi.

Tadqiqot obyektini tavsiflovchi asosiy ko‘rsatkich sifatida statistik ma’lumotlar olindi. Ushbu ma’lumotlar O‘zbekistonda qarzdorlarni reabilitatsiya qilish bo‘yicha sezilarli siljishlar bo‘lmaganini ko‘rsatadi. 2021-yil davomida qo‘zg‘atilgan jami 9 994 ta ishning 87 tasida ish yuritish tugatilgan. Shulardan 5 ta ishda kelishuv bitimi tuzilgan, sud sanatsiyasi va tashqi boshqaruv taomillari oxirgi o‘n yildan beri yiliga 3 yoki 4 ta ishda qo‘llanib kelinmoqda (O‘zbekiston Respublikasi Oliy sudidan olingan ma’lumot). Aksariyat hollarda boshlangan bankrotlik ishi qarzdorni tugatish bilan yakunlanmoqda. Bankrotlik to‘g‘risidagi ishlarning barchasi potensial to‘lovga qobiliyatsiz qarzdorlarga qo‘llanilgan, deb bo‘lmaydi. Bunday taxmin qilingan taqdirda ham, nima uchun barcha uchun foydali bo‘lgan reabilitatsiya mexanizmlaridan yetarli darajada qo‘llanilmayotganiga hayron bo‘lish tabiiy.

AQShda ko‘rilgan bankrotlik ishlari bilan taqqoslaydigan bo‘lsak, 2021-yil davomida biznes bilan bog‘liq ochilgan ishlar soni 413 616 tani tashkil etsa, biznes bilan bog‘liq bo‘lmagan 399 269 ta ish qo‘zg‘atilgan. O‘zbekistonda faqat biznes bilan bog‘liq bankrotlik ishi ko‘riladi. Demak, 413 616 ta ishdan 4 836 tasida AQSh Bankrotlik kodeksining 11-bobi (Title 11), ya’ni reabilitatsiya taomillari joriy qilingan, bu jami ishning taxminan 10 %ni tashkil qilmoqda [5]. Ko‘rib turganimizdek, statistik ma’lumotlardagi farqlar sezilarli darajada.

Olib borilgan ilmiy izlanishning *samaradorligi va haqqoniyligi tahlili* amaldagi O‘zbekiston Respublikasi “Bankrotlik to‘g‘risida”gi Qonuni va boshqa normativ-huquqiy hujjatlar, shuningdek, to‘lovga qobiliyatsizlik huquqi uchun muhim burilish bo‘lishiga xizmat qilgan Taraqqiyot Strategiyasiga tayangan.

Tadqiqot natijalari tahlili

To‘lovga qobiliyatsizlik munosabatlarini tartibga solishga doir islohotlar O‘zbekiston Respublikasi Prezidentining “Jahon banki va Xalqaro moliya korporatsiyasining “Biznes yuritish” yillik hisobotida O‘zbekiston Respublikasining reytingini yanada yaxshilash chora-tadbirlari to‘g‘risida”gi, “Bankrotlik taomillarini yanada soddalashtirish va sud boshqaruvchilari faoliyatini tubdan takomillashtirish chora-tadbirlari to‘g‘risida”gi qarorlar bilan chambarchas bog‘liq.

Sir emaski, to‘lovga qobiliyatsizlik to‘g‘risidagi O‘zbekistonning ko‘plab normalari Rossiya qonunchiligi normalari bilan o‘xshashdir. Shuning uchun Rossiya olimlarining fikrlariga qisqacha to‘xtalib o‘tamiz.

Shunday fikr mavjudki, kreditorlar va qarzdorlar manfaatlari muvozanatini tartibga solish nuqtai nazaridan Rossiya qonunchiligi va sud amaliyotining rivojlanish tendensiyasini o‘rtacha prokreditor yondashuv deb atash mumkin. Ya’ni qarzdorlar o‘z majburiyatlarini bajara olmaganda, kreditorlarning manfaatlari ko‘proq darajada himoya qilinadi [6, 168-b.]. Shuningdek, to‘lovga qobiliyatsizlik huquqining Rossiya tanlovi qarzdorning to‘lov qobiliyatini tiklashga qaratilgan normalar mavjudligiga qaramay, kreditorlar manfaatlari maksimal himoya qilinadi [7, 35-36-b.]. Binobarin, bankrotlik ishida kreditorlar o‘zlariga tegishli qarzni to‘lash muammolarini hal qiladi [8, 48-52-b.].

Agar G‘arb ekspertlarining fikrlariga to‘xtaladigan bo‘lsak, unda Fitchratings (Fitch Ratings) agentligi tomonidan o‘tkazilgan tahlillarga ko‘ra, Rossiyaning to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchiligi yetarlicha kreditorlarni qo‘llab-quvvatlovchi deya baholangan [9]. Mavjud huquqiy rejimlarni 4 ta asosiy toifaga (A–D guruhlari) bo‘lish orqali Fitchratings aksariyat rivojlanayotgan mamlakatlar, shu jumladan, Rossiyani D toifasiga kiritadi. Shu bilan birga, kreditorlarning talablarini taqdim etishda murakkablik va majburiyatlar bajarilishini ta’minlashda to‘siqlar

mavjudligi ham aytiladi. Bu holatlar garov bilan ta’minlangan kreditorlar huquqlari kafolatlanmaganida, sud ish yurituvini boshlashning kechikishida, sud tomonidan asosli qarorlar qabul qilinmasligi bilan ifodalangan.

Milliy manfaatlar nuqtai nazaridan qaysi biri – prokreditor yoki prodebitor yondashuv samarali ekanligi haqidagi konseptual masala mutaxassislar o‘rtasida ko‘plab bahs-munozaralarga sabab bo‘lgan. Biroq M.V. Telyukina tomonidan bildirilgan fikr alohida diqqatga sazovor. Ya’ni umumiy iqtisodiy samaradorlik nuqtai nazaridan rivojlanayotgan mamlakatlarda prokreditor tizimi qarzdorlar manfaatlarini himoya qiladigan tizimga qaraganda ancha samaralidir [10, 348-b.]. Demak, rivojlanayotgan mamlakatlarda to‘lovga qobiliyatsizlik huquqiy tizimlarida kreditorlar manfaatlarini ko‘proq himoya qilishi maqsadga muvofiq.

Vaqtinchalik qiyinchiliklarga duchor bo‘lgan qarzdorlarni saqlab qolish kerak, albatta. Lekin to‘lovni amalga oshira oladigan potensial qarzdorlar mavjud, ular har qanday bosqichda qarzni qoplashi mumkin. Ushbu holat esa to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchilik yo‘nalishi faqat kreditor foydasiga ishlab chiqilgan deyishga to‘sqinlik qiladi [11, 56-59-b.].

Boshqa bir fikrga ko‘ra, agar yetarli reabilitatsiya va tugatish taomillari qonunchilikda nazarda tutilgan bo‘lsa, milliy huquqiy tizimning prodebitor yoki prokreditor sifatida qabul qilinishi investorlar uchun ahamiyatga ega emas. Muhimi, milliy huquqiy tizimning ishlashini ta’minlaydigan infratuzilmaning samarador bo‘lishi. To‘lovga qobiliyatsizlik bilan bog‘liq yuzaga keladigan munosabatlarning o‘ziga xos xususiyatlari hisobga olinsa, ushbu infratuzilmaning sifatli bo‘lishi nafaqat sudyalar va sud boshqaruvchilari, kreditorlar va vijdonli qarzdor, balki ularning tijorat va moliyaviy operatsiyalardagi yuqori tayyorgarligiga ham bog‘liq.

Prodebitor va prokreditor yondashuvlar raqobatini hisobga olgan holda, shuni ta’kidlash kerakki, birinchi yondashuv qarzdorning moliyaviy qiyinchiliklariga aralashmaslik, uning to‘lov qobiliyatini tiklash mumkinligi, reabilitatsiya choralari qarzdorning boshqaruv organlari tomonidan amalga oshirilishini nazarda tutadi. Prokreditor modelida qarzdorning boshqarish organlari yuridik shaxsni kerakli darajada boshqara olmagan va uning to‘lovga qobiliyatsizligini vujudga keltirgan, deb taxmin qilinadi. Natijada kreditorlarning manfaatlari birinchi o‘ringa chiqadi, ular qarzdorning kelajakdagi taqdirini hal qiladi. Kreditorlar, shubhasiz, o‘z manfaatlari yo‘lida harakat qiladi, iloji boricha tezroq va to‘liq o‘z talablarini qondirishga intiladi. Odatda, qarzdorning to‘lov qobiliyatini tiklash ehtimoli bor bo‘lsa ham, kreditorlar qarzdorning mol-mulkini bevosita sotishni afzal deb bilishadi.

Shunisi aniqki, yuqoridagi yondashuvlarning na birinchisi, na ikkinchisi prezumpsiya bo‘la oladi. Bankrotlik to‘g‘risidagi ishda qo‘llaniladigan taomillar davrida kreditorlar va qarzdor manfaatlari balansini tahlil qilishda bunday stereotiplardan qochish kerak. Qarzdorlarning barchasi ham kreditorlardan ma’lumotlarni yashirmaydi va ularning manfaatlarini buzmaydi va, o‘z navbatida, kreditorlar har doim insofsiz bo‘lmaydi va imkon qadar o‘z talablari qanoatlantirilishidan umidvor bo‘ladi. Albatta, qarzdorlar o‘zlarining boshqaruv organlari tomonidan noto‘g‘ri qarorlar qabul qilishi sababli kreditorlarning talablarini qondira olmagan bo‘lishi mumkin. Aksincha, qarzdorning to‘lovga qobiliyatsizligi qarzdor uning boshqaruv organlari nazorati ostida bo‘lmaganligi oqibatida ham yuzaga kelishi mumkin.

Maqsadlarning milliy to‘lovga qobiliyatsizlik rejimlariga ta’siri

To‘lovga qobiliyatsizlik huquqining rejimlari mamlakatlarda bir-biridan sezilarli darajada farq qiladi. Ammo to‘lovga qobiliyatsizlik huquqining ikkita asosiy maqsadi o‘zgarmaydi. Bu maqsadlar qoida tariqasida aksariyat huquqiy tizimlarda qo‘llaniladi [12].

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A.V. Lyubanenko, A.A. Chukreevlar ham to‘lovga qobiliyatsizlik rejimlarini ishlab chiqishda ushbu ikki maqsadga tayanish lozimligini ta’kidlashadi [13, 106-115-b.].

Birinchi maqsad – bozor munosabatlari ishtirokchilari o‘rtasida xavflarni oldindan, adolatli va shaffof tarzda taqsimlashdir. Ushbu maqsadga erishishda bozor ishtirokchilarining kredit tizimiga bo‘lgan ishonchini ta’minlash va iqtisodiy o‘sishni rag‘batlantirish muhim rol o‘ynaydi. Masalan, kreditor-qarzdor munosabatlari nuqtai nazaridan kreditorning qarzdorga nisbatan bankrotlik to‘g‘risidagi ishni hech qanday cheklovlarsiz qo‘zg‘atishi kreditor talablarini ta’minlash vositasi sifatida kreditlash xavfini kamaytiradi va shu bilan kreditlar maqbulligi oshadi, manfaatdor shaxslar tomonidan umumiy investitsiya qarorlarini qabul qilishga yordam beradi.

To‘lovga qobiliyatsizlik to‘g‘risidagi qonun hujjatlari ham har xil kreditorlar o‘rtasida xavflarni adolatli taqsimlashni nazarda tutishi kerak, bu esa qarz oluvchilarning ayrim toifalari manfaatlariga ham ta’sir qilishi mumkin. Ta’minlanmagan kreditorlarga qaraganda ta’minlangan kreditorlarning manfaatlari ustun qo‘yilishi nafaqat ta’minlangan kreditorlarning o‘zlari, balki ma’lum kredit xatarlari tufayli ta’minlanmagan kreditlarga umid bog‘lay olmaydigan potensial qarz oluvchilar uchun ham foydalidir. Ta’minlangan kreditlarning manfaatlari yuqori darajada himoya qilinganligi tegishli kreditlarning narxini ham pasaytiradi.

Huquqiy tizimlarda tadbirkorlik faoliyati subyektlari o‘rtasidagi iqtisodiy risklar turlicha taqsimlanishi mumkin. Qanday bo‘lmasin, tavakkalchilikni taqsimlashning tegishli qoidalari qonunda aniq belgilangan bo‘lishi kerak, davlat barcha bozor ishtirokchilari tomonidan bunday qoidalarga qat’iy rioya qilinishini ta’minlashi shart. Keyin manfaatlar muvozanatini tartibga solishning qonunchilik modeli va uning bankrotlik to‘g‘risidagi ish ishtirokchilarining ma’lum bir toifasi foydasiga siljishidan qat’i nazar, agar qoidalar barqaror va ularni qo‘llash natijalari yetarlicha bashorat qilinadigan bo‘lsa, tadbirkorlik subyektlari duch kelishi mumkin bo‘lgan xatarlar, shu jumladan, narx siyosati ham boshqarilishi lozim. Bunday barqarorlik va bashorat qilishning yetishmasligi bozor ishtirokchilarining kredit va investitsiya qarorlarini qabul qilishga to‘sqinlik qiladi.

To‘lovga qobiliyatsizlik bilan bog‘liq huquqiy munosabatlar ishtirokchilariga adolatli munosabatda bo‘lish haqida gapirganda, o‘ziga xos xususiyat sifatida ularning jamoaviy tabiati ekanligini hisobga olish kerak. Balki, adolatli munosabatda bo‘lish ishtirokchilarning tengligini anglatmaydi. Ammo shunisi aniqki, bankrotlik to‘g‘risidagi ish ishtirokchilarining turli xil iqtisodiy manfaatlarini hisobga olgan holda, qonun ularning har biriga tabaqalashtirilgan yondashuvni nazarda tutishi mumkin. To‘lovga qobiliyatsizlik to‘g‘risidagi qonun hujjatlari firibgarlik muammosini samarali hal qilishi va shaxslarga qonunda nazarda tutilmagan imtiyozlarni taqdim etishi kerak. Bundan tashqari, xalqaro iqtisodiy munosabatlar, kreditlash va investitsiya masalalarida qonun to‘lovga qobiliyatsizlik bilan bog‘liq munosabatlarning xorijiy ishtirokchilariga nisbatan kamsitilmasligini kafolatlashi kerak. Bankrotlik to‘g‘risidagi ish bo‘yicha jamoaviy ish yuritish mumkin bo‘lgan manfaatlar to‘qnashuvi belgilangan tartibda va adolatli hal qilinishiga ishonch hosil qilish maqsadga muvofiq.

To‘lovga qobiliyatsizlik munosabatlarini tartibga solish jarayonlarini bashorat qilish va uning adolatliligi bunday jarayonlarning shaffofligini ta’minlash bilan chambarchas bog‘liq. Manfaatdor shaxslar o‘z huquqlari va qonuniy manfaatlarini amalga oshirish uchun yetarli axborotga ega bo‘lishlari zarur. Kreditorlar qarzdorning moliyaviy ahvoli, uning qarorlari va bankrotlik to‘g‘risidagi ish paytida qabul qilingan harakatlar to‘g‘risida to‘liq ma’lumotga ega bo‘lib borishi lozim.

To‘lovga qobiliyatsizlik to‘g‘risidagi qonunchilikning *ikkinchi maqsadi* – qarzdorning aktivlari qiymatini barcha manfaatdor tomonlar va umuman iqtisodiy manfaatlar uchun himoya qilish hamda uning himoyasini maksimal darajada oshirishni ta’minlashdir. Ushbu maqsadga nafaqat qo‘llaniladigan reabilitatsiya taomillari, balki tugatish taomili ham taalluqlidir. Qarzdorning aktivlari qiymatini maksimal darajada oshirishga qaratilgan vositalar turlicha bo‘lishi mumkin. Masalan, bankrotlik to‘g‘risidagi ish qo‘zg‘atilishidan oldin tuzilgan qarzdorning ayrim shartnomalarini haqiqiy emas deb topish qarzdorning aktivlari qiymatini oshirishga imkon beradi va kreditorlarining talablarini yanada to‘liq va adolatli qondirish uchun sharoit yaratadi. Shu bilan birga, agar bunday himoya keragidan ortiq bo‘lsa, masalan, qarzdorning bitimlarini haqiqiy emas deb topish boshqa tadbirkorlik subyektlari faoliyatini jiddiy yomonlashtirsa. Shunga o‘xshash misol sud boshqaruvchilari faoliyatida ham bo‘lishi mumkin: bir tomondan, uning vakolatlari kengligi, masalan, qarzdorning qarzdor shartnomalari bo‘yicha nizolashish qarzdorning aktivlari qiymatini maksimallashtirishning muhim vositasi hisoblanadi, boshqa tomondan sud boshqaruvchisining vakolatlardan to‘g‘ri foydalanmasligi shartnoma munosabatlariga putur yetkazadi. Umuman olganda, ishtirokchilar vakolatida balansni ta’minlash muhim ahamiyat kasb etadi.

Qarzdorga qo‘llaniladigan reabilitatsiya taomillari uni himoya qilishni ta’minlash va qarzdor aktivlari qiymatini oshirishning asosiy vositasi sifatida qayd etilishi kerak. Ushbu taomillarni tartibga solish to‘lovga qobiliyatsizlik bilan bog‘liq bo‘lgan asosiy manfaatlar to‘qnashuvi – kreditorlar va qarzdorning manfaatlari to‘qnashuvini hal qilish uchun juda muhimdir.

Ikkita maqsadga erishishda – xatarlarni adolatli taqsimlash va qarzdorning aktivlari qiymatini maksimal darajada oshirishda aniq chegarani belgilab bo‘lmaydi. Shuningdek, to‘lovga qobiliyatsizlik huquqi arxitekturasini shakllantirishda qonun chiqaruvchining ma’lum bir tartibga solish maqsadining ustuvorligi va bankrotlik ishi ishtirokchilari manfaatlarining oqilona muvozanati to‘g‘risidagi qarorlari turli xil bo‘ladi, ba’zan qarama-qarshi motivlar bilan ham belgilanishi mumkin.

Xatarlarni taqsimlash va bankrotlik to‘g‘risidagi ishdagi turli ishtirokchilarning manfaatlarini muvozanatlashning ma’lum mexanizmini tanlash to‘g‘risida qaror qabul qilishda stereotiplardan qochish kerak, chunki barcha qarzdorlar insofsiz yoki malakasiz bo‘lmaydi, barcha kreditorlar ham vijdonsiz emas va ularning hammasi biznesni tortib olish yoki qarzdorni tugatishga harakat qilmaydi.

Bankrotlik to‘g‘risidagi ishda qo‘llaniladigan reabilitatsiya yo‘nalishini kuchaytirish va taomillar paytida qarzdorning aktivlari qiymatini maksimal darajada oshirish nafaqat qarzdor mulkdori, balki kreditorlarning ham manfaatlarini himoya qilish deb hisoblanishi mumkin, buning oqibatida katta hajmdagi talablar qondirilishi mumkin.

Shunday qilib, ba’zi huquqiy tizimlarda kreditorlarning talablari “baho”sini oshirish uchun reabilitatsiya taomillaridan foydalaniladi, deb ko‘rsatilsa, boshqa huquqiy tizimlarda qarzdor va uning mulkdorlariga ikkinchi imkoniyat berish reabilitatsiya sifatida e’tirof etiladi. Boshqalarida esa reabilitatsiya mexanizmlaridan foydalanishning asosiy maqsadi qarzdor xodimlarining huquqlarini hisobga olish va ularning manfaatlarini himoya qilishni ta’minlashdir. Ba’zi hollarda davlat o‘z maqsadlariga erishish uchun to‘lovga qobiliyatsizlik huquqi vositalari bilan cheklanmasligi, bankrotlik ishining borishiga alohida ta’sir ko‘rsatishi mumkin. Strategik nuqtai nazardan, davlat iqtisodiyoti barqarorligini ta’minlashda mahsulotlarni uzluksiz ishlab chiqarish talab etiladi. Muayyan tashkilot xodimlarining manfaatlari yoki milliy manfaatlarni himoya qilish uchun davlat bozor munosabatlariga qo‘shilishi va (yoki)

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qarzdorni davlat tomonidan iqtisodiy qo‘llab-quvvatlashi mumkin.

Mol-mulki davlatga tegishli bo‘lgan tashkilotlarga to‘lovga qobiliyatsizlik to‘g‘risidagi qonun hujjatlarini qo‘llash bozorda bunday tashkilotlarning iqtisodiy faoliyat natijalari uchun cheklangan javobgarlik to‘g‘risidagi qoidalarni kiritishga turtki bo‘ladi. Shu nuqtai nazardan, to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchilik davlat korxonalarining moliyaviy muammolarini bozor tamoyillari asosida hal qilishni rag‘batlantiradi va shu bilan bunday tashkilotlar bankrotligining oldini olish uchun mumkin bo‘lgan xarajatlarni kamaytiradi.

Umuman olganda, milliy iqtisodiyotning samarali ishlashini ta’minlash maqsadida to‘lovga qobiliyatsizlikni huquqiy tartibga solishni faqat prokreditor yoki prodebitorlikdan kelib chiqib baholashni oqlab bo‘lmaydi hamda to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchilikning rivojlantirish tarixi va istiqbollari borasidagi xorijiy olimlarning tadqiqotlari qiziqish uyg‘otadi va ular masalaning mohiyatini anglashga yordam beradi.

Yevropa va AQShda yo‘nalish nuqtalari

F. Vud fikriga ko‘ra, to‘lovga qobiliyatsizlik huquqining rivojlanish tarixi “qarzdorni qatag‘on qilishdan – qarzdorni himoya qilishgacha” bo‘lgan harakat sifatida ta’riflanadi [14, 1064-b.]. B. Mann to‘lovga qobiliyatsizlik huquqi rivojlangani sari “jinoyatdan tavakkalchilikka, ma’naviy tazyiqdan iqtisodiy mag‘lubiyat”ga qarab qayta ko‘rilishi va qayta ishlanib borilishi kerak deb hisoblaydi [15, 358-b.].

P.D. Martino tomonidan o‘tkazilgan tadqiqotga ko‘ra, XIX-XX asrlardagi iqtisodiy o‘zgarishlar, madaniy yutuqlar va umumiy institutsional o‘zgarishlar to‘lovga qobiliyatsizlik huquqiy tizimlarining tuzilishi va ishlash mexanizmlariga sezilarli ta’sir ko‘rsatdi. G‘arb mamlakatlarida sanoatlashtirish, kompaniyalarga egalik qilish va nazorat qilishning rivojlanishi qarzga nisbatan shakllangan munosabatning o‘zgarishiga sabab bo‘ldi. Sanoat rivojigacha bo‘lgan iqtisodiyot va nisbatan rivojlanmagan kredit bozorlari bilan shug‘ullanishga odatlangan oldingi to‘lovga qobiliyatsizlik huquqi bunday tez o‘zgaruvchan muhitda samarali bo‘lmay qoldi. Shunga bog‘liq ravishda, XIX asrning o‘rtalaridan boshlab (biroz oldinroq – Buyuk Britaniyada) to‘lovga qobiliyatsizlik qonunchiligi qayta ko‘rib chiqildi va o‘zgartirildi. G‘arbning turli mamlakatlarida to‘lovga qobiliyatsizlik qonunchiligini o‘zgartirishga olib kelgan sabablarning o‘xshashligiga qaramay, Angliya, Fransiya, Germaniya, Italiya va AQShda turli xil to‘lovga qobiliyatsizlik rejimlari ishlab chiqildi. Qarzdor va kreditorlarning manfaatlari muvozanatini tartibga solish hamda ushbu rejimlarda qarzdorning tugatilishi yoki sanatsiya qilinishini ta’minlash tendensiyasi turlicha bo‘ldi [16, 23-43-b.].

Yevropa huquqi instituti tomonidan o‘tkazilgan konferensiyada (2014-yil sentabr, Xorvatiya, Zagreb [17]) to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchilik bilan biznesni qutqarish masalalari muhokama qilindi, o‘tgan asrning so‘nggi ikki o‘n yilligigacha ko‘plab Yevropa davlatlarida moliyaviy qiyinchiliklarni boshdan kechirayotgan kompaniyalar biznesini tugatish muammoni hal qilishning yagona yo‘li ekanligi ta’kidlandi. Bankrotlik to‘g‘risidagi ishda qo‘llaniladigan tugatishga doir ish yuritish taomili davrida ham biznesni qutqarish mumkin bo‘lsa-da, ushbu taomilda tashkilotlarning iqtisodiy faoliyati, asosan, tugatiladi va aktivlar qismlarga bo‘lib sotiladi. Olingan daromad kreditorlar o‘rtasida belgilangan tartibda taqsimlanadi. Konferensiyada yana shu narsaga urg‘u berildiki, korxonalarning to‘lovga qobiliyatsizligi masalalarini hal qilishda bunday bir tomonlama yondashuv Yevropa Ittifoqidagi to‘lovga qobiliyatsizlik masalalarini tartibga solishga doir hujjatlarda hanuzgacha mavjud. Masalan, Yevropa Ittifoqiga a’zo davlatlarda (uning tarkibidagi davlatlarda) ikkita bankrotlik ishini ochish mumkinligi nazarda tutil-

gan va ochilgan ikkita ishda ham tugatish taomillari qo‘llanilaveradi.

2005-yilda ilmiy hamjamiyat vakillari, xususan, N. Martinning yozishicha, AQShda to‘lovga qobiliyatsizlik to‘g‘risidagi qonunchilik bilan taqqoslaganda, ko‘plab Yevropa mamlakatlari qonunchiligi qarzdorlarni reabilitatsiya qilishdan ko‘ra ko‘proq “jazolash”ga qaratilgan [18, 3-77-b.].

XXI asrning boshiga kelib, ko‘plab Yevropa mamlakatlari uchun mavjud bo‘lgan to‘lovga qobiliyatsizlikning huquqiy asoslari yangi chaqiriqlarga javob bermasligi aniq bo‘ldi: tugatish natijasida ta’minlanadigan natijalardan kompaniya biznesini qayta tashkil qilish orqali erishiladigan yutuqlar samarali va foydali ekanligi aniq bo‘ldi [19, 4-8-b.].

Yevropaning turli yurisdiksiyalari to‘lovga qobiliyatsizlik masalalarini tartibga solishda hali ham turli xil yondashuvlarga ega bo‘lishiga qaramay, qarzdorlarga nisbatan reabilitatsiya taomillariga tugatishning muqobil usuli sifatida qarash tendensiyasi mavjud. Ko‘p hollarda davlatlar qonunchiligidagi o‘zgarishlarning modeli sifatida AQSh Bankrotlik kodeksining 11-bobi (Title 11) olinadi [20, 38-b.].

K. Brijning ta’kidlashicha, to‘lovga qobiliyatsizlik huquqini rivojlantirishning dastlabki bosqichlariga qarzdorlarni “davolash” xos bo‘lmagan va taomillar faqat kreditor manfaatlari uchun amalga oshirilgan. Qarzdor tomonidan boshlanadigan ixtiyoriy bankrotlik ishi konsepsiyasi nisbatan yaqinda paydo bo‘lgan. To‘lovga qobiliyatsizlikni tartibga solishga doir yondashuvlarning o‘zgarishi AQShda boshlandi va u yerda qarzdorlarni qutqarishning yangi “biznes madaniyati” shakllandi. Ba’zan ushbu madaniyat ildizlarini AQShning dastlabki tarixiy ildizlari, ayniqsa, ushbu mamlakatga hayotini yangidan boshlash uchun, kelajakka ishonch bilan va mamlakat iqtisodiyotining kelajagiga optimistik nuqtai nazar bilan kelgan muhojirlarga bog‘lashadi.

XIX asrning ikkinchi yarmida tijorat tashkilotlarining bankrotligiga munosabat keskin o‘zgardi. Keyin ko‘plab Amerika temir yo‘l kompaniyalari bankrotlikka yuz tutayotgan edi. AQSh iqtisodiyotini rivojlantirishda temir yo‘l sanoatining strategik ahamiyatini hisobga olib, sanoatdagi bunday vaziyatning salbiy ta’sirini yumshatish yo‘llarini izlashga to‘g‘ri keldi. Tegishli qarorlar dastlab sud hokimiyati tomonidan shakllantirilib, unda kompaniyani qayta tashkil etish, uning aktivlarini himoya qilish va kreditorlar bilan kelishuvga erishish imkoniyatiga qaratilgan umumiy vositalar ishlab chiqildi. Davlat tadbirkorlik xatarlarining ta’sirini hisobga olgan holda, iqtisodiy rivojlanishning zarur elementi sifatida yangi to‘lovga qobiliyatsizlik huquqini ishlab chiqdi va bu moliyaviy muvaffaqiyatsizliklar masalalarini hal qilishda liberal yondashuv to‘g‘ri deya baholandi [21, 30-41-b.].

Hozirgi vaqtda to‘lovga qobiliyatsizlik to‘g‘risidagi AQSh qonunchiligi qarzdorning himoyasini ta’minlash bo‘yicha yetakchi huquqiy tizimlardan biri hisoblanadi. Qarzdorning boshqaruv organlari vakolatlarini saqlashni ta’minlaydigan moliyaviy tiklanishni tartibga solishning qonunchilik modeli qarzdorning o‘z ishlarini mustaqil ravishda boshqarishni davom ettirish va to‘lov qobiliyati tiklanishiga ishonishni nazarda tutadigan yangi doktrina sifatida dunyo yuzini ko‘rdi. Ushbu doktrina keyinchalik Yevropa mamlakatlari iqtisodiyotiga sezilarli ta’sir ko‘rsatdi va bu yerda iqtisodiy jarayonlarni mustahkamlash hamda faollashtirishga xizmat qildi.

Reabilitatsiya – rivojlanish vektori

To‘lovga qobiliyatsizlik to‘g‘risidagi O‘zbekiston qonunchiligini ishlab chiqish o‘z traektoriyasiga ega bo‘lgan. Aksariyat Yevropa mamlakatlarida korxonalarning to‘lovga qobiliyatsizligini bartaraf etish choralari shaxsiy (personal) bankrotlik tizimi, ya’ni jismoniy shaxslarga qo‘llanilgan metodlar va normalarga asoslangan holda ishlab chiqilgan. Sinovdan o‘tgan taomillar, ularning asosiy chora-tadbirlari asta-sekinlik bilan korxonalarga singdirilgan. Shubhasiz, bu jara-

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yon bir nechta bosqichlarda amalga oshirilgan, ko‘p vaqtni talab qilgan. O‘zbekiston esa mulkiy munosabatlar cheklangan tuzumdan xalos bo‘lgach, boshqa ittifoqdosh respublikalar kabi xorijiy huquqiy tizimlardagi korxonalar to‘lovga qobiliyatsizligini hal qilishga doir mexanizmlarni qisqa muddatlarda o‘zlashtirishiga to‘g‘ri kelgan. Ayniqsa, Rossiyada qabul qilingan qonunlar O‘zbekistonning bankrotlik to‘g‘risidagi qonunlari ishlab chiqilishida asosiy manba bo‘lib xizmat qilgan.

O‘zbekiston qonunchiligida, shu jumladan, O‘zbekiston Respublikasining “Bankrotlik to‘g‘risida”gi Qonunida ko‘plab o‘zgarishlar ro‘y bergan bo‘lsa-da, ushbu o‘zgarishlar qaysidir umumiy g‘oyaga bo‘ysunadi, qo‘shimchalar ma’lum bir vektorni ko‘rsatadi, deyish qiyin. Tuzatishlar huquqni muhofaza qilish amaliyotida yuzaga keladigan ayrim muammolarni hal qilish yoki kreditorlarning muayyan guruhlarini himoya qilishni kuchaytirishga qaratilgan edi, xolos. Bankrotlik to‘g‘risidagi qonunga kiritilgan o‘zgartirishlar unga tobora prokreditorlik xarakterini berdi.

Reabilitatsiya taomillarining joriy qilinmayotgani va samarali foydalanilmayotganining asosiy sabablari quyidagilar:

- inqirozning dastlabki bosqichlarida muammolarni aniqlash va reabilitatsiya jarayonlarini boshlash uchun qarzdorga turtki beradigan samarali rag‘batlantirish mexanizmlari yetarli emas;

- bankrotlik arafasida yoki bankrotlik ishida amalga oshirilgan huquqqa zid harakatlar uchun javobgarlik choralari samara bermayapti, xususan, qarzdorning aktivlari qaytarib bo‘lmaydigan qilib begonalashtirilmoqda yoki uchinchi shaxslar orqali o‘zlashtirilmoqda. To‘lovga qobiliyatsizlik vujudga kelishida va korxona bankrot bo‘lishida aybi bo‘lgan shaxslarni javobgarlikka tortish, bitimlarning haqiqiy emasligi bilan bog‘liq normalar huquqqa zid harakatlarning oldini olish va ta’sir chorasini lozim darajada qo‘llashga xizmat qilmayapti;

- sud boshqaruvchilarining huquqiy maqomi, ularning himoyasi va imtiyozlari, shuningdek, yo‘l qo‘yilgan suiiste’molliklari uchun javobgarligi qonun bilan to‘liq tartibga solinmaganligi sud boshqaruvchilarining o‘z faoliyatini kerakli darajada bajarishga to‘sqinlik qilmoqda;

- reabilitatsiya normalarining mazmun-mohiyati, ularning afzalligi, maqbulligi va samaradorligi borasida tushuncha va tasavvurlar to‘liq shakllanmaganligi sababli kreditorlarning reabilitatsiya taomillarini qo‘llashga bo‘lgan salbiy munosabati saqlanib turibdi.

To‘lovga qobiliyatsizlik to‘g‘risidagi qonun hujjatlariga kiritilayotgan o‘zgartirish va qo‘shimchalarning muayyan prinsipga asoslanmaganligi, ayrim munosabatlarning keragidan ortiq tartibga solinganligi va bu mohiyatdan uzoqlashishga olib kelganligi, normalarning boshqa huquq sohalari normalari bilan nomuvofiqligi, bularning barchasi uzoq vaqtdan beri hal qilinmasdan kelmoqda. Ushbu holatlar to‘lovga qobiliyatsizlik qonunchiligidagi parchalangan va nomuvofiq o‘zgarishlarga barham berish, puxta o‘ylangan konseptual islohotni tayyorlash vaqti kelganini anglatadi.

Bankrotlik to‘g‘risidagi qonunga ko‘plab o‘zgartirish va qo‘shimchalar kiritilishiga qaramay, amaliyotda bankrotlik to‘g‘risidagi ish, qoida tariqasida, kreditor tomonidan barcha qarzlarni undirish choralari qolmagandan so‘ng boshlanmoqda. Qarzdorning mol-mulki ijro jarayonida sotib bo‘lingan, bankrotlik ishi doirasida uning to‘lov qobiliyatini tiklash, reabilitatsiya taomillarini amalga oshirish uchun zarur bo‘lgan resurslar yetishmay qolyapti. Ijro ishini yuritishda bir kreditorning (da’vogarning) talablari qanoatlantiriladi, oqibatda mol-mulk boshqa kreditorlarga yetarli bo‘lmaydi.

O‘zbekistonda qarzdorlar bankrotlik to‘g‘risidagi ishlarni boshlashdan manfaatdor emaslar, ular soliq organlari va sud ijrochilari tomonidan qarzlarni undirish choralari amal-

ga oshirilganiga qaramay, o‘z biznes faoliyatini uzoq vaqt davom ettirish imkoniyatiga ega bo‘ladi. Qarzdor boshqaruv organlari korxona ustidan nazoratni yo‘qotishdan xavfsiraydi va ko‘p hollarda kreditorlarning mantiqsiz pozitsiyasini yengib o‘tishning samarali mexanizmlari yetishmasligi tufayli moliyaviy reabilitatsiya qilishga qaratilgan qarorlar qabul qilishni istamaydi.

Vaqtinchalik qiyinchiliklarni boshdan kechirayotgan qarzdorga reabilitatsiya taomillarini qo‘llash imkoniyatiga salbiy ta’sir ko‘rsatadigan yana bir omil, ehtimol, davriy to‘lovlarni amalga oshirishdagi kechikishlar, qarzdorning moliyaviy holatidagi o‘zgarishlar yoki bankrotlik to‘g‘risidagi ishda unga qarshi tugatish taomillarini qo‘llanilishini ta’kidlash o‘rinlidir.

Ko‘p hollarda bankrotlik ishi doirasidan tashqarida kreditorlarni birlashtirish va to‘plash, muammoni hal qilish va sudgacha sanatsiyani joriy etish orqali qarzdor faoliyatini tiklash imkonsiz, deb taxmin qilinadi. Odatda, kreditorlar soddalashtirilgan modelga muvofiq harakat qiladi va qarzdorga asossiz imtiyozlar berilishi haqidagi shubhalardan xoli bo‘lish uchun bankrotlik to‘g‘risidagi ishni qo‘zg‘atishni ma’qul ko‘radi va uni joriy etish osonroq.

Yuqoridagi holatlar qarzdorning o‘zi bankrotlik ishini qo‘zg‘atmayotganligi yoki sudgacha qarzdorlikni bartaraf qilishning muqobil yo‘llari mavjud emasligi sababli paydo bo‘lmoqda. Agar qarzdorning o‘zi bankrotlik ishini qo‘zg‘atishdan manfaatdor bo‘lsa, tashabbus ko‘rsatganlik uchun unga qonun bilan muayyan imtiyoz taqdim etilgan bo‘lsa, barcha kreditorlarning talablarini qanoatlantirish imkoniyati paydo bo‘ladi.

Kreditorlar uchun bankrotlik ishida qarzdorga nisbatan qo‘llaniladigan reabilitatsiya taomillari – sanatsiya yoki tashqi boshqaruvni joriy etish to‘g‘risida qaror qabul qilishga to‘sqinlik qiladigan normalar mavjud emas, ammo bu juda kamdan-kam hollarda sodir bo‘ladi. Buning sabablari turlicha bo‘lishi mumkin, masalan, ko‘p hollarda qarzdorlar ma’lum iqtisodiy foyda keltiradigan biznes birligiga ega bo‘lmaydi yoki biznes bo‘lsa ham, kreditorlar uchun qiziqish uyg‘otmaydi. Kreditorlar qarzdorda faqat mol-mulk yig‘indisini ko‘rishadi, uning hisobidan talablarini iloji boricha tezroq qanoatlantirishga harakat qiladi. Ushbu harakat, birinchi navbatda, bankrotlik ishida majburiy to‘lovlarni undirish uchun qatnashadigan organga (soliq organlari) tegishlidir. Chunki qarzdorning asosiy massasi majburiy to‘lovlarga to‘g‘ri keladi va ular, odatda, asosiy kreditor bo‘lib qatnashadi. Agar qarzdor ishlab turgan biznesga ega bo‘lsa, to‘lov qobiliyatini tiklashda soliq organlari tashabbus ko‘rsatadigan bo‘lsa, shubhasiz, korxona to‘lovga qobiliyatsizlik holatidan chiqib ketadi.

Shuni alohida ta’kidlash kerakki, AQSh, Yevropa va boshqa rivojlangan davlatlar qonunchiligidan farqli o‘laroq, O‘zbekistonda umumiy tartibda ko‘riladigan bankrotlik ishlari kuzatuv taomilidan boshlanadi. Kuzatuv bankrotlik ishida qarzdorga nisbatan qo‘llaniladigan sanatsiya va tugatish taomillarini joriy etishdan oldingi jarayon hisoblanadi, ya’ni yana bir bosqich mavjud. Bir tomondan, kuzatuv faqat bankrotlik ishining borishini kechiktiradi, uning noqulayligini oshiradi. Bunday taomilning mavjudligi aniq foyda keltirmasdan, qarzning ko‘payishi va bankrotlik ishida qo‘shimcha xarajatlarga olib keladi. Boshqa tomondan, kuzatuvni joriy etishning o‘zi qarzdor uchun ijobiy ta’sir ko‘rsatadi, chunki ushbu davrda kreditorning talabiga binoan, qarzdordan mablag‘larni undirish bilan bog‘liq da’vo ishlarini yuritish yakunlanadi, ijro ishi to‘xtatiladi, shu jumladan, qarzdorning mol-mulkiga nisbatan xatlov va ijro ishi paytida undiriladigan qarzdorning mol-mulkiga nisbatan boshqa cheklovlar, ayrim istisnolardan tashqari bekor bo‘ladi.

Kuzatuv davomida qarzdorning moliyaviy ahvoli kreditorlarning birinchi yig‘ilishigacha tahlil qilinadi. Kreditorlar sanatsiya yoki

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tugatish tartibini joriy etish to‘g‘risida qaror qabul qilishlari uchun qarzdorning moliyaviy ahvoli to‘g‘risida hisobot talab qiladi. Sanatsiya yoki tugatish tartibini joriy etish to‘g‘risidagi qaror kuzatuv yakunida va qarzdorning moliyaviy holati tahlili natijalariga qarab qabul qilinadi.

Dunyo tendensiyalarini hisobga olgan holda, milliy qonunchilikni takomillashtirish

Qarzdorlar bankrotlik ishini boshlashdan manfaatdor emaslar va qarzdorlar reabilitatsiya taomillariga qarshi bo‘lgan kreditorlarning pozitsiyasiga ta’sir qila olmaydi.

Reabilitatsiya taomillari qo‘llaniladigan bankrotlik ishlari soni kam, aksariyat hollarda korxona davlat reestridan chiqib ketadi - bunday vaziyatni normal deb bo‘lmaydi. Shu bois qarzdorni reabilitatsiya qilishga doir ilg‘or xorijiy huquqiy mexanizmlardan foydalanish va Bankrotlik to‘g‘risidagi qonunda keltirilgan reabilitatsiya normalarini tubdan qayta ko‘rib chiqish hamda maqbul huquqiy asoslarni ishlab chiqish maqsadga muvofiq.

Reabilitatsiya normalaridan samarali foydalanishga qaratilgan bunday o‘zgarishlarni amalga oshirish uchun kuzatuv taomilini qonunchilikdan chiqarish yoki oxirgi chora sifatida obyektiv zarurat mavjud bo‘lganda qo‘llash, kreditorlar yig‘ilishida qarorlar qabul qilish tizimlarini takomillashtirish lozim.

Qarzdorlar va kreditorlar nafaqat qarzdorni bankrot deb e’lon qilish to‘g‘risidagi ariza, balki reabilitatsiya qilish to‘g‘risidagi arizani ham taqdim etishlari kerak. Uning natijalariga ko‘ra, qarzdorga nisbatan kuzatuv taomilini qo‘llash yoki qo‘llamaslik masalasi hal qilinadi.

Sud sanatsiyasi qo‘llanilganda, qarzdor ma’lum vaqt ichida sud sanatsiyasi rejasini taklif qilish bo‘yicha ustuvor huquq va majburiyatlarga ega bo‘lishi kerak. Ishda qatnashuvchi kreditorlar yoki vakolatli organlar, sud boshqaruvchi va muassislar belgilangan muddatda sud sanatsiyasi rejasini taklif qilish huquqiga ega bo‘lishlari yoki qarzdor tomonidan ilgari surilgan rejani ko‘rib, keyin qaror qabul qilishlari lozim.

Sud sanatsiyasi rejasi kreditorlar talablarini qondirish uchun to‘lov qobiliyatini tiklash, ish joylari va qarzdorning biznesini saqlab qolish uchun ishlab chiqiladi. To‘lov qobiliyatini tiklash deganda, sanatsiya rejasiga muvofiq qoplanmagan qarzni sanatsiya davrida to‘liq to‘lab berilishi tushuniladi. Ushbu rejaga muvofiq, kreditorlarning talablari toifalarga bo‘linadi. Kreditorlarning talablarini toifalarga bo‘lish va har bir toifaga mansub bo‘lgan talablarni qanoatlantirish uchun shart-sharoitlarni ta’minlash – kreditorlarning bitta navbatdagi talablarini mutanosib va teng qondirish prinsipini rad etadi. Talablarni toifalar bo‘yicha guruhlash sud sanatsiyasi rejasini tasdiqlash tartibining moslashuvchanligini oshirishga qaratilgan bo‘lib, talablari tegishli toifaga kiritilgan kreditorlarga maqbul sharoitlar taqdim etiladi. Boshqa tomondan, kreditorlarning talablarini toifalarga bo‘lish kreditorlarning kooperativligini oshirish, ularning raqobatini ta’minlash va kreditorlarni qarzdor bilan murosaga kelishga undashga qaratilgan. Ushbu yondashuv AQSh Bankrotlik kodeksining qoidalari bilan ta’minlangan bo‘lib, bankrotlik ishida qo‘llaniladigan reabilitatsiya taomillarini tartibga solish bo‘yicha dunyodagi yetakchi amaliyotlardan biri sifatida tan olingan.

Bankrotlik to‘g‘risidagi qonun bankrotlik to‘g‘risidagi ishda qarzdor uchun majburiyatlarni qisqa muddatlarda bajarishni talab qiluvchi shartnomalarni chetlab o‘tish va uning salbiy oqibatlarini ertaroq hal qilishni ta’minlash, shartnomalar shartlarini bartaraf etishga qaratilgan normalarni o‘z ichiga olishi lozim. Ko‘pgina hollarda shartnomalarning bunday qoidalari qarzdorga reabilitatsiya taomillarini qo‘llashga to‘siq bo‘ladi. AQSh Bankrotlik kodeksi ushbu muammoni kreditorlarni toifalarga taqsimlash bilan bog‘liq qoidalar bilan hal qiladi.

Agar sud sanatsiyasi rejasida kreditorning majburiyatlari bo‘yicha kreditorning

huquqlari va majburiyatlari, majburiyatni bajarish muddati sud tomonidan reja tasdiqlangan sanagacha vujudga kelmaganligi ko‘rsatilgan bo‘lsa, reja kreditorning manfaatlariga ta’sir qilmagan deb hisoblanadi va majburiyat dastlabki shartlarga muvofiq bajariladi.

Ko‘rsatilgan toifaga sud sanatsiyasi rejasi sud tomonidan tasdiqlaganidan keyin oz muddatga kechiktirilgan talablar va talabning qolgan qismini tegishli majburiyatning dastlabki shartlariga binoan qaytarishni nazarda tutadigan talablar ham kirishi mumkin.

Kreditorlar tomonidan yakka to‘lov shartlari bilan kreditorlar toifalarga bo‘linishni nazarda tutadigan sud sanatsiyasi rejasini tasdiqlash nafaqat har bir toifa ichida bunday rejani ma’qullash (talablar miqdori va kreditorlar soniga muvofiq), balki barcha toifalar tomonidan bir ovozdan qaror qabul qilishni ham o‘z ichiga oladi. Ya’ni kreditorlar talablari toifalarining har biri nafaqat ushbu toifaning talablari qanday qondirilishi to‘g‘risida, balki boshqa har qanday kreditorlarning talablari qanday qondirilishi to‘g‘risida ham kelishib olishlari kerak.

Agar reja biron-bir kreditorning manfaatlariga ta’sir etmasa, ularning ovoz berishda ishtirok etishi talab qilinmasa, ular rejani ma’qullagan hisoblanadi.

Agar bir yoki bir nechta talablar toifalari qarzdor tomonidan taklif qilingan yoki tasdiqlangan sud sanatsiyasi rejasini tasdiqlashga qarshi ovoz bersa, reja sud tomonidan kreditorlarning roziligisiz ma’lum shartlarga rioya qilgan holda tasdiqlanishi mumkin (“cram down” – pastga tushish prinsipi). Bunga faqat rejaga qarshi ovoz bergan kreditorlarning har biri bankrotlik ishida qarzdorning mol-mulkini sotish natijasida olinadiganidan ko‘proq narsani olish sharti kiritilishi bilan yo‘l qo‘yiladi.

“Pastga tushish” prinsipini qo‘llash kreditorlarning manfaatlarini buzishga emas, balki ularning iqtisodiy jihatdan asossiz va mantiqsiz pozitsiyasini yengishga qaratilgan bo‘lib, rejani tasdiqlash nafaqat qarzdor, uning xodimlari va jamiyat, balki kreditorning o‘zi uchun ham ijobiy ta’sir ko‘rsatadi. Rejani tasdiqlashda sud jamiyat manfaatlari, shu jumladan, ish joylarini saqlab qolish zarurligini hisobga olishi kerak. Qarzdorga nisbatan taomillarni joriy etish shartnoma tuzishda taraflar amal qilayotgan shartlarga sezilarli o‘zgartirish qilmasligi va qarzdor kontragentining shartnomani bir tomonlama o‘zgartirish yoki bekor qilishga asos bo‘lmasligi lozim.

Xulosalar

Sudning roli rahbarlikni amalga oshirish, tomonlarning dalillari va bankrotlik to‘g‘risidagi ishning holatlarini har tomonlama o‘rganishdan iborat bo‘lishi zarur. Bankrotlik to‘g‘risidagi ishning o‘ziga xos xususiyatlarini hisobga olgan holda, sudning iqtisodiy va moliyaviy xarakterdagi dalillarni baholashi hamda o‘zining ichki ishonchiga ko‘ra qaror qabul qilishi ishning ajralmas qismi hisoblanadi.

To‘lovga qobiliyatsizlik huquqining vazifalaridan biri qarzdorning aktivlari hisobidan kreditorlarning talablarini adolatli qondirish uchun eng tezkor va eng samarali raqobatbardosh tartibni o‘rnatishdan iborat. Vaqtinchalik qiyinchiliklarni boshdan kechirayotgan, ammo zarur huquqiy vositalar bilan ta’minlash orqali to‘lov qobiliyatini tiklash imkoniyatiga ega bo‘lgan qarzdorning manfaatlarini himoya qilish ham nihoyatda muhimdir. Bu davriy inqiroz jarayonlari va iqtisodiy subyektlarni davlat tomonidan iqtisodiy qo‘llab-quvvatlashning cheklangan resurslari sharoitida ayniqsa dolzarb bo‘lib qoladi. Moliyaviy inqiroz sharoitida, bozor ishtirokchilarining katta qismi inqiroz omillari bosimi ostida bo‘lganda, samarali to‘lovga qobiliyatsizlik qonunchiligi xavflarni adolatli taqsimlashga imkon beradigan muhim chora bo‘lishi lozim.

Bankrotlik to‘g‘risidagi qonunga takomillashtirishga doir bunday tuzatishlarning kutilayotgan natijalari bankrotlik ishida qo‘llaniladigan taomillarning samaradorligini oshirish va kreditorlarning talablarini qanoatlantirish, vaqtinchalik qiyinchiliklarni

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boshdan kechirayotgan qarzdorlarning manfaatlarini himoya qilishga xizmat qiladi. Bundan tashqari, bozor munosabatlari sharoitida muqarrar ravishda yuzaga keladigan inqiroz hodisalarini doimiy ravishda bartaraf etish orqali iqtisodiy faoliyat barqarorligi va samaradorligini oshiradi.

To‘lovga qobiliyatsizlikni huquqiy tartibga solishda butun dunyoda keng qo‘llanilayotgan korxonalar reabilitatsiyasini mustahkamlashga doir tendensiya ustuvorligini o‘rnatish lozim. Uning tanlanishi tadbirkorlik faoliyatini qo‘llab-quvvatlash shakli sifatida e’tirof etilishi bilan ahamiyatlidir.

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O‘ZBEKISTON RESPUBLIKASIDA ONLAYN VA ELEKTRON ARBITRAJ QONUNCHILIGINI TAKOMILLASHTIRISH MASALLARI VA ULARNING QARORLARINI IJRO ETISH

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Annotatsiya. *Maqolada onlayn arbitrajdan foyda ko‘rish mumkin bo‘lgan turli holatlarni aniqlash uchun “past qiymat” tushunchasidan foydalanilgan. Bu sud xarajatlari bo‘lib, ular so‘ralgan huquqiy himoya vositasi da’vogarga keltirishi mumkin bo‘lgan iqtisodiy foydaga mos kelmaydi. Nazariy bashoratlarga muvofiq, hozirda mavjud ODR sxemalari OArb potensiali onlayn tuzilgan iste’mol shartnomalaridan kelib chiqadigan nizolardan tashqariga chiqadi, degan taxminni tasdiqladi. Kam qiymatli B2B nizolariga kelsak, bunday nizolarni ODR sohasidagi kelajakdagi tartibga solish tashabbuslariga kiritish uchun uchta aniq siyosiy sabablar keltirildi. Birinchi sabab (kichikroq) korxonalar ishtirokidagi tijorat nizolariga taqiqlovchi sud xarajatlari teng darajada ta’sir ko‘rsatishi edi. Ikkinchi sabab tijorat tomonlari o‘rtasidagi ko‘plab shartnomaviy munosabatlarda iste’molchi va savdogarlar o‘rtasidagi shartnoma munosabatlariga o‘xshash kuch nomutanosibligini ko‘rsatishini kuzatishdan kelib chiqdi. Nihoyat, e-tijorat operatsiyalari kontekstida sotuvchiga xaridor shaxsini aniqlash ko‘pincha qiyin bo‘lishi ta’kidlab o‘tildi.*

Kalit so‘zlar: *OArb, ODR, ADR, B2B, onlayn va elektron arbitraj, xalqaro arbitraj, UNCITRAL model qonuni, E-Arb, Nyu York konvensiyasi, “elektron suv belgisi”.*

ВОПРОСЫ СОВЕРШЕНСТВОВАНИЯ ЗАКОНОДАТЕЛЬСТВА РЕСПУБЛИКИ УЗБЕКИСТАН ПО ОНЛАЙН- И ЭЛЕКТРОННОМУ АРБИТРАЖУ И ЕГО РЕАЛИЗАЦИИ

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Аннотация. *В статье используется термин «низкое значение» для обозначения различных ситуаций, в которых OArb может принести пользу. Хотя это понятие носит весьма субъективный характер, оно объективирует понятие, связывая его со спорами, где участники несут непомерно высокие судебные издержки. Эти судебные издержки не соответствуют экономической выгоде, которую запрошенное средство правовой защиты может принести истцу. Теоретические прогнозы и существующие схемы ODR подтвердили предположение о том, что потенциал OArb выходит за рамки споров, возникающих по потребительским онлайн-контрактам. Что касается конфликтов B2B с низкой стоимостью, были названы три явные политические причины для включения таких конфликтов в будущие инициативы по регулированию в области ODR. Первая причина заключается в том, что судебные разбирательства, запрещающие (более мелкие)*

коммерческие споры с участием предприятий, имеют такое же значение. Вторая причина возникла из наблюдения, что многие договорные отношения между коммерческими сторонами демонстрируют дисбаланс сил, аналогичный договорным отношениям между потребителями и торговцами. Наконец, было отмечено, что в контексте сделок электронной торговли продавцу зачастую трудно идентифицировать покупателя.

Ключевые слова: *OArb, ODR, ADR, B2B, онлайн и электронный арбитраж, международный арбитраж, Типовой закон ЮНСИТРАЛ, E-Arb, Нью-Йоркская конвенция, «электронный водяной знак».*

ISSUES OF DEVELOPMENT THE LEGISLATION ON ONLINE AND ELECTRONIC ARBITRATION IN THE REPUBLIC OF UZBEKISTAN AND ENFORCEMENT OF THEIR DECISIONS

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Abstract. *The article used the term "low value" to identify various situations in which OArb could benefit. While this notion is highly subjective in nature, it objectifies the concept by linking it to disputes that suffer from prohibitive court costs. These are court costs that do not match the economic benefits that the requested remedy may bring to the plaintiff. According to theoretical predictions, existing ODR schemes have confirmed the assumption that OArb potential goes beyond disputes arising from online consumer contracts. As for low-value B2B conflicts, three clear political reasons have been cited for including such conflicts in future regulatory initiatives in the ODR area. The first reason was that litigation, which prohibits (smaller) commercial disputes involving businesses, has an equal impact. The second reason arose from the observation that many contractual relations between commercial parties show a power imbalance similar to the contractual relationship between consumers and traders. Finally, it was noted that in the context of e-commerce transactions, it is often difficult for the seller to identify the buyer.*

Keywords: *OArb, ODR, ADR, B2B, online and electronic arbitration, International Arbitration, UNCITRAL Model Law, E-Arb, New York Convention, "electronic watermark".*

Kirish

O‘zbekistonda hakamlik sudlari, xalqaro arbitraj, onlayn va elektron arbitraj faoliyatini tashkil etish va davlat tomonidan qo‘llab-quvvatlash mamlakatda olib borilayotgan sud islohotlarini ta’minlash va iqtisodiyotni liberallashtirish, shuningdek, xususiylashtirishni kengaytirish, xo‘jalik yurituvchi subyektlar sonini ko‘paytirish va ular o‘rtasidagi nizolarni hal etishga yordam beradi. Hozirgi vaqtda O‘zbekiston sud organlari tomonidan 200 dan ortiq doimiy faoliyat yurituvchi hakamlik sudlari ro‘yxatga olingan bo‘lib, ularning 160 tasi O‘zbekiston hakamlik sudlari assotsiatsiyasi va uning vakolatxonalari, 15 tasi savdo-sanoat palatasi va uning hududiy bo‘linmalari hamda 30 tasi boshqa yuridik shaxslardir.

Sud qarorlarini tan olish va ijro etishni tartibga soluvchi ko‘p tomonlama konvensiyalar, birinchi navbatda, shu kabi huquqiy tizimlarga ega bo‘lgan davlatlar o‘rtasida tuzilgan bitimlarni o‘z ichiga oladi. Ko‘pincha bu mintaqaviy shartnomalar hisoblanadi (1928-yilgi Bustamante kodeksi, 1932-yildagi Norvegiya, Daniya, Finlandiya, Islandiya va Shvetsiya o‘rtasidagi Konvensiya, 1952-yildagi Arab davlatlari Ligasining sud qarorlari va 1962-yildagi Adliya sohasida hamkorlik to‘g‘risidagi Afro-Malagasy umumiy Konvensiyasining sud qarorlari to‘g‘risidagi Konvensiya).

Umumjahon konvensiyalar sud qarorlari ijrosi bo‘yicha eng samarali vosita sifatida

e’tirof etiladi. Hozirgi vaqtda xalqaro xususiy huquq bo‘yicha Gaaga konferensiyalari xorijiy arbitrajlarni o‘zaro tan olish va ijroga qaratish bo‘yicha universal Konvensiyani ishlab chiqmoqda. Natijada yaqin muddatlarda fuqarolik nizolari bo‘yicha sud qarorlari uchun ijro hujjatlari berishning yagona universal mexanizmi paydo bo‘lishi lozim [1].

Material va metodlar

Hakamlik sudlarining afzalliklarini e’tirof etish bo‘yicha advokatlik harakatlariga qaramasdan, ko‘pchilik, ayniqsa, biznes, hakamlik qarorlarini ijro etish bilan bog‘liq masalalar hali ham mavjud. Shuning uchun biz ushbu masala bo‘yicha qisqacha va lokanik ma’lumot berishga harakat qilamiz.

O‘zbekiston Respublikasining “Hakamlik sudlari to‘g‘risida”gi Qonuni hakamlik sudining hal qiluv qarori ijrosiga bag‘ishlanadi. Ushbu qonun hakamlik sudining qarori ixtiyoriy yoki majburiy ravishda amalga oshirilishi mumkinligini nazarda tutadi.

Qaror o‘z ixtiyori bilan belgilangan tartibda va belgilangan muddatlarda bajarilishi kerak. Birlashgan Qirollik Nyu-York konvensiyasini faqat boshqa Ahdlashuvchi Davlat hududida chiqarilgan mukofotlarning tan olinishi va ijro etilishiga nisbatan qo‘llaydi. Amalda hakamlik sudining taraflarga o‘z majburiyatlarini bajarish uchun muddatni belgilash talabi hakamlik qarorini ijro etishning ixtiyoriy muddatini kiritish uchun asos bo‘ladi. Agar muddat belgilanmagan bo‘lsa, u darhol ijro etilishi kerak.

Agar hakamlik sudining hal qiluv qarori belgilangan tartibda va belgilangan muddatlarda ixtiyoriy bajarilmasa, da’vogar hakamlik sudining hal qiluv qarorini ijro etishga haqli. Bunday holatda mavjud nizo tabiati va taraflarga qarab, da’vogar qaror qabul qilish uchun ijro etuvchi masala yuzasidan quyidagi sudlardan biriga murojaat qilishi mumkin:

- javobgarning (fuqaroning) yashash joyidagi fuqarolik ishlari bo‘yicha tumanlararo, tuman (shahar) sudlari (O‘zbekiston Respublikasi Fuqarolik protsessual kodeksining 353-moddasi talablariga muvofiq);

- javobgarning yashash joyidagi iqtisodiy sudlari (yuridik shaxs tashkil etmasdan yoki qonunda belgilangan tartibda yakka tartibdagi tadbirkor maqomini olmasdan tadbirkorlik faoliyatini amalga oshiruvchi fuqarolar) (Iqtisodiy protsessual kodeksining 202-bobi talablariga muvofiq);

- “Agar xorijiy mamlakatlarda arbitraj tan olinishi va ijro etilishi zarur bo‘lsa, xorijiy arbitrajlar tan olinishi va ijro etilishi to‘g‘risidagi Konvensiya qo‘llaniladi (Nyu-York, 1958-yil, 10-iyun) hamda boshqa xalqaro-huquqiy hujjatlar va ariza ushbu xorijiy davlatning protsessual qonunchiligi talablariga muvofiq tegishli davlat sudiga topshirilishi kerak.

Hakamlik qarorini ijro etish uchun ijro hujjatini berish to‘g‘risidagi ariza qarzdorning joylashgan joyi yoki yashash joyi bo‘yicha vakolatli sud, qarzdorning joylashgan joyi yoki yashash joyi noma’lum bo‘lsa, uning mol-mulki joylashgan joyga taqdim etiladi.

Hakamlik sudining hal qiluv qarorini ijro etish uchun ijro varaqasini berish to‘g‘risidagi ariza quyidagilarni o‘z ichiga olishi kerak:

1) ariza berilayotgan vakolatli sudning nomi;

2) hal qiluv qarorini qabul qilgan hakamlik sudining nomi va tarkibi, joylashgan yeri;

3) hakamlik muhokamasi taraflarining familiyasi, ismi, otasining ismi (nomi), yashash joyi yoki turgan joyi (pochta manzili);

4) hakamlik sudining hal qiluv qarori qabul qilingan sana;

5) ariza bilan murojaat etgan hakamlik muhokamasi tarafi hakamlik sudining hal qiluv qarorini olgan sana;

6) hakamlik sudining hal qiluv qarorini majburiy ijro etish uchun ijro varaqasi berish to‘g‘risidagi talab.

Hakamlik sudining hal qiluv qarorini majburiy ijro etish uchun ijro varaqasi berish to‘g‘risidagi arizada telefonlar, fakslar raqamlari, elektron pochta manzili va boshqa ma’lumotlar ko‘rsatilishi mumkin [2].

Ijro varaqasini berish to‘g‘risidagi arizaga quyidagilar ilova qilinadi:

- arbitraj sudi qarori tasdiqlangan nusxasi (muddatsiz sud qarori nusxasi arbitraj sudi sud raisi tomonidan tasdiqlangan bo‘lishi kerak);

- arbitraj sudi hal qiluv qarorining tasdiqlangan ko‘chirma nusxasi (Doimiy faoliyat ko‘rsatuvchi arbitraj sudi hal qiluv qarorining ko‘chirma nusxasi mazkur hakamlik sudining raisi tomonidan tasdiqlanadi, muvaqqat arbitraj sudi hal qiluv qarorining ko‘chirma nusxasidagi hakamlik sudyasining imzosi notarial tartibda tasdiqlangan bo‘lishi kerak);

- hakamlik bitimining tegishli tarzda tasdiqlangan ko‘chirma nusxasi;

- davlat boji to‘langanligini tasdiqlovchi hujjatlar (eng kam oylik ish haqining ikki baravari miqdorida) belgilangan tartibda va miqdorda, shuningdek, hakamlik muhokamasining boshqa ishtirokchilariga topshirilgan ariza nusxasi.

Hakamlik sudining hal qiluv qarorini ijro etish uchun ijro varaqasi berish to‘g‘risidagi ariza ushbu Kodeksda nazarda tutilgan qoidalarga binoan sudya tomonidan yakka tartibda ko‘rib chiqiladi. Taraflar hakamlik muhokamasining vaqti va joyi to‘g‘risida xabardor qiladi. Sud majlisining vaqti va joyi haqida zarur tarzda xabardor qilingan mazkur shaxslarning kelmaganligi ishni ko‘rib chiqish uchun to‘sqinlik qilmaydi” [3].

Vakolatli sud nizo arbitraj sudi tomonidan qonun bilan belgilangan protsessual tartib-qoidalarga muvofiq ko‘rib chiqilgan-chiqilmaganligini ko‘rib chiqadi va faqat mas’ul shaxs da’vo buzilishining dalillarini taqdim etsa, ijro hujjatini berishni rad etish to‘g‘risida qaror qabul qilishi mumkin [4].

Biroq vakolatli sud ishni eshitish paytida arbitraj sudi tomonidan belgilangan shartlarni ko‘rib chiqish yoki arbitraj mukofotining mazmunini qayta ko‘rib chiqishga haqli emas [5].

Hakamlik sudining hal qiluv qarorini majburiy ijro etish uchun ijro varaqasi berish to‘g‘risidagi ariza hakamlik sudining hal qiluv qarorini ixtiyoriy ijro etish muddati tugagan kundan e’tiboran olti oydan kechiktirmay berilishi mumkin [6].

Hakamlik sudining ijro varaqasi bo‘yicha qarori ijrosi O‘zbekiston Respublikasining 2001-yil 29-avgustdagi 258-II-sonli “Sud hujjatlari va boshqa organlar hujjatlarini ijro etish to‘g‘risida”gi Qonunning 5-moddasida nazarda tutilgan. O‘zbekiston Respublikasi Adliya vazirligi huzuridagi sud qarorlarining moddiy-texnik va moliyaviy ta’minot bo‘yicha bajarilishi Departamentning tegishli huquqni muhofaza qilish organlari xodimlariga tegishlidir.

Ijro varaqasi olingan kundan boshlab uch kundan kechiktirmay davlat ijrochisi ijro ishini qo‘zg‘atish to‘g‘risida qaror qabul qilishi va ijro varaqasi talablarini ixtiyoriy ravishda bajarish uchun besh kun muddat belgilashi mumkin. Shundan so‘ng qarzdor ijro xarajatlari undirilgan taqdirda huquqni muhofaza qilish organlarini xabardor qiladi.

Majburiy ijro choralari quyidagilardan iborat [7]:

1) qarzdorning pul mablag‘lari va boshqa mol-mulkini undirish yo‘nalishi;

2) qarzdorning pul mablag‘lari va boshqa shaxslarga tegishli boshqa mol-mulkini undirish yo‘nalishi;

3) qarzdorning ish haqi, stipendiyalar, pensiyalar va boshqa daromadlari bo‘yicha undirish yo‘nalishi;

4) qarzdordan sud qarorida ko‘rsatilgan ayrim narsalarni olib qo‘yish va undiruvchiga o‘tkazish;

5) ijro hujjati ijrosini ta’minlash uchun qonun hujjatlariga muvofiq boshqa choralar ko‘riladi.

Majburiy ijro hujjatlari ixtiyoriy ravishda ijro etish uchun belgilangan muddat tugagan kundan boshlab ikki oydan oshmagan muddatda ijrochi tomonidan bajarilishi kerak.

Bir so‘z bilan aytganda, ishlarni hakamlik sudida ko‘rib chiqish, birinchi navbatda, tomonlar o‘rtasida do‘stona munosabatlarni saqlashga qaratilgan. Arbitraj sudi ko‘rib chiqqan ko‘p hollarda nizo tomonlarning keli-

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shuvga erishishi bilan tugaydi va keyingi hamkorlik davom etadi [2].

O‘zbekiston Respublikasi Iqtisodiy protsessual kodeksi va Fuqarolik protsessual kodeksiga muvofiq, sudya kelishuv bitimini tuzish yoki nizoni muqobil hal qilish imkoniyatini aniqlaydi va huquqiy oqibatlarini tushuntiradi. Jahon amaliyotidan ma’lumki, yuridik jamiyatda nizolarni hal qilishning muqobil mexanizmlarini yaratish jismoniy va yuridik shaxslarning buzilgan huquqlarini tiklashga erishishning samarali vositasi hisoblanadi.

O‘zbekistonning ishbilarmonlik muhitini yanada yaxshilash va sarmoyaviy jozibadorligini oshirishga to‘sqinlik qilib kelayotgan bir qator tizimli muammolar mavjud. Bu esa xalqaro arbitrajga murojaat qilishga majbur bo‘lgan xorijiy investorlar va mahalliy tadbirkorlik xarajatlarining oshishiga olib keladi. Bundan tashqari, amaldagi qonunchilik, jumladan, “Arbitraj sudlari to‘g‘risida”gi O‘zbekiston Respublikasi Qonuni tomonlarning xorijiy hakamlarni jalb qilish va chet el qonunlarini qo‘llash bilan xalqaro arbitraj standartlariga muvofiq investitsiya nizolarini ko‘rib chiqish imkoniyatlarini cheklaydi [3].

O‘zbekistonda xalqaro arbitraj qarorlarini ijro etishning aniq huquqiy mexanizmlari yo‘qligi xorijiy investorlarning mamlakat sud tizimiga bo‘lgan ishonchiga salbiy ta’sir ko‘rsatmoqda, bu esa mamlakatning sarmoyaviy jozibadorligini pasaytiradi. Shuningdek, mahalliy hakamlar va xalqaro arbitraj sohasidagi boshqa mutaxassislarni tayyorlash hamda qayta tayyorlash yo‘lga qo‘yilmagan.

O‘zbekiston milliy qonunchiligida tadbirkorlikni himoya qilish to‘g‘risida bir qancha qonunlar mavjud. O‘zbekiston Respublikasi Konstitutsiyasi, Iqtisodiy protsessual kodeksi, “Maxsus iqtisodiy zonalar to‘g‘risida”, “Investitsiyalar va investitsiya faoliyati to‘g‘risida”, “Davlat-xususiy sheriklik to‘g‘risida”, “Tadbirkorlik faoliyati erkinligining kafolatlari to‘g‘risida”, “Auditorlik faoliyati to‘g‘risida” shular jumlasidan.

Shu bilan birga, xorijiy investorlarning huquq va manfaatlarini samarali himoya qilish, ishbilarmonlik muhitini yanada yaxshilash hamda O‘zbekistonning investitsion jozibadorligini oshirishga imkon bermaydigan qator tizimli muammolar mavjud [4]. Jumladan:

birinchidan, O‘zbekistonda xalqaro arbitrajni tartibga soluvchi qonuniy bazaning yo‘qligi nizolarni hal qilish uchun xorijiy davlatlarda xalqaro arbitrajga murojaat qilishga majbur bo‘lgan xorijiy investorlar va mahalliy korxonalar xarajatlari oshishiga olib keladi;

ikkinchidan, amaldagi qonunchilik, shu jumladan, “Hakamlik sudlari to‘g‘risida”gi O‘zbekiston Respublikasi qonuni tomonlarning investitsiya nizolarini xalqaro arbitraj standartlariga muvofiq, ya’ni xorijiy hakamlarni jalb qilish va chet el qonunlarini qo‘llash singari imkoniyatlar asosida ko‘rib chiqishni cheklaydi;

uchinchidan, O‘zbekistonda xalqaro arbitraj qarorlarini ijro etishning aniq huquqiy mexanizmlarining yo‘qligi xorijiy investorlarning mamlakat sud tizimiga bo‘lgan ishonchiga salbiy ta’sir ko‘rsatmoqda va shu bilan mamlakatning sarmoyaviy jozibadorligini pasaytirmoqda;

to‘rtinchidan, mahalliy hakamlar hamda xalqaro arbitraj sohasidagi boshqa mutaxassislarni tayyorlash va qayta tayyorlash yo‘q.

Nizolarni onlayn hal qilish va ijro etish bo‘yicha milliy qonunchilik yo‘q, chunki ODR platformalaridan foydalanish bilan bog‘liq yana bir masala – bu onlayn yechim qo‘llashga majburlashdir. Qarorni qaysi sud bajarishi kerak – hakamlik bitimi imzolangan joyning sudimi, hakamlik sudining sudimi, qaror qabul qilingan joyning sudimi, OPC obyekti jismonan joylashgan joyimi yoki Internet-serverlar o‘rnatilgan joy?

Xalqaro arbitraj xalqaro savdo, tijorat va sarmoyaning deyarli barcha sohalarida biznes hamkorlar o‘rtasidagi nizolarni hal qilishning maqbul usuliga aylandi. Xalqaro arbitraj taraf-

larga nizolarni shaxsiy, maxfiy, iqtisodiy va vaqtni tejaydigan usulda, o‘z xohishiga ko‘ra neytral sudda hal qilishga imkon beradi [8]. Ammo, agar kimdir maxfiylikni hakamlik sudining eng muhim jihati sifatida aniqlasa, bu sud jarayonini hal qilishni bildirsa, bu, albatta, arbitraj tarafi qanchalik tasdiqlashini belgilamaydi, hakamlik sudining qanday oqibatlarga olib kelishi tushuniladi.

Xalqaro tijorat arbitraj to‘g‘risida 1985-yilgi UNCITRAL model qonunining 16-moddasiga binoan, arbitraj sudining o‘z yurisdiksiyasidagi masalalarni hal qilish vakolatlari quyidagicha:

Arbitraj sudi o‘z vakolatiga kiruvchi har qanday masala, shu jumladan, hakamlik bitimi mavjudligi yoki haqiqiyligiga e’tiroz bildirishi mumkin. Shu maqsadda hakamlik bitimining bir qismini tashkil etuvchi hakamlik shartnomaning sharti boshqa shartlaridan qat’i nazar, bitim sifatida ko‘rib chiqilishi kerak. Hakamlik sudining shartnoma haqiqiy emasligi to‘g‘risidagi qarori hakamlik shartnoma qoidalarini bekor qilmaydi.

Yaqin Sharqdagi arbitraj bo‘yicha mutaxassis Al-Ahdab (1998:302) arbitraj sudining ta’rifi uchun taklif qilgan shart shundan iboratki, “bu atama arbitraj sudiga topshirildi, har bir mavzu bo‘yicha qaror qabul qilish uchun yakuniy qarorni anglatishini tushunish kerak” [9]. Biroq Nyu-York Konvensiyasi 1-moddasida quyidagilar belgilangan, ya’ni: “Arbitraj qarorlari “ atamasi nafaqat har bir ish bo‘yicha tayinlangan arbitrlar tomonidan chiqarilgan qarorlar, balki tomonlar taqdim etgan doimiy faoliyat yurituvchi arbitraj organlari tomonidan chiqarilgan qarorlarni ham o‘z ichiga oladi”.

Ushbu qoida umumiy bo‘lib hisoblanadi, chunki yakuniy qarorda shartli bo‘lmagan arbitrlarning dastlabki yoki qisman qoidalari chiqarilishi mumkin. Biroq arbitraj ta’rifiga ko‘ra, ushbu qisman qoidalar arbitraj sudi qarorining bir qismi sifatida qaraladi. Shu sababli nizo masalasida majburiy va hal qiluvchi qaror sifatida xalqaro miqyosda ijro etilishi mumkin bo‘lgan “arbitraj qarori” maqsadini aniqlash mumkin[10].

Arbitraj to‘g‘risidagi namunaviy qonunning 31-moddasi 3-bandida qaror “qaror shu joyda berilgan deb hisoblanishi uchun uning sanasi va joyi ko‘rsatilishi kerak”, deyilgan. Shartnoma sud majlislari o‘tkaziladigan va qaror imzolangan joydan qat’i nazar ijro qilinadi. Muqobil variantlar mavjud bo‘lmagan holatlarda va Nyu-York konvensiyasida ko‘rsatilgan hududiy mulohazalarga muvofiq, elektron qarorning kuchga kirishi dargumon.

Biroq “delokalizatsiya nazariyasiga” ko‘ra, agar qaror elektron vositalar orqali berilsa, elektron tijoratni tartibga soluvchi milliy qonunlar qarorning haqiqiyligini hal qiladi [11]. “Yozma shakl” masalasiga kelsak (10-bobda muhokama qilingan), bu alohida davlatning elektron qarorni ijro etish uchun yozma shaklning elektron shaklini qabul qilishiga bog‘liq.

Elektron qarorlar bilan bog‘liq ba’zi muammolarni bartaraf etish uchun Edvards va Uilson Vang arbitraj qarorining “elektron suv belgisi” bosilgan versiyasidan foydalanishni taklif qiladi. Arbitr buni asl qarorni tashkil etuvchi imzo bilan tasdiqlashi mumkin. Bundan tashqari, elektron qarorlar chiqarishda yuzaga kelgan ba’zi nizolar arbitraj bandlari bilan bog‘liq muammolarni bartaraf etish bilan bir xil tarzda hal qilinadi [12]. Vang elektron arbitraj kelishuvlari va arbitraj qarorlari elektron shartnomalar sifatida ko‘rib chiqilishi kerakligini ta’kidlaydi. Bu ularning haqiqiyligini oshiradi hamda BMTning Xalqaro shartnomalarda elektron aloqalardan foydalanish to‘g‘risidagi konvensiyasi va boshqa milliy elektron shartnoma qonunlariga muvofiq avtomatik ravishda tan olinadi.

BAA FPK 212-moddasining 3-bandida shunday deyilgan: “Tezlashtirilgan ijro uchun maxsus qarorlar arbitrlar qoidalariga nisbatan qo‘llanilishi kerak”. Arbitrlarning tuzilmalari bilan bog‘liq bo‘lgan qoidalarga kelsak, u holda, qaror ko‘pchilik arbitrlarning nuqtai

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nazaridan kelib chiqqan holda chiqariladi. Qaror yozma shaklda bo‘lishi va bahslashuvchilar o‘rtasidagi kelishuv tafsilotlarini o‘z ichiga olishi kerak. Xususan, kelishuv va tomonlarning protsessda tasdiqlangan bayonotlarining qisqacha mazmuni bo‘lishi zarur. Sud majlislarida ishtirok etayotgan tomonlarning har birining barcha hujjatlari va ularning himoyasi haqidagi barcha memorandumlarni tekshirish lozim. Bundan tashqari, yakuniy qaror va ajrimda arbitr tomonidan ko‘rsatilgan sabablar, shuningdek, chiqarilgan sana va joy ko‘rsatilishi darkor. Barcha arbitrlar qarorni imzolashi va agar ularning soni ko‘p bo‘lsa, uni imzolamagan arbitrni eslatib o‘tishlari zarur. Bunday holda arbitrlarning ko‘pchiligi imzo cheksa, to‘g‘ri bo‘ladi [13]. Bu arbitraj sudini tartibga soluvchi BAA FPKning 212 (5)-moddasida ko‘rsatilgan:

Arbitrlarning qarori ko‘pchilikning fikri bilan chiqariladi va qarama-qarshi nuqtai nazarni eslatib o‘tish bilan birga yozilishi kerak. Unga arbitraj kelishuvining nusxasi kiritilishi zarur. Tomonlarning bayonotlari va hujjatlarining qisqacha mazmuni, qarorni chiqarish asoslari hamda berilgan sanasi va joyi ko‘rsatilgan holda, arbitrlarning imzolari ko‘rsatilgan bo‘lishi lozim. Agar arbitrlardan biri yoki bir nechtasi unda ko‘rsatilishi kerak bo‘lgan qarorni imzolashdan bosh tortsa va arbitrlarning ko‘pchiligi imzolagan taqdirda u haqiqiy hisoblanadi.

Agar nizolashuvchilar o‘rtasida boshqacha kelishuv bo‘lmasa, qaror arab tilida chiqarilishi darkor. Bunday holda qaror rasmiy tarjimaga beriladi va arbitrlar imzolagan kundan boshlab chiqarilgan hisoblanadi.

BAA arbitrajni tartibga soluvchi FPKning 212(6)-moddasida quyidagilar keltirilgan: “*Agar nizo taraflari o‘rtasida boshqacha kelishuv bo‘lmasa, qaror arab tilida bo‘ladi, aks holda, qarorni topshirish vaqtida uning qonuniylashtirilgan tarjimasi ilova qilinadi*”.

Arbitrlarning qarori, agar ajrim chiqarilgan sud tomonidan ratifikatsiya qilinmasa, ijro etilmaydi. Ajrim ko‘rib chiqilgandan so‘ng, arbitraj hujjatlarini tekshirish bilan birga, uni qo‘llashga to‘sqinlik qiladigan hech narsa yo‘qligi tekshiriladi. Manfaatdor tomonlarning iltimosiga binoan, arbitrlarning qaroridagi xatolarni tuzatish uchun sud belgilanishi mumkin.

BAA FPKning arbitrajni tartibga soluvchi 215-moddasida quyidagilar bayon etilgan: “*Arbitrlarning qarori, agar sud qarori berilgan sud tomonidan tasdiqlanmasa, ijro etilishi mumkin emas. Sud qarori va texnik topshiriqni ko‘rib chiqqan hamda bunday ijro uchun hech qanday to’siq yo‘qligiga ishonch hosil qilgan bo‘lsa, u ijro qilinadi.*” [14].

Bularning barchasi, agar apellatsiya yoki qarorni bekor qilish yo‘li bilan e’tiroz bildirilmagan bo‘lsa, arbitraj tomonidan talab qilingan qonun yoki shartnomada belgilangan muddat ichida bo‘lishi kerak.

E-Arb qarorlariga qo‘yiladigan talablarga kelsak, Cyber Tribunal an’anaviy arbitrajdagi talablar E-Arbdagilardan farq qilmasligini ta’kidlaydi.

Tadqiqot natijalari

E-Arb qarorining chiqarilishi bir qator huquqiy oqibatlarga ega bo‘lib, ulardan eng muhimi E-Arb qarori chiqarilgandan so‘ng darhol va u qonuniy kuchga ega bo‘lgandan keyin ijro qilinishidir. Bu esa, agar yangi qonuniy yoki faktik dalillar mavjud bo‘lsa ham, agar sud qarori bekor qilinmagan bo‘lsa, nizoni sudda qayta ko‘rib chiqishning oldini oladi. Ushbu oqibatlarning birinchisi tomonlarni sud qarori to‘g‘risida xabardor qilishdir, chunki bu xabarnoma qarorni ijro etish bosqichini boshlaydigan birinchi protsedura hisoblanadi. Shundan kelib chiqqan holda, muhokama qilinadigan ikki jihat bor: qaror haqida xabar berish va qarorni ijro etish.

Qaror elektron shaklda onlayn tarzda taqdim etiladi va tomonlar E-Arb provayderi va/yoki arbitraj sudi tomonidan xabardor qilinadi. Ushbu “elektron xabarnoma” tomonlarga qarorning mazmuni haqida ma’lumot taqdim etadi va ixtiyoriy ravishda unga rioya qilish, uni amalga oshirish yoki unga nisbatan murojaat qilishga tayyorlanish imkonini bera-

di. Ba'zi milliy qonunlarda arbitrajda qarorlar to'g'risida elektron xabar berish bilan bog'liq muammo yoki tashvish yo'q. Angliya hamda Uels kabi ba'zi mamlakatlar bunga liberal yondashadi. Ingliz arbitraj qonunining (1996) 55 (1)-bandiga muvofiq, tomonlar qaror to'g'risida xabar berishga qo'yiladigan talablar bo'yicha kelishib olishlari mumkin.

Bunday holda tomonlar arbitraj qarori elektron arbitrajda tez-tez uchraydigan elektron pochta orqali xabardor qilinishi yoki ular uchun ochiq bo'lgan xavfsiz platformaga yuklanishi kerakligiga rozi bo'lishlari mumkin [15].

BAA FPKning an'anaviy arbitrajga ko'ra, arbitraj sudining qarori to'g'risida xabar berish bo'yicha qoidalariga asoslanib, E-Arb'dagi elektron xabarnoma tizimiga qarshi bo'ladigan hech narsa yo'q, chunki elektron xabarnoma hali ham shartlarni saqlab qoladi. Bundan tashqari, BAA FPK bu borada tomonlarga 1996-yildagi Angliya arbitraj to'g'risidagi qonunga o'xshash keng imkoniyatlar beradi. Masalan, BAA FPKning 212(5)-moddasida arbitrajni tartibga soluvchi quyidagi band keltirilgan: "*Arbitrlarning qarori ko'pchilikning fikri bilan chiqariladi va qarama-qarshi nuqtai nazarni eslatib o'tishi kerak. Unga arbitraj kelishuvining nusxasi kiritilishi, tomonlarning bayonotlari va ularning hujjatlarining qisqacha mazmuni, qarorni berish asoslari hamda berilgan sanasi va joyi ko'rsatilgan holda arbitrlarning imzolari qo'yilishi lozim. Agar arbitrlarning bir yoki bir nechtasi unda ko'rsatilishi kerak bo'lgan qarorni imzolashdan bosh tortsa va arbitrlarning ko'pchiligi imzolagan taqdirda u haqiqiy hisoblanadi*".

Ushbu shart, agar tomonlar boshqacha kelishuvga erishmagan bo'lsa, BAA FPKda arbitraj qarori arab tilida berilishi kerakligi to'g'risidagi shart bilan birga elektron xabarnoma orqali osongina bajarilishi mumkin.

BAAda arbitrajni tartibga soluvchi FPKning 212(6)-moddasiga kelsak, unda quyidagi band keltirilgan: "*Agar nizo taraflari o'rtasida boshqacha kelishuv bo'lmasa, qaror arab tilida bo'ladi, aks holda, sud qaroriga ariza berish vaqtida uning qonuniylashtirilgan tarjimasi ilova qilinishi kerak*."

Ta'kidlanishicha, BAA FPKdagi ushbu shartlar elektron qaror to'g'risida elektron xabarnoma bilan osongina amalga oshirilishi mumkin va shuning uchun BAAning amaldagi qonunchiligida elektron qaror to'g'risida elektron xabarnoma bilan mutlaqo muammo yo'q [16]. Bundan tashqari, elektron qaror to'g'risidagi elektron xabarnomani tan olish uchun BAAdagi amaldagi qonunchilik bazasiga ozgina o'zgartirishlar kiritilishi kerak, deb aytish mumkin. Agar tomonlar qaror to'g'risida xabardor qilishning ushbu usuliga rozi bo'lsa, bu ko'proq ahamiyatga ega bo'ladi. Bundan tashqari, tomonlar qarorning barcha tomonlar uchun ochiq bo'lgan xavfsiz platformaga yuklanishiga ham rozi bo'lishlari mumkin.

Butun dunyo bo'ylab E-Arb tizimlari qarorning vakolatiga e'tiroz bildirish mumkin emasligini tan oladi. Agar E-Arb qarorining vakolatiga biron-bir asosda e'tiroz bildirilsa, u haqiqiy emas deb hisoblanadi va uning vakolati kamayadi. Arbitraj sudi tomonidan chiqarilgan E-Arb qarorining vakolati mutlaq vakolatga ega emas, aksincha, u tomonlar uchun nisbiy vakolatga ega. Ikkala tomon ham arbitraj sudiga murojaat qilish to'g'risida dastlabki kelishuvga ega bo'lganidek, qarorni rad etishlari yoki boshqa arbitraj sudiga murojaat qilishlari mumkin.

Arbitraj sudining qarori to'g'ridan-to'g'ri uni chiqargan organ yoki muqobil tashkilot oldida e'tiroz bildirish uchun ochiqdir. Odatda, qaror berilgan mamlakat sudi oldida e'tiroz bildiriladi. Bunday holda, agar bekor qilish sabablari aniqlangan bo'lsa, sudya arbitraj sudining hal qiluv qarorini bekor qilish, hatto o'zgartirish to'g'risida qaror qabul qiladi. Boshqa davlat sudi oldida arbitraj sudining hal qiluv qaroriga e'tiroz bildirishga kelsak, bu holda, agar sud ba'zi sabablar mavjudligini tasdiqlasa, u holda, qarorni tan olmaslik va ijroni rad etish to'g'risida buyruq beradi.

Misr qonunining 42- va 52-moddalari

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Fuqarolik va xo‘jalik protsessual ish yuritish tamoyillari kodeksida belgilangan har qanday shaklda arbitraj qarori ustidan shikoyat qilishni qabul qilmaslikni nazarda tutadi. Arbitraj sudining hal qiluv qarorini bekor qilish to‘g‘risidagi da’vo cheklangan sabablarga ko‘ra qo‘zg‘atilishi mumkin [21]. Shu bilan birga, arbitraj qarori bilan bog‘liq bo‘lgan barcha holatlar, uning bekor qilinishiga olib keladigan nuqsonlar, masalan, qarorning chiqarilishi yolg‘on yoki soxta hujjatga asoslangan hollar kabilarni bekor qilish sabablarini o‘z ichiga olmaydi.

Sud qarori nizolashayotgan tomonlar apellatsiyaning oldini olish to‘g‘risida so‘rov berilishi mumkin bo‘lgan organni hal qilishda to‘liq erkinlikka ega degan tushunchaga asoslanadi. Bundan tashqari, bu ularning ikkalasi ham arbitraj sudining qaroriga birinchi instansiyada ajrim chiqargan organdan boshqa organ oldida shikoyat qilish imkoniyatiga rozi bo‘lishlari mumkinligini anglatadi. Ularning kelishuvi bo‘lmagan taqdirda, masala arbitraj muhokamasi jarayonining borishi uchun ikkala tomon tanlagan arbitraj muhokamasi qoidalariga binoan hal etiladi.

Bu arbitraj sudining qaroriga e’tiroz bildirilishi mumkin bo‘lgan ma’lum bir organ uchun spetsifikatsiyani ko‘zda tutmaydigan xalqaro arbitrajning eng muhim va tan olingan qoidalariga qaramasdan bajariladi. Ushbu fikrga misol Tijorat arbitraji to‘g‘risidagi Arab konvensiyasidan keltirilgan bo‘lib, unda tomonlardan biriga arbitraj markazi rahbaridan qarorni bekor qilish to‘g‘risida qonunda asosli sabablar topilsa, ularning bekor qilinishini qo‘llab-quvvatlashni talab qilishga ruxsat beriladi. Qonun chiqaruvchi bekor qilish to‘g‘risidagi ariza berilishi mumkin bo‘lgan muddatni tartibga soladi.

Xalqaro Savdo Palatasining qoidalari rezolyutsiya loyihasini arbitraj sudiga taqdim etish va vakolatli sud ma’qullaganidan keyin qaror chiqarmaslik majburiyatini belgilaydi.

Shundan kelib chiqib, kodeksning 24-moddasida “yakuniy ijro qarori” sarlavhasi ostida:

1. *Arbitraj sudining qarori yakuniy hisoblanadi.*

2. *Ikkala tomon ham o‘z nizolarini Xalqaro Savdo Palatasining arbitrajiga topshirganidek, ikkalasi ham kechiktirmasdan qarorni ijro etishga majburdirlar va shikoyat qilishning barcha usullarini bekor qiladilar*.

Shuni ham ta’kidlash joizki, xalqaro konvensiyalar ishtirokchi davlatlarni ular nazarda tutgan narsaga majbur qiladi, xalqaro arbitraj qoidalari esa davlatlarni ularga rioya qilishga majburlamaydi. Arbitraj qarorlari ustidan shikoyat qilish sabablariga kelsak, milliy qonunlar shikoyat qilishga ruxsat beruvchi sabablar soni bo‘yicha farqlanadi. Umuman olganda, arbitraj sudining qarorlari ustidan shikoyat qilish imkonini beruvchi sabablarni to‘rt toifaga bo‘lish mumkin:

1*. Qarorning mazmuni bilan bog‘liq sabablar.* Shikoyat bergan tomon arbitraj sudining qarori u chiqarilgan yerning qonunchiligiga yoki amalga oshirilishi kerak bo‘lgan protsessual qonunga muvofiq emasligini ta’kidlaydi.

2. *Arbitraj sudining yurisdiksiyasiga taalluqli sabablar*. Ushbu organ nizoni tekshirish va maxsus qaror chiqarish vakolatiga ega. U nizo sud vakolatiga kiradigan masalalar bilan bog‘liq bo‘lmasa chaqiriladi. Shunday qilib, keyin joy qonuni va arbitraj sudining majburiy qonuni ko‘rib chiqiladi. Organ tomonidan qabul qilingan qarorga e’tiroz bildirish mumkin.

3. *Arbitraj muhokamasi va tegishli tartib bilan bog‘liq sabablar.* Bunday holda apellatsiya arbitraj sudining protsessual qoidalariga rioya qilmasligiga asoslanadi. Ushbu qoidalar arbitraj sudining asosliligi va apellyatsiya tartibida har ikkala nizolashuvchi tomonning huquqlarini taqdim etishni ta’minlaydigan qoidalarga kiritilgan. Bu xalqaro konvensiyalarda arbitraj qaroriga e’tiroz bildirish uchun universal tarzda qo‘llaniladi.

4*. Davlat siyosati tamoyillarining buzilishiga asoslangan sabablar*. Bunda xalqaro

qoidalar va milliy qonunchilik davlat siyosati tamoyiliga ko‘ra qarorga qarshilik ko‘rsatish, uni bekor qilish, tan olmaslik va ijro etmaslik uchun asosli sabab sifatida ko‘rib chiqilishiga kelishilgan. Davlat siyosatiga qarshi chiqishda uning asosli yoki haqiqiy emasligini sud hal qiladi.

Xulosalar

Xulosa qilib aytganda, biz xalqaro tijorat arbitrajlarining huquqiy asoslari, xususan, Xorijiy arbitraj qarorlarini tan olish va ijro etish to‘g‘risidagi Nyu-York Konvensiyasi (NYC) va Xalqaro tijorat arbitrajlari to‘g‘risidagi UNCITRAL Namunaviy qonuni sun’iy intellekt asosidagi arbitraj amaliyoti texnologik yutuqlarga mos kelishini ko‘rib chiqdik. Aniqrog‘i, biz to‘liq AI tomonidan yaratilgan arbitraj qarorlari kuchli xalqaro “qonuniy valyuta” maqomiga ega bo‘lgan Nyu-York Konvensiyasi ma’nosidagi qarorlar ekanini ko‘rsatib o‘tdik. Shuningdek, rivojlangan mamlakatlar tajribasini o‘rgangan holda, COVID-19 pandemiyasi davridan boshlab arbitraj eshituvlari va sud muhokamlarini ham onlayn rejimga o‘tkazishni zamonning o‘zi taqozo qilib turibdi. Mamlakatda davlat organlarining aholi bilan muloqotini takomillashtirish, fuqarolar huquq va erkinliklarining ishonchli himoyasini ta’minlash hamda ularning muammolarini hal etishning zamonaviy mexanizmlarini joriy qilish borasida izchil ishlar amalga oshirilmoqda. O‘zbekiston Respublikasida sun’iy intellektni qo‘llashning asosiy yo‘nalishlari va tamoyillari, shuningdek, yaqin va uzoq istiqbolda ushbu sohani kompleks shakllantirish uchun shart-sharoitlarni belgilovchi sun’iy intellektni rivojlantirish strategiyasini ishlab chiqish, iqtisodiyot tarmoqlari va ijtimoiy sohada, davlat boshqaruvi tizimida sun’iy intellekt texnologiyalarini ishlab chiqish va ulardan foydalanishda yagona talablar, javobgarlik, xavfsizlik va shaffoflikni belgilovchi normativ-huquqiy bazani ishlab chiqish zarur. Aholi manfaatlari yo‘lida davlat xizmatlari ko‘rsatish sifatini yaxshilash, ma’lumotlarni qayta ishlashda davlat organlari samaradorligini oshirish uchun sun’iy intellekt texnologiyalaridan keng foydalanish, foydali texnologik yechimlarni ishlab chiqish bo‘yicha fundamental va amaliy-ilmiy tadqiqotlar o‘tkazish va ularni keyinchalik tijoratlashtirishni rag‘batlantiruvchi sun’iy intellekt sohasida innovatsion ishlanmalarning mahalliy ekotizimini yaratish, sun’iy intellekt texnologiyalarini qo‘llovchi dasturiy ta’minot ishlab chiquvchilariga raqamli ma’lumotlardan foydalanish uchun sharoit yaratish, shuningdek, davlat organlari va tashkilotlarining tegishli ma’lumotlarini tezkor raqamlashtirishni ta’minlash hamda sun’iy intellekt sohasidagi ilmiy ishlar va ishlanmalarning investitsion jozibadorligini shakllantirish, shu jumladan, tovarlarning (ish va xizmatlarning) ichki va tashqi bozorlarda raqobatbardoshligini oshirish lozim.

Shu bilan birga, ushbu sohada islohotlarning integratsiyalashuvini milliy qonunchilikka implementatsiya qilish va hozirgi bosqich uchun davlat organlarida nizolarni sudgacha ko‘rib chiqishning yagona tizimini yaratish, mediatsiya, hakamlik sudlari hamda xalqaro arbitrajlarni fuqarolar hamda tadbirkorlarning ishonchiga sazovor bo‘ladigan nizolarni hal etuvchi samarali muqobil institutlarga aylantirish lozimligini taqozo etmoqda.

Asosan, butun dunyo bo‘ylab davlatlar arbitraj nizomlari bo‘yicha, umuman olganda, yangi texnologiyalar va xususan, SI ilovalariga ochiqlik darajasini belgilashda erkindirlar. Biroq amalda tartibga soluvchi raqobat davlatlar foydalanadigan erkinlik darajasiga ta’sir qiladi. Xalqaro tijorat arbitrajlari katta biznesdir. Davlatlar o‘z yurisdiksiyalariga arbitrajlarni jalb qilish uchun bir-biri bilan raqobatlashadi. Agar mavjud sun’iy intellekt ilovalari inson arbitrlariga qaraganda samaraliroq va sifat jihatidan yaxshiroq arbitraj jarayonlari va qarorlarini taqdim eta olsa, biz arbitraj foydalanuvchilari bozor ulushlarini qo‘lga kiritish (yoki yo‘qotmaslik) uchun bunday xizmatlar va davlatlardan zarur huquqiy infratuzilmani taqdim etishlarini talab qilishlarini kutishimiz kerak. Biz anglo-sakson

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huquq yurisdiksiyalari ushbu raqobatda fuqarolik huquqi yurisdiksiyalari ustidan ustunlikka ega bo‘lishini kutamiz, chunki nazorat ostidagi o‘quv dasturlari diqqat bilan belgilangan o‘quv ma’lumotlarini talab qiladi. Yuridik jarayon kontekstida bu anglo-sakson huquq yurisdiksiyalarida osonroq mavjud bo‘lgan kodlangan qarorlarni anglatadi.

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NIZOLARNI MUQOBIL TARTIBDA HAL QILISHDA HAKAMLIK SUDLARI VA ULARNING TURLARI

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Annotatsiya. *Mamlakatimizni modernizatsiya va isloh etish sharoitida huquqni muhofaza qiluvchi va sud-huquq sohasida amalga oshirilayotgan islohotlar, avvalo, inson huquqlari, erkinliklari va qonuniy manfaatlarini har tomonlama himoya qilishga qaratilgan. O‘tgan davr mobaynida sud hokimiyatini bosqichma-bosqich mustahkamlab borish, sud mustaqilligini ta’minlash, inson va fuqaro huquq-erkinliklarini ishonchli himoya qilishga qaratilgan keng ko‘lamli tashkiliy-huquqiy chora-tadbirlar amalga oshirilmoqda. Shu o‘rinda ta’kidlab o‘tish joizki, bugungi kunda vakolatli sudlardan tashqari nizolarni muqobil tartibda hal qilishda hakamlik sudlari tomonidan ham fuqarolik va iqtisodiy nizolar bo‘yicha bir qancha ishlar ko‘rib chiqilishida turli muammolar uchrab turibdi. Mazkur maqolada arbitraj (hakamlik) sudlari va ularning turlari masalasi xorijiy tajribani tahlil qilgan holda o‘rganib chiqilgan. Hakamlik sudining turlari, xususiyatlari, ahamiyati va ularga qo‘yilgan talablar xususida chel el davlatlarining normativ-huquqiy hujjatlarini o‘rganib chiqish davomida milliy hakamlik sudining turlari xususida to‘xtab o‘tilgan. Ushbu maqolada nizolarni muqobil tartibda hal qilishda hakamlik sudlari va ularning turlari masalasi ko‘rib chiqilib, milliy qonunchiligimizga taklif va tavsiyalar ishlab chiqildi.*

Kalit so‘zlar: *hakamlik sudi, hakamlik sudi tasnifi, arbitraj sudi, arbitr, hakamlik sudining turlari, normativ-huquqiy hujjat, qonun, kodeks.*

ТРЕТЕЙСКИЕ СУДЫ ПРИ АЛЬТЕРНАТИВНОМ РАЗРЕШЕНИИ СПОРОВ И ИХ ВИДЫ

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Аннотация. *В условиях модернизации и реформирования нашей страны осуществляемые реформы в правоохранительной и судебно-правовой сферах направлены прежде всего на всестороннюю защиту прав, свобод и законных интересов человека. За прошедший период были приняты масштабные организационные и правовые меры по постепенному укреплению судебной системы, обеспечению ее независимости, надежной защите прав и свобод человека и гражданина. Следует отметить, что на сегодняшний день, помимо компетентных судов, третейские суды сталкиваются с различными проблемами при рассмотрении ряда дел по гражданским и экономическим спорам в порядке альтернативного разрешения споров. В данной статье рассматривается вопрос о третейских судах и их видах на основе в том числе анализа зарубежного опыта. В ходе изучения нормативных правовых актов зарубежных стран о видах, характеристиках, значении и требованиях к третейскому суду обсуждалась роль национального третейского суда. В статье также приводятся разработанные предложения и рекомендации применительно к нашему национальному законодательству.*

Ключевые слова: *третейский суд, классификация третейских судов, арбитражный суд, арбитр, виды третейского суда, нормативный правовой акт, закон, кодекс.*

ARBITRATION COURTS AND THEIR TYPES IN RESOLUTION OF DISPUTES IN ALTERNATIVE ORDER

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Abstract. *In the conditions of modernization and reform of our country, the ongoing reforms in the law enforcement and judicial spheres are aimed primarily at the comprehensive protection of human rights, freedoms, and legitimate interests. Over the past period, large-scale organizational and legal measures have been taken to gradually strengthen the judicial system, ensure its independence, and reliably protect the rights and freedoms of man and citizen. It should be noted that today, in addition to competent courts, arbitration courts face various problems when considering several cases of civil and economic disputes in the manner of alternative dispute resolution. This article discusses the issue of arbitration courts and their types with an analysis of foreign experience. In the course of studying the normative legal acts of foreign countries on the types, characteristics, significance, and requirements for an arbitration court, the role of a national arbitration court was discussed. This article discusses the issue of arbitration courts and their types in alternative dispute resolution, and also develops proposals and recommendations for our national legislation.*

Keywords: *arbitration court, classification of arbitration courts, arbitrator, types of the arbitration court, normative legal act, law, code.*

Kirish

Mamlakatimizda fuqarolar va yuridik shaxslarning huquq va erkinliklarining ishonchli himoyasini ta’minlash hamda ular o‘rtasida vujudga keladigan nizolarni hal qilishning muqobil usullarini joriy etish borasida izchil islohotlar amalga oshirilmoqda va bu borada tegishli normativ-huquqiy hujjatlar qabul qilinmoqda. Jumladan, O‘zbekiston Respublikasining 2006-yil 16-oktabrda “Hakamlik sudlari to‘g‘risida”gi, 2018-yil 3-iyulda “Mediatsiya to‘g‘risida”gi, 2021-yil 16-fevralda “Xalqaro tijorat arbitraj to‘g‘risida”gi qonunlar, shuningdek, O‘zbekiston Respublikasi Prezidentining 2020-yil 17-iyundagi “Nizolarni muqobil hal etishning mexanizmlarini yanada takomillashtirish chora-tadbirlari to‘g‘risida”gi PQ-4754-son Qarori qabul qilinganligini alohida qayd etish darkor.

Huquqni qo‘llash amaliyotida, ijtimoiy hayotda turli subyektlarning manfaatlari to‘qnashuvi, ular orasida bahs-munozaralar va turli nizolar kelib chiqishi tabiiydir. Shu munosabat bilan nizolarni hal etish tizimi ularni vakolatli sud orqali yoki muqobil usullar bilan hal qilishni o‘z ichiga qamrab oladi. Xususan, nizolarni hal qilishning muqobil usullaridan biri bo‘lgan hakamlik (arbitraj) sudlari alohida ahamiyatga ega.

Material va metodlar

Nizolarni hal qilishning muqobil usullari deganda, qonun hujjatlari yoki taraflar kelishuvi yoxud lokal hujjatlar bilan belgilangan va huquqiy munosabat ishtirokchilari o‘rtasida vujudga keladigan nizolarni suddan tashqari hal qilishga qaratilgan tartib-taomillar, usullar va mexanizmlar tushuniladi. Ya’ni nizolar nafaqat sud hokimiyati organlari tomonidan, balki nizolarni hal qilishning boshqa usullari yordamida (hakamlik sudlari, mediatsiya, xalqaro tijorat arbitraj sudlari) hal etilishi mumkin.

Xorijiy mamlakatlarda nizolarni muqobil hal qilish usullari (Alternative dispute resolution methods) keng tarqalgan bo‘lib, fuqarolar va yuridik shaxslarning buzilgan huquqlari va qonuniy manfaatlarini himoya

qilishning samarali usuli, zaruriy sharti sifatida e’tirof etiladi.

Mamlakatimizda nizolarni muqobil hal qilishning asosiy turlari hakamlik sudida ish yuritish, xalqaro tijorat arbitraj sudida ish yuritish, mediatsiya, muzokaralar va kelishuv bitimi hisoblanadi.

Biz mazkur ilmiy maqolamiz doirasida nizolarni muqobil hal qilish turlaridan hakamlik (arbitraj) sudlariga to‘xtalib o‘tamiz. Jumladan, «Hakamlik sudlari to‘g‘risida»gi Qonun qabul qilinganidan so‘ng O‘zbekistonda, asosan, ko‘zga ko‘ringan ikkita hakamlik sudi – O‘zbekiston Savdo-sanoat palatasi huzuridagi Hakamlik sudi va O‘zbekiston Hakamlik sudlari assotsiatsiyasi mavjud edi.

Prezidentimizning 2020-yil 17-iyundagi «Nizolarni muqobil hal etishning mexanizmlarini yanada takomillashtirish chora-tadbirlari to‘g‘risida»gi Qarori bilan siyosat va iqtisod sohasida ro‘y bergan tub o‘zgarishlar hakamlik muhokamasi institutining yanada rivojlanishiga olib keldi. Natijada ko‘plab turli hakamlik sudlari paydo bo‘ldi va bu jarayon bugungi kunda ham davom etmoqda.

Tadqiqot natijalari

Xalqaro amaliyotda hakamlik sudlari faqat amal qilish muddati bo‘yicha (taraflar tomonidan muayyan nizoni hal qilish uchun tuzilgan ad hoc yoki bir martalik (muvaqqat) hakamlik sudlari, institutsional (doimiy faoliyat ko‘rsatuvchi) hakamlik sudlari) [1, 5-b.] va faoliyat sohasiga ko‘ra (arbitraj sudlari davlat hududida ichki nizolarni hal qilish uchun «ichki», tashqi nizolarni hal qilish uchun «tashqi») [2, 51-b.] turlarga bo‘linadi.

Xorijiy tajribaga nazar tashlaydigan bo‘lsak, masalan, Hindistonda institutsional (doimiy faoliyat ko‘rsatuvchi), ad hoc (muvaqqat) va qisqa muddatli arbitraj turlari mavjud.

Arbitraj instituti arbitrajni olib borsa, u *institutsional (doimiy faoliyat ko‘rsatuvchi) arbitraj* deb ataladi. Taraflar arbitraj bitimida kelishmovchiliklarni saylangan arbitraj sudining qoidalariga muvofiq aniqlashni ko‘rsatish huquqiga ega. Bir yoki bir nechta arbitrlar (hakamlar) tashkilotning boshqaruv organi tomonidan oldindan tanlangan hay’atdan tayinlanishi yoki taraflarning o‘zlari o‘z hay’atini tanlashlari mumkin, ammo u cheklangan hay’at bilan chegaralanishi kerak.

Agar tomonlar o‘zaro kelishib, arbitrajni tashkil qilsalar, u *ad-hoc (muvaqqat) arbitraj* deb ataladi. Bu mahalliy, xorijiy yoki xalqaro arbitraj bo‘lishi mumkin. Bu mavjud nizolarni ko‘rib chiqish to‘g‘risidagi kelishuv yoxud kelajakdagi mavjud nizolarning ish yuritish jarayonini nazorat qilish yoki hech bo‘lmaganda, arbitraj (hakamlik) muhokamasi uchun protsessual qoidalarni taqdim etish uchun hakamlik organi belgilanmasdan arbitrajga yuborish to‘g‘risidagi kelishuv sanaladi. Ushbu ikkinchi ma’no xalqaro arbitrajda ko‘proq uchraydi.

Ad hoc (muvaqqat) arbitraj (hakamlik) sud muhokamasi belgilangan qoidalarga muvofiq o‘tkazilmasligini anglatadi. Chunki taraflar o‘z nizosini arbitraj sudining qoidalariga ko‘ra topshirish majburiyatiga ega emas. Shu sababli ular o‘zlarining tartib-qoidalarini erkin bayon etishlari mumkin. Ad hoc (muvaqqat) arbitrajning geografik yurisdiksiyasi juda muhim, chunki arbitraj (hakamlik) sudiga taalluqli aksariyat masalalar arbitraj (hakamlik) sudi joylashgan joyning milliy qonunchiligiga muvofiq hal qilinadi.

Qisqa muddatli arbitraj – bu arbitraj (hakamlik) va yarashuv aktini taqdim etishda vaqtga bog‘liq bo‘lgan usul. Hatto boshqa arbitraj (hakamlik) jarayonlari ham uzoq va zerikarli bo‘lishi mumkin. Shuning uchun bu arbitraj (hakamlik) jarayoni vaqt masalasini hal qiluvchi vosita sifatida ishlaydi. Uning tartibi shunday o‘rnatilganki, u vaqtni talab qiladigan barcha usullardan voz kechadi va bunday arbitrajning dastlabki maqsadi bo‘lgan soddalikni qo‘llab-quvvatlaydi [3].

Yevropaning boshqa davlatlarida ham arbitrajga bo‘ysunish bo‘yicha taraflar avtonomiyasi, birinchi galda, ad hoc (muvaq-

qat) arbitrajga (hakamlikka) borish yoki institutsional (doimiy faoliyat ko‘rsatuvchi) arbitrajni tanlash to‘g‘risida qaror qabul qiladigan taraflar tomonidan birgalikda amalga oshiriladi [4, 168-169-b.]. Shu sababli arbitrajning ushbu ikki an’anaviy usuli ko‘pincha tomonlarning tanlovi nuqtai nazaridan muhokama qilinishi ajablanarli emas [5, 176-b.] va bir tomondan ad hoc (muvaqqat) arbitraj (hakamlik) va boshqa tomondan institutsional (doimiy faoliyat ko‘rsatuvchi) arbitraj toifalari, odatda, ularning afzallik va kamchiliklari haqida ma’lumot taqdim etiladi [6, 20-23-b.].

Chunonchi, Angliyada «London dengiz arbitrlari assotsiatsiyasi (LMAA)» boshqa xizmat ko‘rsatmasdan, tayinlovchi organ sifatida faqat arbitrlarni tayinlasa-da, arbitraj «instituti» sifatida tasniflanadi [7, 461-b.]. O‘zining institutsional tasnifiga qaramay LMAA shartlariga muvofiq, arbitraj, asosan, ad hoc (muvaqqat) arbitraj (hakamlik) hisoblanadi [8, 116-122-b.].

Germaniyada «Gamburg do‘stona arbitraj (Gamburger freunds chaftliche Arbitrage)»-da hech qanday ma’muriy xizmatlar taklif etilmaydi. Gamburg Savdo palatasi potensial ravishda tayinlovchi organ sifatida ishlaydi. Ma’muriyat yo‘qligi sababli «Gamburg do‘stona arbitraj», asosan, ad hoc (muvaqqat) arbitraj (hakamlik) sifatida tasniflanadi [9]. Bundan farqli o‘laroq, Germaniya Federal Oliy sudi «Gamburg do‘stona arbitraj”ini doimiy faoliyat ko‘rsatuvchi arbitraj instituti (va shuning uchun arbitrajlar go‘yoki institutsional [10, 240-241-b.]) sifatida malakalaydi va sud institutining o‘z arbitraj qoidalaridan foydalanishni hal qiluvchi jihat deb hisobladi [11, 41-b.].

Ushbu misollar ishlarni boshqarish bo‘yicha mavjud yondashuvlarni tasniflash va bunday tasniflardan kelib chiqadigan subyektiv (ba’zan tasodifiy) toifalash qanchalik qiyinligini ko‘rsatadi. Shu o‘rinda aytish mumkinki, ad hoc (muvaqqat) arbitraj (hakamlik), avvalo, institutsional arbitrajning qarama-qarshi tomoni sifatida, ya’ni institutsional bo‘lmagan barcha arbitrajlarni qamrab oluvchi toifa sifatida tasniflanadi [12, 24-b.]. Bu turdagi salbiy tasniflar ad hoc (muvaqqat) arbitraj (hakamlik)ni hech kimning ishtirokisiz o‘tkaziladigan arbitraj sifatida tasniflaydi. Arbitraj instituti barcha muassasalardan mustaqil bo‘lgan [13, 206-b.], tayinlovchi va ma’muriy organning foydasisiz yoki (umuman) arbitrajning oldingi qoidalarisiz amalga oshiriladigan yoki hakamlik sudi tomonidan boshqarilmaydigan, institutsional arbitrajni aniqlashga qaratilgan turli urinishlarni deyarli aks ettiradi [14, 581-582-b.].

Masalan, institutsional arbitrajning qarorlari oson ijro etilishi bu arbitrajning «institutsional» ekanligiga bog‘liq emas, balki aniq bir muassasaning sohadagi obro‘siga bog‘liq. Xuddi shu narsa ba’zida tilga olinadigan institutsional arbitrajning yana bir amaliy afzalligi, ya’ni arbitraj (hakamlik) sudining mavjudligidagi «tasalli» elementi uchun ham amal qiladi [15, 667-668-b.]. Tomonlar ma’lum bir institutning tajribasi va obro‘si, ya’ni ushbu muassasaning hakamlik muhokamasida ishtirok etishidan shunday qulaylikka ega bo‘ladi.

Yuqoridagilarga ko‘ra, aytish mumkinki, ko‘pgina xorijiy davlatlarda arbitrajning eng keng tarqalgan turlari institutsional arbitrajlar va YUNSITRAL arbitraj qoidalaridan foydalanadigan ad hoc (muvaqqat) arbitraj (hakamlik)lardir [16, 20-21-b.].

Yevropa davlatlaridan Slovakiya Respublikasida 2002-yildan 2016-yilga qadar 130 dan ortiq arbitraj sudlari tashkil qilingan. Ular orasida «cho‘ntak» sudlari avj olishi, ularning jalb qiluvchi nomlari, sifatsiz qabul qilingan hal qiluv qarorlari natijasida taraflarning huquqlari buzilishi va boshqa salbiy holatlar ro‘y berdi. Oqibatda tadbirkorlar va fuqarolar orasida arbitraj sudlariga salbiy munosabat paydo bo‘ldi. Bu esa joriy qilingan huquqiy tartib arbitraj sudiga moslashtirilmaganini ko‘rsatdi va arbitraj obro‘siga putur yetkazdi [17, 324-335-b.]. 2016-yilda «Ar-

bitraj to‘g‘risida»gi Qonunning 12-moddasida Slovakiya Olimpiya qo‘mitasi, Milliy sport assotsiatsiyasi va qonun bilan tashkil etilgan palata (masalan, Slovakiya advokatlar uyushmasi yoki Slovakiya Savdo-sanoat palatasi) tomonidan doimiy faoliyat ko‘rsatuvchi arbitraj sudlari tashkil etilishi mumkinligi belgilab qo‘yildi [18].

Xorijiy tajribadan kelib chiqqan holda, mamlakatimizda hakamlik sudlarining ikkita turi mavjud bo‘lib, bular muvaqqat va doimiy faoliyat ko‘rsatuvchi hakamlik sudlaridir. Xususan, doimiy faoliyat ko‘rsatuvchi hakamlik sudlarining aksariyati ta’sischi tashkilot rahbarlarining ixtiyoriy farmoyishlari bilan tuziladi va ularning balansida turadi. «Hakamlik sudlari to‘g‘risida»gi Qonunning 6-moddasiga ko‘ra, doimiy faoliyat ko‘rsatuvchi hakamlik sudlari yuridik shaxslar yoki ularning birlashmalari (assotsiatsiya, birlashma) tomonidan tuziladi va shu tashkilotlar huzurida faoliyat yuritadi. Davlat hokimiyati va boshqaruvi organlari hakamlik sudlarini tashkil etishi hamda hakamlik bitimi taraflari bo‘lishi mumkin emas. Amaldagi ichki qonunchilik doimiy faoliyat ko‘rsatuvchi hakamlik sudlarini tashkil etish tartibiga nisbatan boshqa cheklovlarni nazarda tutmaydi. Shunday qilib, doimiy faoliyat yurituvchi hakamlik sudlari amaldagi qonunchilikka muvofiq mustaqil yuridik shaxs sifatida tashkil etilishi va ro‘yxatdan o‘tkazilishi mumkin emas.

Sh.M. Asyanovning «Hakamlik sudlari to‘g‘risida»gi Qonun sharhiga ko‘ra, qonun chiqaruvchining tegishli ko‘rsatmalari yo‘qligiga qaramasdan, hakamlik sudlari faoliyati tijorat faoliyati sifatida ko‘rilishi mumkin emas. Bu, ayniqsa, soliq solish maqsadlari uchun muhim. Soliq organlari amaliyotida hakamlik sudlari faoliyatini foyda olish uchun xizmat ko‘rsatish faoliyati sifatida ko‘rish holatlari ro‘y bergan. Bunda soliq organlari foyda ko‘rish uchun tadbirkorlik faoliyatiga xizmat ko‘rsatish deb hisoblab, mulkiy nizolarni ko‘rib chiqish uchun olinadigan foydaga soliq solinishi va to‘lovlardan qo‘shimcha qiymat solig‘i olinishi kerak, degan fikrdan kelib chiqqan. Biroq Germaniya, Fransiya, Qozog‘iston, Rossiya va boshqa mamlakatlar sud-arbitraj tajribasi hamda bu mamlakatlar soliq organlari qonun hujjatlari va tajribasidan ko‘rinishicha, ular hakamlik sudlari faoliyati yuritilishiga bunday munosabatni to‘g‘ri tatbiq qilmagan. Jumladan, bunday toifadagi nizolar bo‘yicha sud qarorlarida hakamlik sudida nizolarni muhokama etishni O‘zbekiston Respublikasi Fuqarolik kodeksida tushuncha berilgan tijorat faoliyatiga, shu jumladan, foyda ko‘rish maqsadida xizmat ko‘rsatishga ham kiritish mumkin emas. Hakamlik sudiga (yoki hakamlik sudini tashkil etgan yuridik shaxsga) hakamlik to‘lovlari sifatida kelib tushuvchi pul mablag‘lariga soliq solinishi mumkin emas [19].

Shu bilan birga, Qonunning 7-moddasiga muvofiq, muvaqqat hakamlik sudi hakamlik bitimi taraflari o‘rtasida kelib chiqqan muayyan nizoni hal etish uchun ular tomonidan tashkil etilib, nizo ko‘rib chiqilganidan keyin o‘z faoliyatini tugatadi.

Adliya vazirligining 2022-yil yanvar oyidagi reestr ma’lumotlariga ko‘ra, O‘zbekistonda jami 255 dan ortiq doimiy faoliyat ko‘rsatuvchi hakamlik (xalqaro arbitraj) sudlari, jumladan, O‘zbekiston Hakamlik sudlari assotsiatsiyasi huzurida 160 dan, O‘zbekiston Savdo-sanoat palatasi huzurida 15 dan ortiq va boshqa nomlar bilan qayd etilgan 80 dan ziyod doimiy faoliyat ko‘rsatuvchi hakamlik (xalqaro arbitraj) sudlari va jami 1200 ga yaqin hakamlik sudi sudyalari ro‘yxatdan o‘tgan.

Xorij tajribalaridan kelib chiqqan holda, bugungi kunda mamlakatimizdagi mavjud hakamlik (arbitraj) sudlari orasida ham «cho‘ntak» sudlari, ularning jalb qiluvchi nomlari, sifatsiz qabul qilingan hal qiluv qarorlari, taraflarning huquqlari buzilishi va boshqa salbiy holatlar ro‘y bermayapti, desak, albatta, adashgan bo‘lamiz.

Yuridik fanlar doktori, professor F.X. Otaxonovning ta’kidlashicha, «Hakamlik

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sudlari to‘g‘risida»gi Qonunga quyidagi normalarning kiritilishi hakamlik sudlari faoliyatining jozibadorligini yanada oshirish va unda ko‘riladigan nizolar ko‘lami ortishiga xiz_mat qiladi [20, 78-b.]:

– doimiy faoliyat yurituvchi hakamlik sudlari nodavlat notijorat tashkilotlar tomonidan tashkil etiladi va ularning huzurida faoliyat ko‘rsatadi;

– doimiy faoliyat yurituvchi hakamlik sudlari ro‘yxatida kamida yetti nafar hakamlik sudyasi mavjud bo‘lgan taqdirda, adliya organlari tomonidan hisob ro‘yxatidan o‘tkaziladi.

Professor F.X. Otaxonov ilgari surgan takliflar bugungi kunda dolzarbligini hisobga olgan holda, aytishimiz mumkinki, hakamlik (arbitraj) sudi nodavlat organ bo‘lib, shaxs maqomiga ega emas. Shu sababli hakamlik (arbitraj) sudi biznes (tadbirkorlik) faoliyati bilan shug‘ullanmaydi va shu maqsadda uni nodavlat notijorat tashkilotlar huzurida tashkil qilishni qo‘llab-quvvatlash maqsadga muvofiq.

Bundan tashqari, hakamlik sudlari va hakamlik muhokamasi masalalariga bag‘ishlangan zamonaviy ilmiy adabiyotlarda «hakamlik sudlari nodavlat notijorat tashkilotlari shaklidagi yuridik shaxslar maqomiga ega nodavlat organlar sifatida» mavjudligi va bu maqsadga muvofiqligi haqida oqilona fikrlar ham mavjud [21, 4-b.].

Fikrimizcha, bu nuqtai nazar nafaqat mavjud bo‘lish huquqiga loyiq, balki qonunchilikni birlashtirishni ham taqozo qiladi, chunki faqat shu tarzda (doimiy faoliyat ko‘rsatuvchi hakamlik sudlariga yuridik shaxs maqomini berish orqali) ularning tashkiliy xarakterdagi ko‘plab muammolari hal qilinishi mumkin, bu esa bugungi zamon talablariga mos keladi, desak mubolag‘a bo‘lmaydi. Bunda Adliya vazirligidan nodavlat notijorat tashkilot sifatida davlat ro‘yxatidan o‘tgan yuridik shaxs doimiy faoliyat ko‘rsatuvchi hakamlik sudini tashkil etishi maqsadga muvofiq bo‘ladi. Buning natijasida hakamlik sudi o‘zining inson huquqlari bo‘yicha funksiyasini amalga oshirishda uchinchi shaxslar ta’siridan mustaqildir. Shuningdek, xorijiy tajribadan kelib chiqqan holda, bugungi kundagi ayrim «cho‘ntak» hakamlik sudlariga ham barham berilishiga xizmat qiladi.

Ta’kidlaganimizdek, xalqaro tijorat arbitraj sudlari, odatda, faoliyat sohasiga ko‘ra «xalqaro» va «ichki»ga bo‘linadi. Xalqaro tijorat arbitraj sudlari «Xalqaro tijorat arbitraji to‘g‘risida»gi Qonuni (masalan, 2021-yil 22-iyundagi Adliya vazirligining 992-sonli «O‘zbekiston Xalqaro arbitraj sudlari birlashmasi» nodavlat notijorat tashkiloti davlat ro‘yxatidan o‘tkazilganligi to‘g‘risidagi guvohnomasi) asosida ishlaydi. Mamlakatimizda «ichki» sudlar hozirda «Hakamlik sudlari to‘g‘risida»gi Qonun asosida ishlaydi va ular O‘zbekiston Respublikasida fuqarolik huquqiy munosabatlaridan kelib chiquvchi nizolar, shu jumladan, tadbirkorlik subyektlari o‘rtasida vujudga keluvchi iqtisodiy nizolarni o‘z ichiga oladi (O‘zbekiston Savdo-sanoat palatasi huzuridagi Hakamlik sudi, O‘zbekiston Hakamlik sudlari assotsiatsiyasi va hududlarda tashkil etilgan boshqa hakamlik sudlari).

Biroq bunday tasnif butunlay to‘liq emas va mavjud haqiqatlarga mos kelmaydi. Fikrimizcha, ayrim sudlar xalqaro darajada va yaxshi tashkil etilganligini inobatga olgan holda (masalan, BMT xalqaro sudi, Yevropa Ittifoqi sudi, MDH iqtisodiy sudi va boshqalar), O‘zbekistondagi barcha hakamlik va xalqaro tijorat arbitraj sudlarini nodavlat notijorat tashkiloti tomonidan tashkil etish va uning huzurida faoliyat ko‘rsatishini joriy qilish masalasini hal qilish bugungi rivojlangan iqtisodiy davr talabidir.

2014-yil 1-avgust kuni poytaxtimizda O‘zbekiston Hakamlik sudlari assotsiatsiyasi tomonidan Germaniya Federativ Respublikasi (GFR)ning Fridrix Ebert nomidagi xalqaro fondi bilan hamkorlikda «O‘zbekiston huquq tizimida nizolarni hakamlik sudlarida hal qilishning o‘rni va ahamiyati: milliy amaliyot

va xalqaro tajriba» mavzusida o‘tkazilgan ilmiy-amaliy seminarda yurtimizda sud-huquq sohasidagi islohotlarni ko‘rib, GFR Saksoniya Federal yerining Oliy ma’muriy sudi raisi o‘rinbosari, doktor Vulf Fridrix Ryover «bizda sud-huquq islohotlari boshlanganiga ko‘p yillar bo‘ldi, shunga qaramay, bu boradagi ishlar izchil davom ettirilmoqda. O‘zbekistonda ham shuning guvohi bo‘ldim. Yurtingizda sud-huquq islohotlari jadal olib borilayotgan ekan» [22, 187-b.], deya ijobiy fikrlar bildirgan edi.

Shu bilan bir qatorda, “Xalqaro tijorat arbitraji to‘g‘risida”gi Qonunning 4-moddasi ko‘ra, O‘zbekiston Respublikasi va boshqa davlat (davlatlar) o‘rtasida amalda bo‘lgan kelishuvlarga rioya etgan holda, xalqaro tijorat arbitrajiga nisbatan qo‘llaniladi.

Shuningdek, xalqaro tijorat arbitrajiga taraflarning kelishuviga binoan, tijorat xususiyatiga ega bo‘lgan ham shartnomaviy, ham shartnomadan tashqari barcha munosabatlardan yuzaga keladigan nizolar berilishi mumkin. Biroq O‘zbekistonda tashkil etilgan Xalqaro tijorat arbitraj sudining Reglamentida arbitraj tomonidan “fuqarolik huquqiy munosabatlaridan kelib chiquvchi nizolarni...” ham ko‘rish mumkinligi ko‘rsatilgan.

Xulosalar

Yuqoridagi mulohazalar, sud-huquq sohasida olib borilayotgan jadal islohotlar, xalqaro tajriba hamda yuqorida qayd etilganlardan kelib chiqqan holda, «Hakamlik sudlari to‘g‘risida»gi Qonundagi 3-moddaning 3- va 4-xatboshisidagi, 6-moddaning 1-, 2- va 3-xatboshisidagi, 15-moddaning 2-xatboshisidagi «*yuridik shaxs*» so‘zlarini *«nodavlat notijorat tashkilot»* so‘zlari bilan almashtirish, shuningdek, 6-moddaning 2-xatboshisiga «*doimiy faoliyat ko‘rsatuvchi hakamlik sudini tashkil etish haqida qaror qabul qilganida*» so‘zlaridan keyin «*doimiy faoliyat yurituvchi hakamlik sudlari ro‘yxatida kamida besh nafar hakamlik sudyasi mavjud bo‘lgan taqdirda»* degan jumlalarni kiritish taklif etiladi.

Yuqoridagilardan kelib chiqqan holda, “Xalqaro tijorat arbitraji to‘g‘risida”gi Qonunning 4-moddasiga *“fuqarolik huquqiy munosabatlardan kelib chiquvchi nizolarni”* ham hal qilishi mumkinligi xususida qo‘shimcha o‘zgartirish kiritish maqsadga muvofiq bo‘lar edi. Shu bilan birga, O‘zbekiston Respublikasi Fuqarolik protsessual kodeksining 21-moddasi 3-bandi va Iqtisodiy protsessual kodeksining 20-moddasi 2-bandidagi “hakamlik sudi sudyasi” jumlasini *“hakamlik sudi sudyasi, arbitr”* so‘zlari bilan almashtirish; FPKning 56-moddasi 2-qismi uchinchi xatboshi va IPKning 53-moddasi 2-qismi uchinchi xatboshini *“arbitrlar, arbitraj tarkibi tomonidan tayinlangan ekspertlar, arbitraj muassasasining xodimlari, hakamlik sudyalari – arbitraj yoki hakamlik muhokamasi davomida o‘zlariga ma’lum bo‘lib qolgan holatlar to‘g‘risida”* jumlalari bilan to‘ldirish; FPKning 122-moddasi va IPKning 107-moddasidagi “hakamlik sudi” so‘zlaridan keyin *“arbitraj”* so‘zini qo‘yish, shuningdek, FPKning 194-moddasi 3-bandi va IPKning 154-moddasi 3-bandidagi “hakamlik sudining” so‘zlaridan keyin *“arbitraj sudining”* jumlasini keltirish taklif etiladi.

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ОСНОВНЫЕ ЭТАПЫ РАЗВИТИЯ НЕЗАВИСИМОЙ АДВОКАТУРЫ В РЕСПУБЛИКЕ КАЗАХСТАН И РЕСПУБЛИКЕ УЗБЕКИСТАН

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Аннотация. *В настоящей статье автором с историко-правовых позиций рассмотрены основные этапы эволюционного развития института адвокатуры на территории современного Узбекистана и Казахстана. В частности, стадии эволюционного развития института адвокатуры подразделены автором на четыре этапа, каждая из которых подробно освещена в аспекте организационного и функционального обеспечения адвокатской деятельности, основ их правового статуса и независимости. В ходе подготовки научной работы всесторонне изучены некоторые исторические правовые источники, в том числе Жеты Жаргы, Судебные установления и т. п. Автором отмечено, что каждый этап развития института адвокатуры в Казахстане и Узбекистане имеет свои схожие и отличительные черты. Так, архаичный период – период развития прото-адвокатуры – имел в целом общий характер для обеих изученных стран, поскольку характеризовался отсутствием институциональной адвокатуры, развитостью самозащитных правовых механизмов, а также действием общих источников права – одата (урф) и шариата. Также отмечается, что в целом, несмотря на сохранение относительной независимости в колониальный период, на территории узбекских ханств постепенно были внедрены источники и институты Российской империи, которые действовали на территории современного Казахстана несколько ранее. Вместе с тем советский период развития адвокатуры был, по сути, един для всех республик, входящих в Союз, и лишь в период независимости развитие адвокатуры в изученных странах пошло самостоятельным путем. По итогам изучения автором представлены теоретические выводы и заключения.*

Ключевые слова: *суды казиев, суды биев, шариат, урф-одат, правозаступник, присяжный поверенный, адвокатура, адвокат, защитник.*

QOZOG‘ISTON RESPUBLIKASI VA O‘ZBEKISTON RESPUBLIKASIDA MUSTAQIL ADVOKATURA RIVOJLANISHINING ASOSIY BOSQICHLARI

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Toshkent davlat yuridik universiteti
mustaqil izlanuvchisi

Annotatsiya. *Ushbu maqolada muallif hozirgi O‘zbekiston va Qozog‘iston hududlarida advokatura instituti tadrijiy rivojlanishining asosiy bosqichlarini tarixiy-huquqiy pozitsiyalardan kelib chiqib ko‘rib chiqadi. Xususan, advokatura institutining evolyutsion rivojlanish bosqichlari muallif tomonidan to‘rtta bosqichga ajratilgan. Ularning har biri advokaturaning tashkiliy-funksional ta’minlanishi, ularning huquqiy maqomi va mustaqilligi asoslari nuqtai nazaridan atroflicha yoritilgan. Ilmiy ishni tayyorlash jarayonida ba’zi tarixiy-huquqiy manbalar, jumladan, “Jeti jargi”, “Sud nizomlari” va boshqalar har*

tomonlama o‘rganilgan. Muallif Qozog‘iston va O‘zbekistonda advokatura instituti rivojlanishining har bir bosqichi o‘ziga xos o‘xshash va farqli xususiyatlarga ega ekanligini ta’kidlaydi. Jumladan, arxaik davr – proto advokaturaning rivojlanish davri, umuman, har ikki o‘rganilayotgan mamlakat uchun ham umumiylikka ega bo‘lgan, chunki institutsional advokaturaning yo‘qligi o‘z-o‘zini himoya qilish huquqi mexanizmlari rivojlanganligi, shuningdek, umumiy huquq manbalari – odat (urf) va shariatning amal qilishi bilan tavsiflangan. Shuningdek, mustamlakachilik davrida nisbatan mustaqil bo‘lganga qaramay, o‘zbek xonliklari hududida hozirgi Qozog‘iston hududida birmuncha oldinroq amal qila boshlagan Rossiya imperiyasining huquqiy manbalari va institutlari bosqichma-bosqich joriy qilinganligi qayd etilgan. Shu bilan birga, sovet davrida advokatura rivoji Ittifoq tarkibiga kiruvchi barcha respublikalar uchun bir xil bo‘lgan. O‘rganilayotgan mamlakatlarda faqat mustaqillik davrida advokatura rivoji mustaqil yo‘l tutgani kuzatilgan. Muallif tadqiqot natijalari bo‘yicha nazariy xulosalar ishlab chiqqan.

Kalit so‘zlar: *qozi sudlari, biy sudlari, shariat, urf-odat, huquq himoyachisi, advokat, advokatura, himoyachi.*

MAIN STAGES OF DEVELOPMENT OF INDEPENDENT ADVOCACY IN THE REPUBLIC OF KAZAKHSTAN AND THE REPUBLIC OF UZBEKISTAN

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Abstract. *In this article, the author considers the main stages of the evolutionary development of the institution of advocacy in the territories of modern Uzbekistan and Kazakhstan from the historical and legal positions. In particular, the stages of evolutionary development of the institution of advocacy are subdivided into four stages by the author, each of which is covered in detail in the context of the organizational and functional support of advocacy, the foundations of their legal status, and independence. During the preparation of the scientific work, some historical legal sources were comprehensively studied, including “Jet jargi”, “Judicial regulations”, etc. The author noted that each stage of development of the institution of advocacy in Kazakhstan and Uzbekistan has its own similar and distinctive features. Thus, the archaic period - the period of the development of the proto-advocacy, was, in general, of common nature for both studied countries, since it was characterized by the absence of institutional advocacy, the development of self-protective legal mechanisms, as well as the operation of common sources of law - odat (urf) and sharia. It is also noted that in general, despite the preservation of relative independence during the colonial period, on the territory of the Uzbek khanates, the sources and institutions of the Russian Empire were gradually introduced, which acted on the territory of modern Kazakhstan a little earlier. At the same time, the Soviet period of development of the legal profession was, in fact, the same for all the republics that were members of the Union, and only during the period of independence did the development of the legal profession in the studied countries take an independent path. The author presents the results of the study as theoretical conclusions.*

Keywords: *qazi courts, biy courts, sharia, urf-odat, juror defender, attorney at law, advocacy, defender.*

Введение

Развитие института адвокатуры странах Центральной Азии, в том числе Узбекистана и Казахстана, в целом имеют общий характер и истоки. Конечно, нельзя игнорировать факт оседлости (по большей части) народов Узбекистана и кочевой характер жизни народов, проживавших на обширной территории современного Казахстана. Это, безусловно, нашло отражение в правовых традициях и устоях народов данных стран, в частности в развитии института защиты права.

В целом исторические отрезки (этапы) развития института адвокатуры в Казахстане и Узбекистане условно можно разделить на следующие этапы:

1. Архаичный (неинституциализированный) период.

2. Колониальный период (период завоевания земель Казахстана и Узбекистана Российской империей).

3. Советский период (с 1917 по 1991 годы).

4. Современный период.

Вопросы развития института адвокатуры в историческом разрезе исследовались многими авторами, поскольку в относительно современном виде институт адвокатуры сформировался на территории Казахстана и Узбекистана в царский период, когда нормы Российской империи, как и правовые учреждения в целом, стали вводиться во всей метрополии.

Еще более глубоко и обстоятельно исследовался советский период адвокатуры, что вполне логично, поскольку этот временной отрезок завершился в достаточно недалеком прошлом, поэтому труды советских авторов и исследователей сохранились практически в целости и сохранности.

Среди ученых, исследовавших историю адвокатуры, можно выделить Т.Э. Нейштадта, который одним из первых изучил становление и развитие советской адвокатуры, будучи практикующим адвокатом, раскрывает понятия «адвокатской этики» и «адвокатской тайны» в советском государстве [1, с. 13-14]. В 50-60 гг. XX века исследователи Т.П. Соколов, Я.С. Киселев, А.С. Экмекчи, М. Выдряв своих трудах раскрыли участие адвоката на предварительном следствии и в суде, в свете изменения позиции советской адвокатуры в процессе формирования конституционного принципа права на защиту обвиняемых и потерпевших при рассмотрении уголовных дел, по которым обвинение поддерживается прокуратурой [2, с. 22-24]. В дальнейшем теоретические вопросы советской адвокатуры анализировали Г.З. Анашкин, К.Н. Апраксин, которые продолжили исследовать концептуальные проблемы функции защиты в советском судопроизводстве [3], также Ю.И. Стецовский, И.Ю. Сухарев рассматривали эволюцию изменений в правовом регулировании адвокатской деятельности [4; 5].

Среди современных ученых, изучающих адвокатуру, можно указать таких исследователей, как Г.А. Жайлин, Р.М. Жамиева, Е.И. Каиржанов, Б.Х. Толеубекова, С.Т. Тыныбеков, А.Я. Шагимуратов, З.Х. Баймолдина, М.А. Сарсембаев (Казахстан), М.Х. Рустамбаев, У.А. Тухташева, О. Окюлов, Г.З. Тулаганова, С. Рахманов, Б. Саломов, Ф. Отахонов, Д. Базарова, Д. Хабибуллаев, В. Давлятов, Д. Нурумов (Узбекистан) и др.

Целью настоящей работы является проведение анализа исторической эволюции института адвокатуры в Узбекистане и Казахстане, рассмотрение ключевых изменений в развитии данного института в течение определенных временных отрезков (этапов).

Материалы и методы

В ходе подготовки и рассмотрения материалов по выбранной тематике был проведен подробный анализ исторических этапов развития адвокатуры. В связи с близостью культуры, традиций, правовых устоев и обычаев было признано целесообразным провести общий (для обеих стран) анализ каждого этапа и акцентировать внимание на особенностях, присущих соответственно Узбекистану или Казахстану. Было установлено, что, несмотря на близость и в территориальном, и культурном идеологическом смысле, развитие института адвокатуры в Узбекистане и Казахстане шло параллельными, но далеко не всегда близкими курсами, и лишь в

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советский период относительно долго сохраняло близкие нормы и стандарты (что было не удивительно, учитывая централизованный и тоталитарный характер государственного строя и, по сути, формальный, «домашний» институт адвокатуры).

Объектом анализа являются исторически складывающиеся отношения касательно формирования, организации и функционирования института адвокатуры на конкретных исторических этапах государственности Узбекистана и Казахстана.

В ходе подготовки научной статьи были использованы такие методы логического познания, как анализ, синтез, толкование норм, исторический, сравнительно-правовой, изучение статистических данных и др.

Результаты исследования

Архаичный (неинституциализированный) период

Институты защиты среди народов Узбекистана и Казахстана имели определенные исторические традиции. Труды историков казахского и узбекского права позволяют говорить о наличии элементов защиты, таких как «институт отвода судьи», «согласие на рассмотрение дела», «институт присяги».

Между тем, стоит отметить, что имелись некоторые общие черты в развитии адвокатуры (точнее протоадвокатуры) того периода, естественно, не имевшей самостоятельного институционального облика.

Известные сегодня источники казахского обычного права позволяют сделать вывод о том, что своеобразные институты защиты существовали на территории нынешнего Казахстана еще до колонизации Российской империей, некоторые из которых сохранились вплоть до 20-х годов XX века. Речь идет о так называемом источнике «Жеты Жаргы» – неписаном источнике права казахского народа [6, с. 35].

Четвертый раздел данного источника содержал положения о судебном процессе, где в том числе были нормы касательно защиты права. Конечно, в большей степени речь шла о самозащите. В Узбекистане среди оседлого населения источником разрешения правовых споров был шариат, а для кочевых народов, также составлявших значительную часть населения, – обычное право (урф и одат).

Таким образом, суды биев и суды казиев решали конкретные дела с учетом национальных и религиозных особенностей. При решении споров суд биев руководствовался нормами обычного права и шариата, а суд казиев – только правилами шариата [7, с. 20].

Особые требования предъявлялись к лицам, претендовавшим на должность судей (кази). Они должны были отвечать следующим требованиям: 1) быть мусульманином; 2) быть самостоятельным и достигшим совершеннолетия; 3) находиться в браке и не иметь физических недостатков; 4) владеть в совершенстве арабским языком, наукой фикха (юриспруденции) и иметь большой жизненный опыт; 5) иметь непорочную репутацию.

Факихы или ученые в сфере фикха (правовой сферы шариата) славились в качестве знатоков и поборников норм права, они могли писать комментарии к различным законам и правилам шариата. Как в свое время отмечал писатель С. Айни, «… в бухарских медресе изучали правила шариата, знание которых было необходимо для религиозной или государственной деятельности. Бухара считалась центром богословия не только мусульман Средней Азии, но и башкир, татар, дагестанцев…» [8, с. 138].

К слову, получаемые судьей доходы в основном зависели от суммы судебных штрафов, а также от налогов и сборов, собираемых с граждан за заключение между ними различных договоров [9]. Дей-

ствовал институт залога, можно было платить установленную сумму за применение меры пресечения в виде оставления на свободе. Если применялось личное поручительство, то поручитель заранее вносил поручительный платеж. В качестве самой строгой меры могло применяться содержание в зиндане (тюрьма) [10, с. 116].

Учитывая, что судопроизводство в ханствах основывалось на шариате (при этом в Центральной Азии действовала ханафитская школа мусульманского права), для решения проблемных вопросов во многих случаях кази обращался к муфтию и аъламу [11, с. 17], иным знатокам права.

Судебный процесс при рассмотрении дел не предусматривал института государственного обвинителя, при этом кази сам определял порядок рассмотрения дел. Все дела возбуждались только на основе заявления или иска потерпевшего (его родных или близких). При рассмотрении уголовного дела потерпевший обязан был предъявить кази доказательства, свидетельствующие о наличии того или иного преступления, на основании которых и возбуждалось дело.

Именно здесь, кстати, можно разглядеть прообраз адвоката, консультирующего клиента. Истец должен был принести законную жалобу с аргументами, сформулированными в устной или письменной форме. При этом устная жалоба принималась исключительно от лица, которое знало законы и нормы шариата. В качестве таковых выступали лица, знавшие фикх.

В свою очередь письменную жалобу также составляли юристы (факихы), поскольку она должны была отвечать определенной структуре, в том числе содержать так называемый ривоят, т. е. приведение слов из Корана и хадиса, придающих законность требуемому иску. Помимо этого, иск должны были заверить печатью муфтия или нескольких муфтиев (юрисконсультов), удостоверяющих не ложность приведенных слов из шариата [12, с. 203].

Колониальный период (период завоевания земель Казахстана и Узбекистана Российской империей)

После завоевания земель Казахских жузов, а также установления протектората Российской империи в узбекских ханствах (эмирате), а позднее и в Туркестанском крае были созданы основы для коренной перестройки судебно-правовой системы. Судебная система строилась в соответствии с вновь утвержденными Положениями об управлении Туркестанским и Степными краями 1886 и 1891 годов, законодательство империи распространялось на все население, в связи с чем впервые возникает институциональная система адвокатуры. Возникает институт присяжных поверенных – это уже вполне современный прообраз адвокатуры.

Таким образом, отметим, что становление профессиональной адвокатуры в Узбекистане и Казахстане самым тесным образом связано с историей становления данного института в России.

Судебная реформа 1864 года. Устав об учреждении судебных постановлений, утвержденный указом правительствующего Сената от 20 ноября 1864 года сделал адвокатуру новым юридическим учреждением России и ее колониальных территорий. Отметим, что до того времени самодержавные правители России выступали против адвокатуры.

Роль адвокатов исторически возлагалась на стряпчих или ходатаев, функции (их обязанности ограничивались составлением, подачей некоторых документов (бумаг)) и правовой статус которых никак не был законодательно регламентирован, соответственно, не было никаких требований касательно возраста, образования и др.

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Учреждением судебных установлений адвокаты были разделены на две категории: присяжных поверенных (корпорацию профессиональных адвокатов) и частных поверенных (индивидуально практикующих адвокатов) [13, с. 187].

Впервые возникает корпоративное самоуправление адвокатуры. При этом в качестве органов самоуправления присяжных поверенных при судебной палате действовали Советы присяжных поверенных. Совет осуществлял функции современной Палаты адвокатов, функционируя в качестве контролирующего и организационно-управленческого органа. Однако полностью самостоятельной адвокатуры не было, поскольку надзор за деятельностью Совета присяжных поверенных возлагался на Судебную палату и Правительствующий сенат. Кроме того, советы присяжных действовали при конкретной судебной палате.

Советы присяжных поверенных обычно состояли из председателя, товарищей председателя и членов совета, чьи должности были выборными. Выборы в совет проводились в отдельности на каждую должность простым большинством голосов. Совет осуществлял свою деятельность по различным направлениям. Он принимал и увольнял присяжных поверенных, осуществлял дисциплинарную практику, распределял дела по бесплатной (государственной) защите среди присяжных поверенных, регулировал различные споры между ними и т. д. Свои решения он принимал большинством голосов.

Иными словами, присяжная адвокатура впервые возникает в своем современном облике – как корпорация (сословие) лиц свободной профессии, объединенных внутренним самоуправлением выборных органов – советов присяжных поверенных – и внешним надзором высших судебных органов.

Близость к современному пониманию адвокатуры как института гражданского общества характеризует также тот факт, что на присяжных поверенных, помимо защиты по уголовным делам (в том числе бесплатно), представительства в гражданском процессе, возлагалось также оказание юридической помощи населению, включая бесплатные консультации для нуждающихся категорий населения.

Исторически зафиксировано, что на территории Узбекистана первая профессиональная адвокатура под названием «Филиал защитников» как самоуправляемая структура была создана в 1879 г. в городе Коканде и объединяла в себе более десяти правозаступников, которых называли «закончи» [14, с. 205]. Филиал был создан по инициативе Абдунаби Куролбая, получившего юридическое образование в Санкт-Петербурге. Его считают первым узбекским адвокатом.

В 1899 г. при Ташкентской судебной палате и окружных судах были учреждены коллегии защитников. Они руководствовались российским имперским законодательством. Кроме того, в Бухарском эмирате с 1915 г. функционировал «Филиал добровольных адвокатов», созданный Валихоном Ходжи, который изучал адвокатскую практику в России и Турции [15, с. 50]. В 1919 г. он был обвинен в неуважении к эмиру, заключен под стражу и казнен.

Как отмечает исследователь Ж. Турдалиев, для местного (туземного) населения поступление в адвокатуру было связано с большими трудностями – в отношении лиц нехристианского происхождения существовали ограничения, они могли стать присяжными поверенными только с разрешения министра юстиции. Также, хотя официального запрета и не существовало, по факту в адвокатуру не допускались женщины. До 1917 г. среди присяжных поверенных Туркестанского края не было ни одной женщины [16].

Институционализация адвокатуры потребовала установления жестких требований к новому общественно-правовому институту, в частности четко регламентировались требования к присяжным поверенным, их правовой статус.

Согласно ст. 354 Установлений, присяжными поверенными могли быть лица, достигшие 25-летнего возраста, имеющие высшее юридическое образование и, кроме того, пять лет судебной практики в качестве чиновника судебного ведомства или помощника присяжного поверенного [17].

Присяжными поверенными не могли быть: 1) не достигшие 25-летнего возраста; 2) иностранцы; 3) объявленные несостоятельными должниками; 4) состоящие на службе от правительства или по выборам, за исключением лиц, занимающих почетные или общественные должности без жалованья; 5) подвергшиеся по судебным приговорам лишению или ограничению прав состояния, а также священнослужители, лишенные духовного сана по приговорам духовного суда; 6) состоящие под следствием за преступления и проступки, влекущие за собой лишение или ограничение прав состояния, и те, которые, находясь под судом за такие преступления или проступки, не оправданы судебными приговорами; 7) исключенные из службы по суду или из духовного ведомства за пороки или же из среды обществ и дворянских собраний по приговорам тех обществ, к которым они принадлежали; 8) те, которым по суду воспрещено хождение по чужим делам, а также исключенные из числа присяжных поверенных [18].

Вместе с тем уже на тот момент проблема нравственного облика адвокатов становится одним из стержневых качеств, требуемых от кандидатов, поэтому Советы присяжных поверенных при рассмотрении вопроса о приеме руководствовались также данными о нравственных качествах кандидата.

В Установлении был определен также действующий и поныне порядок вступления в корпорацию адвокатов и начало осуществления деятельности присяжного поверенного, который состоял из двух стадий: регистрации (принятия в ряды) и приписки (к какому-либо судебному учреждению).

Однако территориальный принцип деятельности присяжных поверенных не превращал адвоката в «крепостного». Если один совет присяжных отказывал заявителю в приеме, это же лицо при тех же данных могло быть принято другим советом. Определения совета об отказе и приеме, основанные на условиях формальной правоспособности, могли быть обжалованы в судебную палату и далее в Правительствующий сенат. Но деятельность свою присяжные поверенные могли осуществлять только в одном округе, так как, согласно требованиям ст. 356 Установлений, они обязаны были избирать своим местом жительства один из городов округа соответствующей судебной палаты.

Приписка осуществлялась судебной палатой на основании решения Совета о принятии данного лица в число присяжных поверенных. Приписка состояла во внесении принятого в совет присяжных поверенных округа, после чего председатель судейской инстанции ставил свою подпись на свидетельстве присяжного.

Вознаграждение присяжного поверенного за его труд определялось письменным соглашением его с доверителем и клиентом; при отсутствии такого соглашения вознаграждений определялось специальной таксой (только для гражданских дел). Основным критерием при определении размера вознаграждения служила цена иска, при этом с увеличением цены иска процент уменьшался: поверенный истца получал четвертую, а поверен-

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ный ответчика третью часть от причитавшейся ему оплаты.

Адвокаты уже с этого момента давали присягу. В присяге были отражены профессиональные обязанности, в том числе строгое соблюдение закона и чести адвоката.

Интересно, что уже в те времена был заложен *правовой механизм предотвращения конфликта интересов*. В п. 4 ст. 355 Установлений указывалось, что присяжный поверенный не может состоять на действительной службе (это могло привести к ограничению его деятельности и зависимости от государственных органов и чиновников) [19, с. 236].

У присяжных поверенных могли быть свои помощники, в качестве которых выступали лица, «занимавшиеся в течение пяти лет судебной практикой под руководством присяжных поверенных в качестве их помощников, которые, окончив курс юридических наук, но нигде не служившие, могут тем не менее иметь сведения и в судебной практике» [20].

Основным отличием присяжных поверенных от частных поверенных (учрежден законом от 6 июня 1874 года [21]) является то, что они могли участвовать в производстве гражданских дел у мировых судей, основанием для их деятельности была выдача им особого свидетельства теми судами, в округе которых частный поверенный осуществлял ходатайство по гражданским делам.

Итак, колониальный период развития адвокатуры на территории Казахстана и Узбекистана характеризуется следующими особенностями:

во-первых, впервые были созданы институциональные основы адвокатуры;

во-вторых, в это время, по сути, действуют три параллельные системы судопроизводства (на основе судебных положений царской России, шариата и на основе обычного права);

в-третьих, создается сословие адвокатов, хотя полностью независимым и самостоятельным институтом оно еще не стало (сохранялись институты судебного контроля);

в-четвертых, присяжные поверенные (адвокаты) впервые подразделены на две группы – присяжные поверенные и частные поверенные, при этом они действовали в пределах конкретных судебных округов;

в-пятых, впервые внедряются некоторые элементы современной адвокатуры (требования к кандидатам в присяжные, договорной характер отношений, институт pro bono, определенные социальные гарантии).

Советский период развития адвокатуры (1917–1991 годы)

Касательно советского периода развития, надо сказать, что, несмотря на разные вводные условия (присоединение Казахских жузов к царской России и относительная независимость узбекских ханств), после ликвидации царского института адвокатуры присяжных советская власть стала насаждать свои собственные взгляды по обеспечению граждан защитой.

Вместе с тем каждая из стран переживала свои особенности становления советской адвокатуры. Так, в *Казахстане* учредительный съезд Советов Казахской АССР 6 октября 1920 г. принял Декларацию прав трудящихся КАССР, призывающую построить народную юстицию в точном соответствии с братским российским опытом [22, с. 21]. Поэтому специальная глава Положения о народном суде КАССР, утвержденного Декретом ЦИК КАССР от 8 апреля 1921 г., буквально повторяла статьи Положения о народном суде РСФСР от 21 октября 1920 г.

Съезд обязал органы юстиции на местах организовать бесплатную юридическую помощь населению в виде консультаций и судебной защиты. Однако речи об

адвокатуре не шло, для этих целей привлекались ответственные работники партийных, профессиональных и общественных организаций.

Тем не менее 26 мая 1922 г. было принято Положение об адвокатуре, согласно которому были созданы самостоятельные коллегии адвокатов как общественные организации. Хотя не унимались и противники адвокатуры, которые не допускали ее права на существование. В этой связи нуждался в защите сам институт защиты [23].

Организация адвокатуры и повышение ее роли в обществе были также рассмотрены и при обсуждении проекта Конституции СССР в 1936 г. [24]. После принятия Конституции было утверждено Положение об адвокатуре СССР от 16 августа 1936 г. Положение вернуло гражданское звание «адвокат» (впервые появилось еще в 1864 г.), которое в ранний период советской власти заменяли термином «член коллегии защитников».

Несмотря на все трудности в организации адвокатуры, в Казахстане по мере возможности проводилась работа по подготовке адвокатских кадров. Так, в 1936 г. в коллегиях адвокатов уже состоял 141 человек [25; 26, с. 11].

Однако в советское время практически весь период, за некоторым исключением, организация деятельности адвокатуры в Казахстане не имела самостоятельного характера, общее руководство над деятельностью коллегий осуществлял Народный комиссариат юстиции Казахской ССР. Из-за низкого уровня роли адвокатуры в обществе остро ощущался дефицит квалифицированных кадров, слабо была развита ее материальная база [27]. 5 июля 1960 г. Верховным Советом Казахской ССР было утверждено *Положение об адвокатуре*.

Важной вехой в становлении института адвокатуры стало принятие в СССР Закона об адвокатуре от 30 ноября 1979 г. На основании данного закона в Казахстане было разработано и утверждено новое Положение об адвокатуре от 13 ноября 1980 г. В положении были определены задачи адвокатуры, порядок приема в члены коллегии и исключения из нее, предусмотрены меры по совершенствованию деятельности коллегий, впервые сформулированы гарантии адвокатской деятельности и т. д.

Некоторые нормы Положения в дальнейшем нашли свое отражение в тексте действующего Закона Республики Казахстан «Об адвокатской деятельности». В частности, в современном законе были заимствованы основные принципы организации и деятельности адвокатуры, в том числе независимость адвокатов при осуществлении своей деятельности; осуществление адвокатской деятельности методами и средствами, не запрещенными законодательством; недопустимость вмешательства в деятельность адвокатов со стороны прокуратуры, судов, органов дознания и предварительного следствия, других государственных органов, иных организаций и должностных лиц, за исключением случаев, прямо предусмотренных законодательными актами; соблюдение норм профессионального поведения и сохранения адвокатской тайны (ст. 3) [28].

Конечно, уровень их реального воплощения в советский период и на сегодняшний день различаются очень существенно, поскольку в период СССР адвокатура, по сути, оставалась на заднем плане, и независимость носила лишь декларативный и «декоративный» характер.

В *Узбекистане* революция 1917 г. принесла конец старым институтам права, была упразднена и адвокатура. При этом уже с первых дней Декретом о суде № 1 в качестве защитников стали допускать к защите в судах всех неопороченных граж-

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дан обоего пола, пользующихся гражданскими правами [29, с. 29]. 19 декабря 1917 г. Народный комиссариат юстиции ТуркАССР утвердил инструкцию революционного трибунала, при которых создавались коллегии правозаступников. Согласно Декрету о суде № 2 от 7 марта 1918 г., при советах рабочих, солдатских, крестьянских и казачьих депутатов создается коллегия правозаступников, которые впервые имели право выступать в суде за плату, то есть на профессиональной основе [30].

Государственные деятели той эпохи, такие как Д.И. Курский [31, с. 178] и П.И. Стучка [32, с. 625], подчеркивали, что адвокат, прежде всего, должен служить не закону, а государству. Таким образом, в 20-х гг. прошлого века уже наблюдался классовый подход к адвокатуре.

Декретом ВЦИК от 18 марта 1920 г. было утверждено Положение о революционных трибуналах, адвокатура была упразднена, осуществление защиты стало рассматриваться как общественная повинность всех граждан, способных выполнять эту обязанность.

Мусульманское право продолжало применяться на территории Туркестана до начала 1920 г., на практике казийские суды продолжали применять нормы шариата и адата [33].

5 января 1924 г. было утверждено Положение о судоустройстве Бухарской Народной Советской Республики, установившее, что при окружных судах состоят коллегии защитников по уголовным и гражданским делам, деятельность которых регулируется особым Положением. Общее руководство их работой осуществлял Комиссариат (Назират) юстиции, а повседневная деятельность коллегий велась под руководством их президиумов. Иными словами, правозащитники находились в прямом подчинении Назирата юстиции. Прием новых членов производился по постановлениям общего собрания коллегии правозащитников, об этом немедленно извещались органы юстиции и Государственный прокурор республики [34].

Несмотря на то, что в 1924 г. в ТуркАССР насчитывалось 106 лиц – защитников, лишь около 20 человек составляли лица местных (коренных) наций, в связи с чем особое значение имело решение вопроса вовлечения представителей коренного населения в ряды коллегий защитников республики [35, с. 59].

После образования 27 октября 1924 г. на территории Узбекистана Узбекской ССР институт адвокатуры получает дальнейшее развитие. Так, Положением о судоустройстве УзССР от 15 февраля 1927 г. при каждом судебном округе создавались коллегии защитников для оказания юридической помощи населению и осуществления задач судебной защиты. Как свидетельствуют источники, в 1928 г. в Ташкентской окружной коллегии адвокатов насчитывалось 85 членов, в том числе: с высшим образованием – 62, окончивших юридические курсы – 4; лиц местных национальностей – 9; женщин – 8. В Самаркандской областной коллегии адвокатов из 43 адвокатов было 11 узбеков, 3 женщины. В Ферганской области из 26 адвокатов 11 были местных национальностей. Однако в Кашкадарье и Хорезме работало лишь по 9 адвокатов [34].

С принятием Конституции СССР 1936 г. право на защиту в суде было возведено в конституционный принцип (ст. 111), была создана единая организация адвокатуры во всех союзных республиках. В соответствии с этим Положением во всех областях Узбекской ССР и Каракалпакской АССР были созданы областные коллегии адвокатов, городские и районные юридические консультации [36, с. 24].

30 мая 1961 г. Верховным Советом Узбекской ССР было утверждено новое *По-*

ложение об адвокатуре, которое установило, что коллегии адвокатов являются добровольными объединениями лиц, занимающихся адвокатской практикой.

Впервые появилась возможность образования адвокатских коллегий по инициативе самих юристов, хотя предложение об образовании коллегии следовало направить в Министерство юстиции. Устанавливались действующие и сегодня цензы касательно наличия высшего юридического образования и стажа, а также необходимости прохождения стажировки.

Со временем адвокатура укреплялась организационно и в кадровом плане, в том числе местными кадрами. Вместе с тем руководство коллегиями защитников продолжал осуществлять Минюст УзССР, в составе которого был создан специальный отдел (а в дальнейшем – управление) судебной защиты и юридической помощи населению (который практически без каких-то существенных изменений сохранялся до периода национальной независимости страны).

Кроме того, Минюст УзССР приняло в 1950-х гг. Инструкцию о порядке рассмотрения дисциплинарных дел адвокатов, Методические указания о составлении производства адвокатов по судебному делу и т. д., а также утверждало предельные лимиты штатов коллегий [37].

Несмотря на то, что постепенно уменьшалась опека со стороны государственных органов, повышалось качество оказания юридической помощи населению вследствие роста квалифицированных кадров (в 1958 г. в Узбекской ССР было 402 адвоката, среди которых узбеков – 127 (в том числе 20 узбечек); с высшим образованием – 282, средним – 77 [34]), в условиях административно-командной системы советского государства участие защитника в отправлении правосудия, особенно в уголовном процессе, носило в определенной степени формальный, декларативный характер [38, с. 207], хотя некоторые авторы отмечают ее относительную независимость даже в таких условиях [39, с. 2].

Таким образом, советский период развития адвокатуры на территории Казахстана и Узбекистана характеризуется следующими особенностями:

во-первых, существовал тотальный контроль адвокатуры со стороны государства;

во-вторых, упраздняются негосударственные или религиозные системы судопроизводства (суды казиев, биев вне закона);

в-третьих, впервые на конституционном уровне говорится об институте адвокатуры, хотя полностью независимым и самостоятельным институтом он так и не стал (сохраняется организационный контроль Минюста);

в-четвертых, несмотря на формальное (законодательное) внедрение элементов состязательности, адвокаты в судах играли очень незначительные роли, по существу, выполняя функции формального характера.

Современный период развития адвокатуры

Современный период развития адвокатуры в исследуемых странах характеризуется весьма значительными отличиями института адвокатуры как в нормативной, так и в организационной плоскостях.

Вместе с тем в качестве общей черты следует отметить признание конституционного статуса института адвокатуры. Так, согласно Конституции РК 1995 г., Казахстан утверждает себя демократическим, правовым, светским и социальным государством, высшими ценностями которого являются жизнь, права и свободы человека, где каждому гарантируется конституционное право на получение квалифицированной юридической помощи (раздел II) [40].

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Аналогичным образом, Конституция Республики Узбекистан, принятая 8 декабря 1992 г., заложила правовые основы, определяющие роль адвокатуры в осуществлении защиты прав и законных интересов физических и юридических лиц. В частности, обвиняемому обеспечивается право на защиту. Кроме того, для оказания юридической помощи гражданам, предприятиям, учреждениям и организациям действует адвокатура. Организация и порядок деятельности адвокатуры определяются законом.

В указанных положениях проявляется назначение государства, которое своей деятельностью призвано создавать фактические, организационные, юридические предпосылки для использования гражданами предоставленных законом возможностей в целях удовлетворения самых разнообразных интересов и потребностей. В целом, Конституции и законодательство современного этапа строительства государств Казахстана и Узбекистана свидетельствуют о значимой роли и месте адвокатуры в строительстве правового и демократического государства, сильного гражданского общества.

Выводы

Архаичный период развития адвокатуры на территории исследуемых стран характеризуется следующими признаками: отсутствием институциональных основ института адвокатуры; наличием двух параллельных систем судопроизводства (на основе шариата и на основе обычного права); защитой нарушенного права самими потерпевшими или же с помощью знатоков права, участвующих в судах опосредованно (путем подготовки письменных судебных актов факихами) или непосредственно (выступлением факиха (муфтия) вместе с потерпевшим); произвольностью и не каноничностью участия защитника в судах биев (как правило, в качестве таковых могли выступать старейшины и аксакалы).

Колониальный период развития адвокатуры на территории Казахстана и Узбекистана характеризуется следующими особенностями: впервые были созданы институциональные основы адвокатуры; в это время, по сути, действуют три параллельные системы судопроизводства (на основе судебных положений царской России, шариата и на основе обычного права); создается сословие адвокатов, хотя полностью независимым и самостоятельным институтом оно еще не стало (сохранялись институты судебного контроля); присяжные поверенные (адвокаты) впервые подразделены на две группы – присяжные поверенные и частные поверенные, при этом они действовали в пределах конкретных судебных округов; впервые внедряются некоторые элементы современной адвокатуры (требования к кандидатам в присяжные, договорной характер отношений, институт pro bono, определенные социальные гарантии).

Советский период развития адвокатуры на территории Казахстана и Узбекистана характеризуется следующими особенностями: существовал тотальный контроль адвокатуры со стороны государства; упраздняются негосударственные или религиозные системы судопроизводства (суды казиев, биев вне закона); впервые на конституционном уровне говорится об институте адвокатуры, хотя полностью независимым и самостоятельным институтом он так и не стал (сохраняется организационный контроль Минюста); несмотря на формальное (законодательное) внедрение элементов состязательности, адвокаты в судах играли очень незначительные роли, по существу, выполняя функции формального характера.

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AYRIM XORIJIY DAVLATLAR JINOYAT QONUNCHILIGIDA QILMISHNING JINOIYLIGINI ISTISNO QILUVCHI HOLAT SIFATIDA OXIRGI ZARURATNING O‘RNI

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Annotatsiya. *Ushbu maqolada qilmishning jinoiyligini istisno qiluvchi holat sifatida oxirgi zaruratning huquqiy tabiati, o‘ziga xosliklari, chegaralari xorijiy davlatlar qonunchiligini tahlil qilish orqali o‘rganildi hamda milliy jinoyat qonunchiligini takomillashtirish masalasida bir qator takliflar ishlab chiqildi. 10 dan ortiq xorijiy ilg‘or mamlakatlarning jinoyat qonunchiligini o‘rganib chiqish orqali bir qator zarur nazariy va amaliy xulosalar qilindi. Roman-german hamda anglo-sakson huquq tizimiga kiruvchi mamlakatlar qonunchiligidagi oxirgi zarurat institutiga oid normalar tahlil qilindi va ularning o‘ziga xosliklari yoritib berildi. Xorijiy davlatlar jinoyat kodekslarida oxirgi zarurat normalarining joylashish o‘rni, unga qo‘yilgan talablar, xavfga nisbatan belgilangan qonuniylik shartlari, javobgarlik hamda jazodan ozod qilishning o‘ziga xos tomonlari muhokama qilindi. Jinoyat qonuni bilan himoya qilinuvchi qaysi obyektlar oxirgi zarurat huquqini qo‘llash orqali muhofaza qilinishi mumkinligi, bu kabi obyektlarning turli davlatlarda turlicha talqin qilinishi holatlariga alohida e’tibor qaratildi. Xorij tajribasini tahlil qilish natijasida eng ilg‘or mamlakatlar jinoyat qonunidagi yutuqlarni milliy jinoyat qonunimizga kiritish masalasi yuzasidan taklif hamda tavsiyalar ishlab chiqildi.*

Kalit so‘zlar: *oxirgi zarurat, maxsus subyekt, jinoiy javobgarlikdan ozod qilish, jazodan ozod qilish, yuridik xato, xavf, qonuniy shartlar.*

РОЛЬ КРАЙНЕЙ НЕОБХОДИМОСТИ КАК ОБСТОЯТЕЛЬСТВО, ИСКЛЮЧАЮЩЕЕ ПРЕСТУПНОСТЬ ДЕЯНИЯ, В УГОЛОВНОМ ПРАВЕ НЕКОТОРЫХ ЗАРУБЕЖНЫХ СТРАН

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Аннотация. *В данной статье были изучены правовая природа, особенности и предел крайней необходимости как обстоятельства, исключающие преступность деяния, проанализировано законодательство зарубежных стран и разработан ряд предложений по вопросу совершенствования национального уголовного законодательства. Теоретические и практические выводы сделаны на основе изучения уголовного законодательства более 10 зарубежных стран. Проанализированы нормы крайней необходимости в законодательстве романо-германской и англосаксонской правовых систем и выделена их специфика. Обсуждены место нормы крайней необходимости в уголовных кодексах зарубежных стран, требования к ней, условия законности по отношению к риску, особенности освобождения от ответственности и наказания. Особое внимание было обращено на то, какие объекты,*

охраняемые уголовным законом, могут быть защищены применением права крайней необходимости и на то, что различные объекты трактуются в разных странах по-разному. В результате анализа зарубежного опыта выработаны предложения и рекомендации по включению достижений наиболее передовых стран в области уголовного права в национальное уголовное право.

Ключевые слова: *крайняя необходимость, специальный субъект, освобождение от уголовной ответственности, освобождение от наказания, юридическая ошибка, риск, условия законности.*

THE ROLE OF EXTREME NECESSITY AS AN EXCULPATORY CIRCUMSTANCE IN THE CRIMINAL LAW OF SOME FOREIGN COUNTRIES

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Abstract. *The legal nature, peculiarity, and limit of extreme necessity as an exculpatory circumstance are studied in this article by analyzing the legislation of foreign countries and several proposals have been developed on the issue of improving national criminal legislation. Theoretical and practical conclusions were made based on studying the criminal legislation of more than 10 foreign countries. The norms of extreme necessity in the legislation of the Romano-Germanic and Anglo-Saxon legal systems are analyzed and their specificity is highlighted. The place of the norm of extreme necessity in the criminal codes of foreign countries, the requirements for it, the conditions of legality concerning risk, and the features of exemption from liability and punishment are discussed. Particular attention was paid to the objects protected by the application of the right of extreme necessity, and to the fact that the objects are treated differently in different countries. As a result of the analysis of foreign experience, proposals and recommendations have been developed for incorporating the achievements of the most advanced countries in the field of criminal law into national criminal law.*

Keywords: *extreme necessity, special subject, exemption from criminal liability, exemption from penalty, legal error, risk, legal conditions.*

Kirish

Oxirgi zaruratning xorijiy davlatlar qonunchiligida tutgan o‘rnining tahlili bizga bugungi kunda rivojlangan davlatlarning jinoyat qonunchiligida aynan oxirgi zarurat bilan bog‘liq normalarning qay shaklda bayon qilinganligi va mamlakatimiz jinoyat qonunchiligida uchramaydigan qanday ilg‘or o‘ziga xos yutuqlarga erishilganligini o‘rganishimiz uchun muhim sanaladi. Jinoyat qonunchiligida oxirgi zarurat institutini takomillashtirish fuqarolarning huquq va erkinliklarini ishonchli himoya qilish kafolatlarini mustahkamlashga xizmat qiladi. Bu borada xorijning ilg‘or tajribasini o‘rganish zarurati mavjud.

Qilmishning jinoiyligini istisno qiluvchi holat sifatida oxirgi zaruratning ayrim xorijiy mamlakatlar jinoyat qonunchiligidagi o‘rnini o‘rganishga kirishar ekanmiz, avvalo, bizning qonunchiligimizda aks etmagan jihatlarini yoritishga harakat qilamiz. Shuningdek, o‘rganilgan mamlakatlarning JKlarida oxirgi zaruratni huquqiy tartibga solish, nomi, bayon etilishi, kodeksdagi joylashuvi, qonuniylik shartlarida juda katta farqlar mavjudligi haqida so‘z yuritamiz.

Material va metodlar

Ayrim xorijiy davlatlar jinoyat qonunchiligida qilmishning jinoiyligini istisno qiluvchi holat sifatida oxirgi zaruratning o‘rnini aniqlash yuzasidan milliy jinoyat huquqi ilmi

doirasida yetarlicha chuqur ilmiy izlanishlar bugungi kunda olib borilmaganligi hamda mazkur ilmiy maqolada aks ettirilgan fikrlar mavzu yuzasida dastlabki ilmiy qarashlar sifatida o‘rin olganini hisobga olgan holda, mazkur tadqiqot ishida, asosan, qiyosiy-huquqiy tahlil metodidan foydalanildi. Shu bilan birga, maqolada ilmiy izlanishlar natijasini aks ettirishda yordam beruvchi kuzatish, umumlashtirish, induksiya va deduksiya metodlari ham qo‘llanildi.

Tadqiqot natijalari

Xorijiy davlatlar JKda oxirgi zaruratning jazo yoki javobgarlikni istisno qilishi masalasida turlicha yondashuvlarni kuzatish mumkin. Masalan, *Turkiya, Polsha, Avstriya, Gruziya* jinoyat qonunchiligida oxirgi zarurat jazoni istisno qiluvchi holatlar guruhiga kiritilsa, *Shvetsiya, Ispaniya, Yaponiya* va *Rossiya*da oxirgi zarurat jinoiy javobgarlikdan ozod qilish uchun asos hisoblanadi. Shuningdek, oxirgi zaruratning jinoyat qonunidagi o‘rni ham turli davlatlarda farqlanadi. Misol uchun, oxirgi zarurat normasi *Shveysariya* JKning “Qonuniy harakatlar” bo‘limiga kiritilgan bo‘lib, ushbu davlat qonunchiligiga ko‘ra, mazkur harakat qonunga zid hisoblanmaydi. *Niderlandiya* JKda oxirgi zarurat jinoiy javobgarlikdan ozod qilish va jinoiy javobgarlikni kuchaytirishga oid asoslar bilan bir bobga kiritilgan. *Germaniya* JKda oxirgi zarurat masalalari alohida “Zaruriy mudofaa va oxirgi zarurat” deb nom olgan bobda yoritib berilgan. *Avstriya* jinoyat qonunida oxirgi zarurat ayb shakllari, yuridik xato, ishtirokchilik kabi normalar bilan bir qatorda, Koreya JKda “Jinoyat” deb nomlanuvchi bobda, *XXR* JKning esa “Jinoyatlar haqida” deb nomlangan bobiga kiritilgan. Taxmin qilish mumkinki, dunyo mamlakatlari JKlaridagi bu kabi farqlarning mavjudligi har bir davlatdagi jinoyat qonuni rivojining tarixiy bosqichlaridagi o‘ziga xosliklarga asoslanadi.

Tadqiqotimiz davomida shunga amin bo‘ldikki, ko‘pchilik xorijiy mamlakatlar JKda jinoiy javobgarlikni istisno qiluvchi holatlarning huquqiy tabiati haqida umumiy tushunchalar, asosan, bizning JKda bo‘lgani kabi yagona bobda joylashgan bo‘lib, qilmishning jinoiyligini istisno qiluvchi holatlarning turli boblarda tarqoq bayon qilinishi holatlari xorij tajribasida ham kamdan-kam uchraydi.

Quyida ilg‘or xorijiy davlatlar jinoyat qonunchiligidagi oxirgi zarurat o‘rin olgan normalarning o‘ziga xosliklarini ko‘rib chiqamiz.

Turkiya JKning 25-moddasida zaruriy mudofaa bilan bir moddada oxirgi zaruratga ham ta’rif berilgan bo‘lib, shaxsning o‘zini yoki boshqa shaxslarni jiddiy va real xavf (o‘zi bila turib yaratmagan)dan himoya qilish maqsadida sodir etgan qilmishi, agar foydalanilgan vositalar xavfning og‘irligi va predmetiga mutanosib bo‘lsa hamda boshqa himoya vositalari bo‘lmagan taqdirda jazolanmasligi belgilangan [1]. Ko‘rinib turibdiki, davlat va jamiyat manfaatlari mazkur davlat JKda oxirgi zarurat obyektlari sirasiga kiritilmagan. Biroq *Xitoy Xalq Respublikasi*da davlat va jamiyat manfaatlari oxirgi zarurat obyektlaridan o‘rin olgan. *XXR* JKning 21-moddasi 1-qismiga muvofiq, “shaxsning davlat, jamoat manfaatlariga, o‘zi va boshqa shaxslarga, ularning mol-mulki va boshqa huquqlariga tahdid soluvchi xavfning oldini olish uchun majburan sodir etilgan favqulodda harakatlari natijasida zarar yetkazgan bo‘lsa, u jinoiy javobgarlikka tortilmaydi” [2]. *Germaniya* JKga (§ 34) ko‘ra esa shaxs hayoti, sog‘lig‘i, erkinligi, sha’ni, mulki yoki boshqa huquq va manfaatlari oxirgi zarurat holatida himoya qilinishi mumkin bo‘lgan obyeklar sifatida ko‘rsatib o‘tilgan. Erkinlik va sha’n masalasi *Shveysariya* JKda ham oxirgi zarurat obyekti sifatida keltirilgan bo‘lsa, *Koreya Respublikasi*da shu holat uchun “kimningdir yoki o‘zga shaxsning qonuniy manfaatlari” belgilangan. *Yaponiya*da “O‘zi yoki boshqa shaxsning hayoti, sog‘lig‘i, erkinligi va mulki” [3], *Daniya*da esa “shaxsning o‘zi va mulk” oxirgi zarurat holatida himoya qilinishi mumkinligini ko‘rish mumkin. *Rossiya Federatsiyasi*da esa

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oxirgi zarurat holatida himoya qilinuvchi manfaatlar juda keng talqin qilingan bo‘lib, “jinoyat qonuni bilan himoya qilinuvchi manfaatlar” jumlasi *RF* JKning 39-moddasidan o‘rin olgan.

Niderlandiya JKda oxirgi zarurat bilan bog‘liq norma juda qisqa tahrirda keltirilganligi uchun ham mavhum bo‘lib, obyekt haqida hech qanday ma’lumot yo‘q. Mazkur mamlakat jinoyat qonunining 40-moddasida oxirgi zarurat “Yengib bo‘lmas kuch ta’sirida majburlikdan jinoyat sodir etgan har qanday shaxs jinoiy javobgarlikka tortilmaydi” [4] jumlasida o‘z ifodasini topgan. *Niderlandiya* Oliy sudi tomonidan tushuntirilganidek, shaxs ziddiyatli vaziyatlardan birini tanlashi kerak bo‘lgan hollarda u ularning ichidan eng muhimi (zwaarstwegende)ga bo‘ysunadi [5]. Bu ham xorijiy davlatlar qonunchiligining o‘ziga xosligini ko‘rsatadi.

Xorijiy davlatlar jinoyat qonunchiligida oxirgi zarurat mavjudligi shartlarining belgilanganligini uchratish mumkin. Masalan, *Ispaniya* JKning 21-moddasi 5-bandiga muvofiq, o‘ziga yoki boshqa shaxsga zarar yetkazilishining oldini olish uchun shart bo‘lgan holatda boshqa shaxsning huquqlariga zarar yetkazgan yoki huquqlarini buzgan shaxs jinoiy javobgarlikka tortilmaydi, faqat bunda harakat belgilangan quyidagi shartlarga javob berishi kerak [6]:

a) yetkazilgan zarar oldini olgan zarardan kamroq bo‘lishi;

b) oxirgi zarurat holati zarar yetkazgan shaxsning o‘zi tomonidan yaratilmagan bo‘lishi;

d) oxirgi zarurat holatida bo‘lgan shaxsning kasbiy burchida birovning huquq va manfaatlarini himoya qilish uchun o‘zini qurbon qilish majburiyati bo‘lmagan bo‘lishi kerak.

Polsha JKning 26-moddasi esa yanada kengroq qoidalarni mustahkamlagan bo‘lib, unda oxirgi zarurat tushunchasidan (1-§) tashqari manfaatlar mosligi (2-§), oxirgi zarurat chegarasidan chetga chiqish (3-§), maxsus subyekt (4-§), shuningdek, majburiyatlar to‘qnashuvi (5-§) masalalari ham yoritib berilgan [7].

Oxirgi zarurat belgilarining JKda belgilanishi boshqa davlatlarda ham uchraydi. Masalan, oxirgi zarurat holatida xavfning belgisi sifatida “hozirda mavjud yoki kelajakda kutilayotgan”ligi (*Fransiya* JK 122-7-moddasi), xavfning “tahdidli” (*XXR* JK ning 21-moddasi) ekanligi, “yaqin” va “muqarrar” (*Koreya* JKning 22-moddasi) ekanligi uning oldini olish uchun asos bo‘lib xizmat qilishi belgilangan.

Germaniya JKda oxirgi zarurat masalalari o‘zgacha yoritilgan, ya’ni bu masalada ikkita modda mavjud bo‘lib, birinchisi “qonuniy oxirgi zarurat” (§ 34) deb nomlanadi hamda oxirgi zarurat holatida xavfni bartaraf etish uchun kamroq zarar yetkazish uchun javobgarlikni isnisno qilsa, ikkinchisi, aybni istisno qiluvchi yoki yengillashtiruvchi oxirgi zarurat holatiga bag‘ishlangan (§ 35). Unda o‘zining, qarindoshlari yoki yaqin kishilarining hayoti, sog‘lig‘i yoki erkinliklari uchun xavf tug‘diradigan sharoitlarda shu kabi xavfni bartaraf qilish uchun g‘ayriqonuniy xatti-harakatni sodir etish aybni istisno qilishi yoki yengillashtirishi mustahkamlangan [8]. *Mazkur ikkinchi holat bizning jinoyat qonunchiligimizda mavjud bo‘lmagan yangi holat hisoblanadi.*

Yana bir e’tiborli holat shundaki, *Germaniya* JKda qonuniy favqulodda holat mavjudligi sharti sifatida xavfni shaxsning o‘zi yaratmagan bo‘lishi lozimligi ham belgilanganligidir. Bunday talab *Turkiya, Ispaniya, Litva* va *Shveysariya* JKda ham uchraydi. Biroq *Litva*da o‘z harakati bilan xavfni yuzaga keltirgan shaxs, bu vaziyat faqat ehtiyotsizlik tufayli yuzaga kelgan bo‘lsagina, oxirgi zarurat qoidalariga tayanishi mumkin.

Oxirgi zarurat holati qonuniylik shartini belgilagan *Polsha, Gruziya*, *Turkiya, Rossiya, Shveysariya, Litva* va *Ukraina* JKda mavjud vaziyatda xavfni bartaraf etishning boshqa vosita va usullari yo‘qligi ko‘rsatilgan bo‘lsa, *Yaponiya, Koreya, Xitoy, Avstriya, Ispaniya,*

Shvetsiya va *Niderlandiya* qonunchiligida bunday shart mavjud emas. *Daniya*da esa sodir etilgan qilmish "nisbatan kichik jinoyat bo'lsagina" javobgarlikni keltirib chiqarmaydi [9].

Oxirgi zarurat chegarasidan chiqish masalalari ham xorijiy davlatlar jinoyat qonunida turlicha shakllantirilganligini ko'rish mumkin. Masalan, oxirgi zaruratning qonuniylik chegaralarini aniqlash masalasida *Rossiya, Ozarbayjon, Qozog'iston* va *Tojikiston* JKda oldi olingan xavfga teng yoki undan ko'proq zarar yetkazish oxirgi zarurat chegarasidan chetga chiqish deb baholanishi belgilangan.

XXR JKda ham sodir etilgan harakatlar zarurat chegarasidan oshib ketgan va jiddiy zarar yetkazgan bo'lsa, jinoiy javobgarlik yuzaga kelishi, biroq ish holatlarini inobatga olgan holda, belgilangan jazoning pastki chegaradan ham pastroq jazo tayinlanishi yoki jazodan ozod etilishi kerakligi [2] mustahkamlab qo'yilgan. *Yaponiya*da oxirgi zarurat chegarasidan chiqishning "yagona" holati ko'rsatilgan bo'lib, unga ko'ra, "yetkazilgan zarar oldi olingan zarardan oshib ketsa", javobgarlik yuzaga kelishi mumkinligi, biroq bu holatda ham vaziyatga qarab jazo yengillashtirilishi yoki shaxs jazodan ozod etilishi mumkin.

Moldova Respublikasi JKda umuman oxirgi zarurat chegarasidan chetga chiqish tushunchasi mavjud emas [10].

Maxsus kasb egalari bo'lgan shaxslar tomonidan oxirgi zarurat qoidalari qo'llanilishi masalasi ham ba'zi xorijiy davlatlar jinoyat qonunchiligida aks ettirilgan. Masalan, *Litva* JKning 31-modda 3-qismiga ko'ra, shaxsning o'z kasbi, majburiyatlari yoki boshqa holatlarga ko'ra ko'proq xavfli sharoitlarda harakat qilishi talab etiladigan bo'lsa, u o'z majburiyatini bajarmaganligini oxirgi zarurat qoidalari bilan oqlay olmaydi. *Yaponiya* JK 37-moddasi 3-qismida esa oxirgi zarurat qoidalari kasbi bo'yicha alohida majburiyatga ega bo'lgan shaxslarga nisbatan qo'llanilmasligi mustahkamlangan. Xuddi shunday qoida *XXR* JKning 21-modda 3-qismidan ham o'rin olgan. Mazkur davlatlar qonunchiligi bo'yicha maxsus subyektlar uchun oxirgi zarurat huquq emas majburiyat sanaladi.

Yana bir e'tiborli jihati shundaki, *Turkiya, Polsha, Avstriya, Belorussiya*, *Fransiya* kabi davlatlarda qilmishning jinoiyligini istisno qiluvchi holatlar aks etgan bobda mazkur hollarda yuridik xatoga yo'l qo'yishga oid normalar ham kiritilgan bo'lib, bu holat biz uchun yangilik sanaladi.

Polsha JKning 29-moddasiga ko'ra, qilmishning jinoiyligini istisno qiluvchi holat haqida xato qilgan shaxsning mazkur holatda sodir etgan qilmishi jinoyat hisoblanmaydi. Agar shaxsning xatosi asoslanmagan bo'lsa, sud hukmi bilan eng yengil jazo turi tayinlanadi [7].

Avstriya JKning 8-§da: "ish holatlarini noto'g'ri idrok etgan, qilmishning g'ayriqonuniy ekanligi istisno qilinuvchi holat deb faraz qilgan har bir shaxs qilmishi qasddan sodir etilganlik uchun jazolanishi mumkin emas. Agar uning xatosi ehtiyotsizlikka asoslangan bo'lsa va bu ehtiyotsizligi jazo tahdidi ostida taqiqlangan bo'lsa, shaxs ehtiyotsizlikdan qilgan qilmishi uchun jazolanishi mumkin [11]", deyilgan. *Fransiya* JKning 122-3-moddasida ham yuqoridagiga o'xshash norma belgilangan bo'lib, unga ko'ra, shaxs o'sha vaziyatda xato qilishdan qutulishi mumkin emasligi to'g'risida dalillar keltirgan taqdirda javobgarlikdan ozod etiladi [12]. Faktik xato qilishning huquqiy oqibatlari esa Fransiya jinoyat qonunchiligida tartibga solinmagan. Bizning jinoyat qonunchiligimizdagi oxirgi zarurat bilan bog'liq normani ham shu mazmunni qamrab olgan norma sifatida keltirib o'tish mumkin.

Anglo-sakson oilasiga kiruvchi davlatlar qonunchiligida oxirgi zarurat masalalarini o'rganishni *AQSh* tajribasini tahlil qilishdan boshlaymiz. Bilamizki, bu davlatda ham sud pretsedentining o'rni katta bo'lib, oxirgi zarurat masalalari ham ularga asoslanishi lozim.

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AQSh jinoyat qonunida e'tiborli holat sifatida shaxsning jabrlanuvchining iltimosiga ko'ra jinoyatni sodir etishi jinoiy javobgarlikni istisno qilmasligini keltirib o'tish joiz. *Misol sifatida 1992-yilning sentabrida odam o'ldirishga suiqasd qilishda ayblangan shifokor Nayjel Koksning ishini keltirish mumkin. U og'riqlarini hech bir dori-darmon qoldirmay qo'ygan 70 yoshli bemorning iltimosi bilan uni azoblanish xavfidan qutqarish uchun yurak faoliyatini to'xtatuvchi ukol qiladi. Bu qilmishi uchun Nayjel Koks oxirgi zarurat holatida bo'lgan deb topilmagan va jinoiy javobgarlikka tortilgan* [13].

AQShning Namunaviy Jinoyat kodeksiga ko'ra, oxirgi zarurat holatida sodir etilgan qilmishni amalga oshirish orqali oldi olinishi ko'zlangan xavf mazkur qilmish uchun qonunchilikda belgilangan javobgarlikdan kattaroq zarar yetkazishi mumkin bo'lsa, javobgarlikka sabab bo'lmaydi (3.02-modda). Mazkur norma keyinchalik boshqa shtatlar jinoyat qonunchiligi, ya'ni Arkanzas shtati (§ 41-504), Kolorado shtati (18-1-702-modda), Pensilvaniya shtati (§ 503) va Texas shtati (§ 9.22) jinoyat kodekslarida ham qabul qilingan [14].

AQSh huquqshunoslari oxirgi zaruratni shaxsning aybi bilan emas, balki ko'pincha tabiiy kuchlar ta'siri ostida sodir bo'lishi, bu yerda ikki xavfdan qonunni buzgan holda, eng kamroq zarar yetkazilishi (choice of evils)ni tanlash kerakligini nazarda tutadi. Shu o'rinda eslatib o'tmoqchimizki, ushbu davlat jinoyat qonunchiligining o'ziga xosliklaridan biri shuki, qilmishning jinoiyligini istisno qiluvchi holat sifatida oxirgi zaruratning mavjudligini AQSh shtatlarining yarmi o'z qonunchiligida tan oladi, xolos [15], qolgan yarmi esa to'liq tan olmagan.

Tadqiqot natijalari tahlili

Bir qator shtatlarning sud pretsedentlarini tahlil qilishda aynan oxirgi zarurat haqida yillar davomida shakllangan normalarni uchratdik. Quyida ulardan bir nechtasini sanab o'tamiz:

1. Harbiylar zarurat tug'ilganda, mulkni tortib olishlari mumkin [16].

2. Agar zarurat bo'lsa yoki o'sha vaziyatda zarurat sifatida baholash uchun asoslar yetarli bo'lsa, shaxs yong'in yoki kasallik tarqalishining oldini olish uchun mulkni yo'q qilishi mumkin [17].

3. Tezlikni oshirish pistirmaga tushish yoki noqonuniy hibsga olinishning oldini olish uchun zarurat bo'lgan bo'lsa, oqlanishi mumkin [18].

4. Spirtli ichimliklarni ichgan holda transport boshqarish, hattoki shaxs yarador bo'lsa ham va uning shifoxonaga yetib borishi uchun o'zgacha imkon bo'lmasa ham oqlanmaydi [19].

5. Spirtli ichimliklarni retseptsiz sotish zarurat holatida oqlanadi [20; 21].

AQSh sud amaliyoti oxirgi zarurat holatida xavfning aniq mavjudligiga urg'u beradi hamda kelajakda paydo bo'lishi mumkin bo'lgan xavfning oldini olishda oxirgi zarurat holatining ehtimolini tan olmaydi.

AQShdan boshqa anglo-sakson huquq tizimiga mansub davlatlar jinoyat qonunchiligida oxirgi zarurat huquqi yoritilgan, biroq qonun doirasidan kengroq pretsedentlarni qo'llash bu borada keng uchraydi.

Ko'rinib turganidek, turli xorijiy davlatlar qonunchiligida oxirgi zarurat masalalarida o'ziga xosliklar mavjud bo'lib, ularni qiyosiy tahlil qilish milliy qonunchilikning rivoji uchun muhim va ahamiyatli sanaladi.

*MDH*ga kiruvchi davlatlar jinoyat qonunchiligini tahlil qiladigan bo'lsak, ko'pincha ushbu mamlakatlar JKda belgilangan oxirgi zarurat chegarasidan chiqish tahriri *Rossiya Federatsiyasi* JKda keltirilgan normalar bilan bir xil ekanligini qayd etish mumkin. O'ziga xoslik O'zbekiston Respublikasi JK 38-moddasi 3-qismida mavjud. Unda oxirgi zarurat chegarasidan chiqib, qonun bilan muhofaza qilingan manfaatlarga zarar yetkazishning ikki holati ko'rsatilgan:

1) agar boshqa vositalar orqali xavfning oldini olish mumkin bo'lsa;

2) keltirilgan zarar oldi olingan zarardan oshib ketsa.

Bizning fikrimizcha, xavfni boshqa vositalar bilan bartaraf etish imkoniyatining mavjudligi oxirgi zaruratga ehtiyoj yo‘qligini ko‘rsatadi. O‘zbekiston Respublikasi JKning 38-moddasi 1-qismida xavfni o‘sha holatda boshqa choralar bilan qaytarishning iloji bo‘lmasa, qilmish jinoyat deb topilmasligi belgilangan. Bunda O‘zbekiston Respublikasi JKda umumiy tarzda jinoyat deb topilish hamda oxirgi zarurat chegarasidan chetga chiqqanlik masalalari bitta ma’noni berib qolmoqda, zero, umumiy tarzda jinoyat sifatida topilishga nisbatan oxirgi zarurat chegarasidan chetga chiqish masalasi yengillashtiruvchi holat hisoblanadi hamda bu kodeksning 55-moddasi 1-qismi “e” bandida mustahkamlab qo‘yilgan hamda boshqa-boshqa ma’no kasb etishi lozim. Mazkur masala oxirgi zarurat chegarasidan chiqib, qonuniy himoyalangan manfaatlarga zarar yetkazishning ikkinchi holati sifatida ko‘rsatilgan “keltirilgan zarar oldi olingan zarardan oshib ketishi” holatiga ham tegishlidir.

Xulosalar

1. Yuqoridagilardan kelib chiqib, xulosa qilish mumkinki, O‘zbekiston Respublikasi JKning 38-moddasi 3-qismi takomillashtirilishi lozim hamda kodeksda oxirgi zarurat chegarasidan chetga chiqishning umumiy jinoyat sifatida topilishi mumkin bo‘lgan holatlardan farqli jihatlari ham yoritib o‘tilishi maqsadga muvofiq bo‘lar edi.

2. Yaponiya, Xitoy, Germaniya, Shveysariya davlatlari jinoyat qonunchiligi tahlilidan kelib chiqib, fikrimizcha, O‘zbekiston Respublikasi JKda oxirgi zarurat holatida himoya qilinuvchi obyektlarni keng tarzda ifodalash, ya’ni sog‘liq, hurmat, erkinlik kabilarni ham himoya qilishda oxirgi zarurat huquqi qo‘llanilishi mumkinligini mustahkamlab o‘tish lozim.

3. Qilmishning jinoiyligini istisno qiluvchi holatlar aks etgan bobda mazkur hollarda yuridik xatoga yo‘l qo‘yishga oid normalar ham kiritilishi yuridik hamda faktik xato mavjud vaziyatda qilmishni kvalifikatsiya qilish masalasini oydinlashtirgan bo‘lar edi.

4. Mamlakatimiz jinoyat kodeksida maxsus subyektlar oxirgi zarurat holatida qay tartibda harakat qilishi kerakligi, umuman, ular uchun oxirgi zarurat huquq yoki majburiyat ekanligi haqida norma mavjud emas. Mazkur masalani Yaponiya, XXR hamda Litva kabi xorijiy mamlakatlar qonunchiligi asosida o‘rganib chiqish va zaruratga ko‘ra, milliy jinoyat qonuniga kiritish lozim deb hisoblaymiz.

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TARAQQIYOT STRATEGIYASINING ASOSIY MAQSADI – INSON QADRINI E'ZOZLASH

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Annotatsiya. *Inson huquqlari va manfaatlarini himoya qilishda advokatning o'rni muhimdir. Advokatura instituti samaradorligini tubdan oshirish hozirgi kundagi asosiy vazifalardan biri hisoblanadi. 2022–2026-yillarga mo'ljallangan taraqqiyot strategiyasida 7 ta yo'nalishda 100 ta maqsad belgilangan bo'lib, ushbu maqola dolzarb masalalardan biri bo'lgan advokaturaga bag'ishlanadi. Maqolada inson qadrini yuksaltirish va erkin fuqarolik jamiyatini yanada rivojlantirish orqali xalqparvar davlat barpo etish, asosiysi, mamlakatimizda adolat va qonun ustuvorligi tamoyillarini taraqqiyotning eng asosiy va zarur shartiga aylantirish asosiy yo'nalishlardan biri ekanligi belgilangan. Advokat huquqlarining amalga oshirilishi va kengaytirilishi uchun shart-sharoitlar yaratilishi inson huquqlari va qonuniy manfaatlari muhofazasiga xizmat qilishi, jinoyat protsessining barcha bosqichlarida tortishuv prinsipi asosida ayblov va himoya taraflarining protsessual imkoniyatlari tenglashtirib borilishi yuzasidan takliflar ishlab chiqilgan. Shunga ko'ra, tortishuv prinsipini ishni sudga qadar yuritishda ham amal qilishini belgilash asnosida advokat huquqlarini kengaytirish masalalariga to'xtalib o'tilgan. Ushbu institutdagi ayrim muammolarni jinoyat protsessual qonunchilikni takomillashtirish maqsadida taraqqiyot strategiyasida belgilangan ustuvor maqsadlardagi vazifalarni amalga oshirish mexanizmi yuzasidan ilmiy-nazariy va amaliy tavsiyalar berib o'tilgan.*

Kalit so'zlar: *strategiya, inson huquqlari, himoya, advokat, sud, huquqni muhofaza qiluvchi organ, bepul yuridik yordam, advokat orderi va yordamchisi.*

ОСНОВНАЯ ЗАДАЧА СТРАТЕГИИ РАЗВИТИЯ – УВАЖЕНИЕ ЧЕЛОВЕЧЕСКОГО ДОСТОИНСТВА

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Аннотация. *Роль адвоката очень важна в защите прав и интересов человека. Одной из главных задач на сегодняшний день является кардинальное повышение эффективности деятельности адвокатуры. В Стратегии развития на 2022-2026 годы предусмотрено 100 целей по 7 направлениям, так, данная статья посвящена институту адвокатуры, что является одним из самых актуальных вопросов. Кроме того, в данной статье подчеркивается, что одним из основных направлений являются повышение человеческого достоинства и дальнейшее развитие свободного гражданского общества, а главное, превращение принципов справедливости и верховенства закона в основополагающее и необходимое условие развития страны. В частности, представлены предложения по созданию условий для реализации и расширения прав адвоката на защиту прав и законных интересов человека, уравниванию процессуальных возможностей обвинения и защиты на основе принципа спорности на всех стадиях уголовного производства. Следуя этому, рассмотрен вопрос расширения прав адвоката при определении того, распространяется ли принцип состязательности и на досудебное производство. В целях совершенствования уголовно-процессуального законодательства по некоторым проблемам данного института даны научно-теоретические и практические рекомендации по механизму реализации приоритетных задач, поставленных в Стратегии развития.*

Ключевые слова: *стратегия, права человека, защита, адвокат, суд, правоохранительные органы, бесплатная юридическая помощь, ордер адвоката, помощник адвоката.*

THE MAIN OBJECTIVE OF THE DEVELOPMENT STRATEGY IS RESPECT FOR HUMAN DIGNITY

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Abstract. *The role of a lawyer is very important in protecting the rights and interests of a person. One of the main tasks today is a radical increase in the efficiency of the advocacy. The Development Strategy for 2022-2026 provides for 100 goals in 7 areas, and this article is devoted to the institution of advocacy, which is one of the most pressing issues. In addition, this article emphasizes that one of the main directions is to increase human dignity and further develop a free civil society, and most importantly, the transformation of the principles of justice and the rule of law into a fundamental and necessary condition for the development of the country. Thus, proposals are presented on creating conditions for the implementation and expansion of the rights of a lawyer to protect the rights and legitimate interests of a person, equalizing the procedural possibilities of prosecution and defense based on the principle of disputability at all stages of criminal proceedings. Therefore, the issue of expanding the rights of a lawyer in determining whether the adversarial principle also applies to pre-trial proceedings. To improve the criminal procedure legislation on some problems of this institution, scientific, theoretical, and practical recommendations are given on the mechanism for implementing the priority tasks set in the development strategy.*

Keywords: *strategy, human rights, defense, attorney, court, law enforcement agencies, free legal aid, attorney's warrant an attorney's assistant.*

Kirish

2022–2026-yillarga mo‘ljallangan taraqqiyot strategiyasida 7 ta yo‘nalishda 100 ta maqsad belgilangan bo‘lib, uning negizida “Inson qadri ustuvor bo‘lgan jamiyat va xalqparvar davlat” degan muhim g‘oya yotadi. Davlatimiz rahbari belgilab bergan bu ulug‘vor maqsad asosida xalqimiz yangidan-yangi islohotlarning haqiqiy mualliflga aylanib bormoqda. Shu munosabat bilan “Harakatlar strategiyasidan Taraqqiyot strategiyasi sari” tamoyili kelgusi besh yillikda mamlakatimizda amalga oshiriladigan islohotlarning zarur siyosiy-huquqiy, ijtimoiy-iqtisodiy va ilmiy-ma’rifiy asoslarini yaratib berishga qaratilgan. Taraqqiyot strategiyasi loyihasida belgilangan yo‘nalishlar yuzasidan inson qadrini yuksaltirish va erkin fuqarolik jamiyatini yanada rivojlantirish orqali xalqparvar davlat barpo etish, asosiysi, mamlakatimizda adolat va qonun ustuvorligi tamoyillarini taraqqiyotning eng asosiy va zarur shartiga aylantirish muhim yo‘nalishlardan biri hisoblanadi.

Mamlakatimizda adolat va qonun ustuvorligi tamoyillarini taraqqiyotning eng asosiy va zarur shartiga aylantirish yo‘nalishida quyidagi maqsadlarga erishishga qaratilgan 28 ta chora-tadbir belgilanmoqda: mulk huquqi daxlsizligini ishonchli himoya qilishni ta’minlash va qaror (harakat) noqonuniy emasligini sudda isbotlash majburiyatini mansabdor shaxsning o‘ziga yuklash (“aybsizlik prezumpsiyasi”) [1]; fuqarolarni yashash joyi bo‘yicha hisobga olish (“propiska”) tizimini yanada soddalashtirish va aholiga qo‘shimcha qulayliklar yaratish, tekshirish uchun fuqaroni ichki ishlar bo‘limiga olib borish o‘rniga barcha ma’lumotlarni joyida tekshirish tartibini joriy etish; jinoyat qonunchiligini liberallashtirish siyosatini izchil davom ettirish, jazoni o‘tab bo‘lganlarni jamiyatga qaytarish va ularga tadbirkorlik loyihasini amalga oshirish uchun “dastlabki ijtimoiy-moddiy yordam paketi”ni berish tizimini joriy etish; ma’muriy adliyani rivojlantirish orqali davlat organlari va mansabdor shaxslar faoliyati ustidan samarali sud nazoratini o‘rnatish; huquqni muhofaza qiluvchi organlarning yangi qiyofasini shakllantirish, ularning faoliyatini xalq manfaatlariga xizmat qilish hamda fuqarolarning huquq va erkinliklarini ta’minlashga yo‘naltirish; advokatura institutining inson huquqlari, erkinliklari va qonuniy manfaatlarini himoya qilish salohiyatini tubdan oshirish, uning institutsional mustaqilligini ta’minlash masalalariga e’tibor berilgan.

Tadqiqotning dolzarbligi

Yuqorida qayd etilgan eng dolzarb maqsadlardan biri advokatura institutini takomillashtirish hisoblanadi. Inson huquqlari va manfaatlarini himoya qilishda advokatning o‘rni muhimdir. Bugungi kunda 80 000 dan ortiq advokatlar va 200 dan ortiq advokatlar assotsiatsiyalari hamda 170 dan ortiq huquqshunoslik jamiyatlarini birlashtirgan holda faoliyat olib boruvchi Xalqaro advokatlar Assotsiatsiyasi advokatlarning tashqi aralashuvsiz o‘z kasbiy faoliyati bilan mustaqil shug‘ullanishini qo‘llab-quvvatlashni o‘z oldiga maqsad qilib qo‘yganligi ham butun dunyoda advokatlik kasbiga qaratilayotgan e’tibordan dalolat beradi.

Advokat huquqlarining [2] amalga oshirilishi va kengaytirilishi uchun shart-sharoitlar yaratilishi inson huquqlari va qonuniy manfaatlarining muhofazasiga xizmat qiladi. Shu o‘rinda aytish kerakki, bugungi kunda respublikamizda advokat huquqlarini kengaytirish borasida ko‘plab sa’y-harakatlar amalga oshirilmoqda. Jumladan, advokatlarning o‘z kasbiy faoliyatlarini amalga oshirishlari uchun zarur huquqiy maydon va jinoyat protsessida ayblov tarafi [3] bilan teng imkoniyatlarga ega bo‘lishi uchun yetarli sharoit yaratish dolzarb ahamiyat kasb etmoqda. Ma’lumki, jinoyat protsessining [4] barcha bosqichlarida tortishuv prinsipi asosida ayblov va himoya taraflarining protsessual imkoniyatlari tenglashtirib borilmoqda. Shunga ko‘ra, tortishuv prinsipini ishni sudga

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qadar yuritishda ham amal qilishini belgilash asnosida advokat huquqlarini kengaytirish maqsadga muvofiqdir.

Material va metodlar

Tadqiqotda jinoyat protsessida advokat ishtirokini yanada kengaytirish nuqtai nazaridan advokatura institutining yanada takomillashtirishi masalalari bo‘yicha qonunchilik normalari va huquqshunos olimlarning ilmiy-nazariy qarashlaridan foydalanilgan.

Tadqiqot davomida qiyosiy-huquqiy usul, tahlil, sintez va boshqa usullar qo‘llanilgan.

Tadqiqot natijalari

Inson huquqlarini himoya qilish tizimini takomillashtirishni yangi bosqichga ko‘tarish, shaxsning huquq va erkinliklarini ishonchli himoya qilish, jinoyat ishlarini yuritishning barcha bosqichlarida advokat nufuzi [5] va protsessual maqomini [6] oshirish, sud va huquqni muhofaza qiluvchi organlar [7] hamda nazorat organlari faoliyatida fuqarolarning huquq va manfaatlarini [8] himoya qilish kafolatlarini ta’minlash, fuqarolarning huquqni muhofaza qilish tizimiga bo‘lgan ishonchini mustahkamlashga qaratilgan chora-tadbirlar izchil amalga oshirilmoqda. 2018-yil 12-maydagi “Advokatura instituti samaradorligini tubdan oshirish va advokatlarning mustaqilligini kengaytirish chora-tadbirlari to‘g‘risida”gi PF–5441-sonli, 2020-yilning 10-avgustdagi “Sud-tergov faoliyatida shaxsning huquq va erkinliklarini himoya qilish kafolatlarini yanada kuchaytirish chora-tadbirlari to‘g‘risida”gi PF–6041-sonli farmonlari, shuningdek, 2019-yil 13-dekabrdagi “Konstitutsiya va qonun ustuvorligini ta’minlash, bu borada jamoatchilik nazoratini kuchaytirish hamda jamiyatda huquqiy madaniyatni yuksaltirish bo‘yicha chora-tadbirlar to‘g‘risida”gi PQ–4551-sonli qarorida belgilangan vazifalarni amalga oshirishga katta e’tibor berilmoqda.

Ko‘plab qabul qilinayotgan farmon va qonunlar yuzasidan aytish mumkinki, bugungi kunda advokatura faoliyatiga oid qonunchilik hujjatlarini yanada tizimlashtirish va to‘g‘ridan-to‘g‘ri amal qiluvchi qonun ishlab chiqish zarurati mavjud. Advokatura to‘g‘risidagi qonunga ko‘ra, advokatga nisbatan bir qancha talablar [9] qo‘yilgan. Hozirda advokatlik litsenziyasini olish uchun yuridik mutaxassislik bo‘yicha 2 yillik ish staji talab qilinadi. O‘zbekiston Respublikasi Vazirlar Mahkamasining “Advokatlik faoliyatini litsensiyalash va advokatlik tuzilmalarini tashkil etish tartibini takomillashtirish to‘g‘risida”gi qaroriga ham qo‘shimcha o‘zgartishlar kiritish vaqti keldi. Yana bir masalaga to‘xtalib o‘tsak: hozirda advokatlarning 60 foizi deyarli 50 yoshdan oshgan shaxslardir. 30 yoshga to‘lmagan yoshlar ushbu sohada juda kam. Bu, albatta, muammoli masala hisoblanadi.

Bugungi kunda aholi sonidan kelib chiqib, yetuk malakaga ega mutaxassis kadrlar hisobidan advokatlar [10] sonini ko‘paytirish muhimdir. Yoshlarning ushbu sohaga kirib kelishi uchun malaka talablari qatoridan 2 yillik yuridik stajga oid talabni bekor qilish maqsadga muvofiq. Shuningdek, oliy yuridik ma’lumotli shaxslarga 3 oylik stajirovkadan keyin advokatlik imtihonini topshirish imkoniyatini yaratish hamda stajirovka o‘tamasdan advokatlik litsenziyasi olishi uchun imtihon topshirishga ruxsat berilishi zarur. Yana bir masala: oliy yoki hududiy malaka komissiyasi qarori asosida advokatlik litsenziyasini “Litsenziya” axborot tizimi orqali rasmiylashtirish tartibini joriy etish o‘z samarasini beradi, deb hisoblaymiz.

Tadqiqot natijalari tahlili

Shuningdek, bakalavr va magistr talabalarning o‘qishdan bo‘sh vaqtlarida advokat yordamchisi bo‘lib amaliyotni o‘rganishga katta qiziqishlari bor. Bakalavr talabalari da’vo arizalarini tuzish, rasmiylashtirishda fuqarolarga bepul yordam berib, huquqiy maslahatlar berib bormoqda. Shundan kelib chiqib aytadigan bo‘lsak, oliy yuridik ta’lim muassasalarining bakalavr yo‘nalishida tahsil olayotgan bitiruvchi kurs talabalariga o‘qishdan bo‘sh vaqtlarida advokat yordamchisi sifatida ishlash huquqini berish kela-

jakda yosh advokatlar soni oshishiga xizmat qiladi.

Shuningdek, Taraqqiyot strategiyasi asosida advokatlik faoliyatiga zamonaviy axborot texnologiyalarini joriy qilish orqali ortiqcha byurokratiya va qog‘ozbozlikka chek qo‘yish, sudlar, huquqni muhofaza qiluvchi organlar va boshqa davlat organlari bilan elektron hujjatlar almashinuvini yo‘lga qo‘yish ayni muddaodir.

Xulosalar

Taraqqiyot strategiyasi sudlar tizimida “yagona darcha” tamoyilini keng joriy etish maqsadida arizalarning sudga taalluqliligidan qat’i nazar, qabul qilish va vakolatli sudga yuborish hamda muayyan ish doirasida barcha huquqiy oqibatlarni hal qilishni ta’minlash tizimini joriy etish masalasiga ham to‘xtab o‘tilgan bo‘lib, ushbu masala fuqarolarni ortiqcha ovoragarchiliklardan xalos etadi. Ma’muriy, fuqarolik ishlarida ijtimoiy himoyaga muhtoj shaxslarni advokat bilan bepul ta’minlash masalasi ham muhimdir. Sababi fuqaro ariza bilan sudga [11] biror-bir masala bo‘yicha murojaat qilganda [12], uning murojaati [13] e’tibordan chetda qolmaydi.

Ma’lumki, Jinoyat protsessual kodeksi 87-moddasining ikkinchi qismida advokatning dalillarni to‘plash huquqi mustahkamlangan. Lekin JPKning dalillar turlari deb nomlangan 81-moddasi 1-qismida dalil hisoblanadigan ma’lumotlarni aniqlovchi shaxslar tarkibida himoyachi ko‘rsatib o‘tilmaganligini esa yana ayblov tomonining ustunligi deb baholash mumkin. Shu jihatdan protsessual qonunchilikda [14] advokatning dalillarni to‘plash va taqdim etishga oid vakolatlarini [15] kengaytirish himoya tomonining salmog‘ini yanada orttiradi, deb hisoblaymiz.

Shuningdek, advokatlar, sudlar, huquqni muhofaza qiluvchi organlar va boshqa davlat organlari o‘rtasida hujjatlar almashinuvini ta’minlovchi “Yuridik yordam” elektron tizimini yaratish va advokatning protsessda ishtirokini ta’minlashni soddalashtiruvchi “Elektron advokat orderi”ni joriy etish ham jinoyat sudlov ishlarini soddalashtirishga xizmat qiladi. Yana bir asosiy masalalardan biri davlat hisobidan ijtimoiy himoyaga muhtoj fuqarolarga bepul yuridik yordamni jinoyat ishlari bilan bir qatorda fuqarolik va ma’muriy ishlar bo‘yicha ham ko‘rsatish tizimini joriy etish fuqarolarning davlat himoyasida ekanligini tasdiqlaydi.

Xulosa qilib aytganda, advokatlik maqomini yanada mustahkamlash va uning faoliyat mexanizmini tartibga soluvchi normalarni ishlab chiqish orqali jinoyat-protsessual qonun hujjatlarini takomillashtirish bugungi kunning dolzarb vazifalaridan biri hisoblanadi.

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TERGOV SUDYASI JINOYAT PROTSESSINING SUDGACHA BO‘LGAN BOSQICHIDA SHAXS HUQUQLARINING KAFOLATI SIFATIDA

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Annotatsiya. *Mamlakatimizda inson huquqlarini himoya qilish tizimini takomillashtirishni yangi bosqichga ko‘tarish, shaxsning huquq va manfaatlarini ishonchli himoya qilish, jinoyat ishlarini yuritishning barcha bosqichlarida advokat nufuzi va protsessual maqomini oshirish, sud va huquqni muhofaza qiluvchi organlar faoliyatida fuqarolarning huquq va manfaatlarini himoya qilish kafolatlarini ta’minlash, fuqarolarning huquqni muhofaza qilish tizimiga bo‘lgan ishonchini mustahkamlashga qaratilgan chora-tadbirlar olib borilmoqda. Amalga oshirilayotgan islohotlarga qaramasdan, tahlillar shuni ko‘rsatmoqdaki, himoyachining o‘z kasbiy faoliyatini amalga oshirishi uchun to‘laqonli huquqlarga ega emasligi, ularni amalga oshirish mexanizmining yetarli darajada ishlab chiqilmaganligi hamda muayyan to‘siqlarning, jumladan, isbot qilish jarayonidagi ishtiroki va dalillar to‘plash bilan bog‘liq huquqlarini amalga oshirishdagi qonunchilik kollizion normalarining mavjudligi ushbu sohani tadqiq etish zaruriyatidan dalolat beradi. Sud-tergov amaliyotini tahlil qilish natijalari jinoyat protsessida shaxsning huquq va erkinliklarini himoya qilish kafolatlarini ta’minlash bo‘yicha mexanizmlar to‘liq ishga solinmaganligidan, shuningdek, qonunchilikda jinoyat ishlarini tergov qilish bo‘yicha huquqni muhofaza qiluvchi organlarning vakolatlarini aniq belgilash bilan bog‘liq bo‘shliqlar mavjudligini ko‘rsatmoqda. Mazkur maqolada aynan himoyachining haq-huquqlarini ta’minlash masalasi tahlil qilingan.*

Kalit so‘zlar: *jinoyat, himoyachi, gumon qilinuvchi, taraflar tortishuvi, huquq, erkinlik, majburiyat, tergov sudyasi.*

СЛЕДСТВЕННЫЙ СУДЬЯ КАК ГАРАНТ ПРАВ ЛИЧНОСТИ НА ДОСУДЕБНОЙ СТАДИИ УГОЛОВНОГО ПРОЦЕССА

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Аннотация. *Поднятие на новый уровень и совершенствование системы защиты прав человека в стране, надежная защита прав и интересов личности, повышение престижа и процессуального статуса адвоката на всех стадиях уголовного судопроизводства, обеспечение гарантий защиты интересов граждан, прав и интересов в суде и правоохранительных органах – все эти меры укрепляют доверие граждан к правоохранительной системе. Несмотря на осуществляемые реформы, анализ показывает, что защитник не обладает полными правами на осуществление своей профессиональной деятельности, недостаточно разработан механизм их реализации, существуют определенные препятствия, в том числе по участию его в процессе доказывания, противоречащие нормы при осуществлении доказывания, поэтому существование этих проблем указывает на необходимость изучения этой области. Результаты анализа судебной практики показывают, что механизмы обеспечения защиты прав и свобод личности в уголовном судопроизводстве реализованы не в полной мере, а также имеются пробелы в законодательстве, не позволяющие четко определить полномочия правоохранительных органов при проведении расследования уголовного дела. В данной статье анализируется вопрос защиты прав адвокатов.*

Ключевые слова: *преступление, защита, подозреваемый, судебное разбирательство, права, свободы, обязанности, следственный судья.*

INVESTIGATING JUDGE AS A GUARANTOR OF INDIVIDUAL RIGHTS AT THE PRE-TRIAL STAGE OF CRIMINAL PROCEEDINGS

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Abstract. *In our country, measures are being taken on raising to a new level of improvement in the human rights protection system, protecting the rights and interests of the individual, increasing the prestige and procedural status of a lawyer at all stages of criminal proceedings, ensuring guarantees for protecting the interests of citizens, providing rights and interests of citizens in court and law enforcement, and building confidence for the system. Despite the reforms, the analysis shows that the defender does not have full rights to carry out his professional activities, the mechanism for their implementation is not sufficiently developed, and there are certain obstacles, including participation in the process of proving and contradictory norms in the implementation of proving, the existence indicates the need to study in these areas. The results of the analysis of judicial practice show that the mechanisms for ensuring the protection of the rights and freedoms of the individual in criminal proceedings are not fully implemented, and there are also gaps in the legislation that make it possible to clearly define the powers of law enforcement agencies to conduct an investigation. This article analyzes the issue of protecting the rights of lawyers.*

Keywords: *crime, defense, suspect, trial, rights, freedoms, duties, investigating judge.*

Kirish

Ma’lumki, jinoyat protsessining barcha prinsiplari o‘z tizimining asosiy elementlari sifatida harakat qilib, o‘zaro uzviy va chambarchas bog‘liq bo‘lgan asosiy huquqiy qoidalar tizimidir. Shu bilan bir qatorda, jinoyat protsessi tamoyillarining har biri ishtirokchilarning jinoyat-protsessual faoliyatini amalga oshirish nuqtai nazaridan alohida bir huquqiy hodisa o‘rnida qaralishi kerak.

Shu jumladan, tortishuv tamoyili jinoyat protsessul huquqining markaziy va asosiy prinsiplari qatorida bo‘lib, ushbu prinsip jinoyat-protsessual qonunchiligining asosi va mazmunini anglatadi, jinoyat-protsessual huquqining ko‘p jihatlarini o‘zgartirib yuboradi.

Mamlakatimizda shaxsning huquq va erkinliklarini ishonchli himoya qilish, uning sha’ni va qadr-qimmatini hurmat qilish, sud ishlarini yuritishning barcha bosqichlarida taraflarning tortishuv tamoyili qo‘llanilishini yanada kengaytirish hamda ushbu sohada xalqaro standartlar va ilg‘or xorijiy tajribani joriy etishga qaratilgan bir qator qonun hujjatlari qabul qilindi.

Xususan, O‘zbekiston Respublikasi Prezidentining 2018-yil 14-maydagi PQ–3723-son qarori bilan tasdiqlangan O‘zbekiston Respublikasining jinoyat va jinoyat-protsessual qonunchiligini takomillashtirish Konsepsiyasida advokatlarning protsessual huquq va vakolatlarini kuchaytirish orqali taraflarning o‘zaro tortishuv tamoyilini amalda ro‘yobga chiqarish, ularning haqqoniy mustaqilligini ta’minlash, shuningdek, “xabeas korpus” institutini amalga oshirish ko‘lami, shu bilan birga, jinoyat protsessining sudgacha bo‘lgan bosqichida qo‘llaniladigan protsessual qarorlar va tergov organi harakatlari ustidan sudga shikoyat qilish institutini joriy etish orqali kengaytirish masalalari ustuvor vazifa sifatida belgilab berilgan [1].

Binobarin, protsessualist olim V.V. Novik o‘z o‘rnida «Nizoni adolatli hal etish imkoniyatini yaratuvchi va to‘g‘ri qaror qabul qiluvchi tortishuv huquqiy madaniyatning eng qimmatli yutug‘i deb e’tirof etiladi» [2, 89-b.], deya qayd etib o‘tgan.

Shu o‘rinda tortishuv prinsipining mazmuniga to‘xtalib, shuni aytish mumkinki, tortishuv prinsipi himoya huquqining asosiy kafolati sifatida namoyon bo‘ladi, ya’ni mazkur prinsipning amal qilishi ish yuzasidan “tarafdor” va “qarshi” xususiyatga ega bo‘lgan barcha fikrlarni taqqoslash yo‘li orqali haqiqatni aniqlashga erishish imkonini beradi. Tortishuv prinsipining ta’minlanmasligi gumon qilinuvchi (ayblanuvchi)ning himoya huquqi buzilishi hisoblanadi, chunki himoya huquqi ayblovni rad etish huquqisiz mavjud bo‘lishi mumkin emas [3, 65-b.]. Tortishuv prinsipining ta’minlanishi esa himoyachi huquqlarining amalga oshishi va uning protsessual imkoniyatlari kengayishiga olib keladi. Tortishuv prinsipining mazmuni va ahamiyati haqida to‘xtalib, M.S. Jamborov quyidagilarni ta’kidlaydi: “Tortishuv prinsipining mazmunini taraflarga o‘zlaridagi mavjud dalillar asosida xolis sud ishtirokida o‘z huquqiy pozitsiyasini namoyon etish va qarshi tarafning dalillariga nisbatan bahsga kirishish imkonini beruvchi sud ish yurituvi davomida haqiqatni aniqlashga qaratilgan qonuniy usul va uslublar tashkil etadi [4, 325-b.]”.

K. Gusenko esa tortishuv prinsipining amal qilishi yuzasidan quyidagi fikrlarni bildirib o‘tadi: “Ayblov xulosasidan kelib chiqadigan tortishuv prinsipi anglo-sakson huquq tizimi amal qiladigan davlatlarda eng ko‘p tarqalgan. Uning bugungi kunda keng yoyilgan klassik modeliga ko‘ra, tortishuv bu – davlat va jinoiy javobgarlikka tortilayotgan fuqaro o‘rtasidagi sud jarayonidagi tortishuvdan iboratdir. Bu tortishuvda taraflar dalillarni to‘plash, taqdim etish, tekshirish, tahlil qilish hamda aniq bir ish yuzasidan muayyan dalillarni ilgari surishda teng huquqiy imkoniyatlarga ega. Umuman olganda, taraflar ushbu teng imkoniyatlarga nafaqat sud bosqichida, balki ish yuritishning

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sudga qadar bo‘lgan bosqichlarida ham to‘liq ega bo‘lishlari kerak” [5, 264-b.].

Shu o‘rinda ta’kidlash o‘rinliki, taraflarning dalillarni to‘plash va o‘z pozitsiyasini isbot qilish bilan bog‘liq protsessual harakatlari sud muhokamasi jarayoniga kelib, yana yangidan qayta amalga oshiriladi. Bunda yuz beradigan takrorlanish yoki jarayonning qayta amalga oshirilishi holatining oldini olish maqsadida ishni sudga qadar yuritish bosqichlarida taraflar tomonidan to‘plangan dalillarning xolis organ bo‘lgan sud (tergov sudyasi) tarafidan ko‘rib chiqilib, ularga baho berish mexanizmini yo‘lga qo‘yish maqsadga muvofiqdir.

Shu sababli amaldagi Jinoyat-protsessual kodeksida belgilangan (25-modda) tortishuv prinsipining nafaqat ishlar sudda ko‘rilayotganda [6, 322-b.], balki ishni sudga qadar yuritishdayoq amal qilishiga erishish fuqarolarning konstitutsiyaviy huquqi hisoblangan himoya huquqi ta’minlanishi uchun sharoit yaratib beradi. Zero, taraflarning ishni sudga qadar yuritish bosqichlaridayoq teng huquqiy imkoniyatlarga ega bo‘lishi ushbu ish bo‘yicha adolatli sud hukmi chiqarilishiga erishishning kafolati sifatida asosiy o‘rinni egallaydi.

Shu sababli ham sud-tergov amaliyotida qandaydir yuzaki o‘zgarishlar emas, balki yangicha qarash va zamonaviy talablarga asoslangan tartib va tamoyilni o‘rnatish bugungi kun talabidir. Tortishuv prinsipining umume’tirof etilgan xalqaro hujjatlarda o‘z aksini topgan prinsip ekanligidan kelib chiqadigan bo‘lsak, ushbu prinsip nafaqat birinchi instansiya sudlarining sud majlislarida va ishlar yuqori instansiya sudlarida ko‘rilayotganda amal qilishi, balki jinoyat protsessida mavjud bo‘lgan barcha bosqichlarida, shu jumladan, ishni sudga qadar yuritish bosqichida ham amal qilinishi ta’minlanishiga erishish lozim.

Amaliyotda haqiqiy ma’nodagi jinoyat protsessi taraflarining o‘zaro teng huquqliligi va tortishuvchanlik sharoitini yuzaga chiqarish, himoyachining ish faoliyati davomida yuzaga kelayotgan to‘siqlarni bartaraf etish, uning protsessual haq-huquqlari hajmini kengaytirishga erishish muhim ahamiyat kasb etadi.

Material va metodlar

Mazkur ilmiy maqolani tayyorlashda ilmiy bilishning mantiqiy va ilmiy uslublaridan foydalanilgan, xususan, mantiqiy tahlil, sintez, tarixiy, qiyosiy-huquqiy kabi uslublar qo‘llanilgan. Bundan tashqari, empirik materiallar, xususan, statistika ma’lumotlari, ijtimoiy so‘rov natijalari, xorijiy davlatlar qonunchiligi va amaliyoti tahlil qilindi.

Tadqiqot natijalari

Himoyachining o‘z faoliyatini samarali yuritishi va jinoyat ishi yuzasidan yetarli dalillar to‘plashi oqibatida tergovchi hamda prokuror ko‘p hollarda o‘z kasbiy faoliyati nuqtai nazaridan kelib chiqib manfaatdor bo‘la olmaydi. Misol o‘rnida keltirib o‘tadigan bo‘lsak, ekspertiza tayinlash to‘g‘risidagi qaror tarkibida himoyachini qiziqtirishi mumkin bo‘lgan va ish bo‘yicha holatni aniqlashtirishga ko‘maklashuvchi savollarning aks etishi surishtiruvchi, tergovchi yoki prokurorning irodasiga bog‘liq ekanligi himoyachi faoliyatida to‘siqlar yuzaga kelishiga olib keladi, ayblov tarafiga esa bu holat ustunlik beradi. Oqibatda esa himoyachining o‘z faoliyatini muvaffaqiyatli olib borishini qiyinlashtiradi. Bunday holatni nemis huquqshunosi Ferdinand Lassal so‘zlari bilan ifodalaydigan bo‘lsak, “qonuniy, asoslangan va adolatli sud hukmiga erishish uchun prokuror yuzdan oshiq politsiyachidan iborat butun boshli komanda bilan harakat qilsa, advokat esa bu yo‘lda yolg‘iz o‘zi harakat qiladi va kurashadi” [7, 165-b.].

Shu jumladan, himoyachining ayblovchi tomon bilan o‘zaro teng imkoniyatlardan foydalanishi uchun uning xolis organ sifatida sudga murojaat etishi orqali o‘z imkoniyatlarini kengaytirishi maqsadga muvofiqdir. Ammo amalda faoliyat yurituvchi sudlarga biror-bir ishni sudga qadar yuritishda taraf-

larning o‘zaro tengligi va tortishuvni nazorat qilish vazifasini yuklab bo‘lmasligining qator omillari mavjud bo‘lib, ularni quyida keltirib o‘tamiz:

Birinchidan, ba’zi bir tadqiqotchilarning qayd etishicha, sudyaning ayblov tarafi tomonidan to‘plangan dalillarni baholash uchun kirishishi jinoyat ishini ko‘rish va hal etishning xolisligiga shubha uyg‘otadi. Shu sababdan ham gumon qilinuvchi yoki ayblanuvchini qamoqqa olish asoslarini belgilab bergan sudya uning aybliligi to‘g‘risidagi masalani hal qilishi mumkin emas [6, 314-b.].

Ikkinchidan, sudyaning ishni sudga qadar bo‘lgan bosqichda yuritishdagi har qanday xulosasi muayyan bir darajada ayblilik to‘g‘risidagi masalasini hal qiladi, bu esa kelajakda ushbu shaxsga nisbatan bo‘ladigan sud muhokamasi jarayonida ayblilik masalasini hal qilishda sudyaning betaraflik prinsipiga daxl etishi mumkin [8, 87-b.].

Yuqorida keltirilgan holatlarga qo‘shimcha tarzda ishni sudga qadar yuritishda sud nazorati zarurligini asoslash asnosida B. Mo‘minov: “Faqatgina ishni mazmunan ko‘rish va hal qilish majburiyatidan ozod etilgan sudyagina ishni sudga qadar yuritishda sud nazoratini xolis amalga oshirishi mumkin”, degan fikrni bildirib o‘tadi [6, 225-b.]. Xorijiy ekspertlar ishni sudga qadar yuritish bosqichida sud tomonidan hal etiladigan masalalarni ishni mazmunan ko‘rib chiqishdan uzviy ajratish, shu bilan birga, ishni sudga qadar yuritish bosqichi ustidan sud nazoratini yanada kuchaytirishni tavsiya etadi [9, 163-b.].

Biz ham ushbu fikrlarga qo‘shilgan holda, aynan ishni sudga qadar bo‘lgan bosqichda yuritishda taraflar o‘z huquqlaridan emin-erkin foydalanishlari va o‘zlarining protsessual majburiyatlarini bajarishlari uchun ushbu jarayonda xolislik hamda beg‘arazlikni ta’minlab beruvchi jinoyat ishlari bo‘yicha tuman (shahar) sudlari tarkibida tergov sudyasi lavozimini joriy qilish maqsadga muvofiq deb hisoblaymiz. Tergov sudyasi tomonidan sud nazoratining amalga oshirilishi, ishni sudgacha bo‘lgan bosqichda yuritishda haqqoniy tortishuvchanlik muhitini yaratadi. Sababi himoyachining iltimosnomasini endi ishni sudga qadar yurituvchi organlar hal qilmaydi, balki bu orqali kuchlar muvozanati yaratiladi. Bu, o‘z navbatida, jinoyat protsessida himoyachining mavqeyi oshishiga, uning isbotlash jarayonida qatnashish huquqini real ta’minlashga xizmat qiladi. Sababi dalillarni topish va mustahkamlash yuzasidan asosli iltimosnomasi rad qilingan hollarda, tergov sudyasi unga mazkur huquqidan foydalanish imkonini kafolatlaydi. Shu bilan birga, uning keyinchalik ishni mazmunan ko‘rish majburiyatidan xalos etilishi uning ichki mustaqilligini ta’minlaydi, ya’ni uning qabul qilgan qaroriga kelgusida bog‘lanib qolishining oldi olinadi [6, 249-b.].

Shu o‘rinda tergov sudyasining kimligi va uning jinoyat protsessidagi maqomiga to‘xtalib o‘tish o‘rinlidir. Qozog‘iston Respublikasi JPKning 54-moddasi 3-qismiga muvofiq, tergov sudyasi – tegishlicha birinchi instansiya sudining raisi tomonidan tayinlanadigan, sudga qadar tergovga jalb qilingan shaxslarning huquqi va erkinliklari, ularning qonuniy manfaatlarini ta’minlash yuzasidan sud nazoratini amalga oshirish vakolatiga ega bo‘lgan sudyadir [9, 118-b.].

B. Mo‘minov tergov sudyasiga quyidagicha ta’rif beradi: “Tergov sudyasi – ishni sudga qadar yuritish bosqichida, ishni sudga qadar yuritish uchun mas’ul organlarning iltimosnomalari va manfaatdor shaxslarning shikoyatlarini ko‘rib chiqish va hal qilish orqali shaxslarning huquq va erkinliklari, qonuniy manfaatlari ta’minlanishi ustidan sud nazoratini amalga oshirishga vakolatli sudyadir” [6, 249-b.].

S. Adilov esa tergov sudyasi ishni sudga qadar yuritish jarayonida kelib chiqadigan masalalar yuzasidan xolis va mustaqil hakam bo‘lishi mumkinligi, chunki u keyingi sud in-

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stansiyalarida odil sudlovni amalga oshirishdan chetlatilgan bo‘lishini e’tirof etadi [10, 166-b.].

Shu tariqa aytishimiz mumkinki, tergov sudyasi – sudga qadar bo‘lgan bosqichda ish yuritish faoliyatini olib boruvchi, ayblov va himoya taraflarining o‘zaro harakatlarini muvofiqlashtiruvchi, nazorat qiluvchi hamda ularning o‘z huquq va vakolatlarini to‘laqonli amalga oshirishlari uchun muhim bo‘lgan barcha shart-sharoitlarni yaratib beruvchi mansabdor shaxs hisoblanadi. Vakolat chegarasiga ko‘ra, tergov sudyasining zimmasiga O‘zbekiston Respublikasi JPKda keltirib o‘tilgan ishni sudga qadar yuritish bosqichida sud qarori (ajrimi) talab etiladigan protsessual harakatlar yuzasidan sud vakolatlarining barchasi o‘tkaziladi. E’tiborli jihati shundaki, tergov sudyasining ish bo‘yicha xolislik va taraflar tengligi ta’minlanishi nuqtai nazaridan kelib chiqib, unga ayblovchi tarafning bir nechta vakolatlari, shu jumladan, qamoqqa olish (yoki uy qamog‘i) ehtiyot chorasini o‘zgartirish, mol-mulkni xatlash (taqiqdan yechish), ekspertiza, taftish tayinlash to‘g‘risida qarorlar qabul qilish, tergovga qadar tekshiruvni amalga oshiruvchi mansabdor shaxs, surishtiruvchi va tergovchining qonunga zid bo‘lgan hamda asossiz qabul qilingan qarorlarini bekor qilish kabi vakolatlarining o‘tkazilishi maqsadga muvofiqdir. Shuningdek, tergov sudyasining advokat so‘rovi bo‘yicha mansabdor shaxs tomonidan rad javobi berilgan taqdirda, tegishli tartibda yuridik yordam ko‘rsatish, o‘z himoyasi ostidagi shaxsning manfaatlarini himoya qilish uchun muhim bo‘lgan har qanday ma’lumot, hujjat yoki narsalarni talab qilish to‘g‘risidagi himoyachining iltimosnomasini ko‘rib chiqish va tegishli tartibda organlarga so‘rov yuborish, sudga qadar bo‘lgan bosqichda ishni yuritishda himoyachi iltimosnomasiga binoan, qonun bilan muhofaza etiluvchi sirni tashkil etuvchi hujjatlarni so‘rovnoma bilan olish va himoyachiga taqdim qilish, jinoyat ishini sud muhokamasi uchun tayyorlash kabi vakolatlarga ega bo‘lishi muhim ahamiyat kasb etadi. Ya’ni tergov sudyasi dalillarni bir yoqlama to‘plash amaliyotiga barham beradi, dalillar tortishuv muhitida to‘planib, ularning haqqoniyligi va ishonchliligi ta’minlanadi, bu esa haqiqatni aniqlashga xizmat qiladi.

Shu asnoda ish yuzasidan xolislik ta’minlanishiga to‘sqinlik qiluvchi ko‘plab vakolatlarning boshqa bir mustaqil organning ish yurituviga o‘tkazilishi oqibatida ishni sudga qadar yuritish bosqichida taraflarning tengligi ta’minlanishi, ushbu jarayonda ayblov va himoya faoliyati ustidan sud nazoratining muvaffaqqiyatli amalga oshirilishi, shu bilan birga, himoyachi tomonidan o‘z xizmat faoliyatini amalga oshirishida keng imkoniyat va qulayliklar yaratilishiga erishish mumkin. Zero, tergov sudyasi faoliyatining yo‘lga qo‘yilishi jinoyat ishlarini shaffof va teng huquqlilik asosida olib borishga sharoit yaratib beradi. Ishni sudga qadar yuritishda tergov sudyasi faoliyatining yo‘lga qo‘yilishi, bir tomondan, ishni sudga qadar yuritishda taraflar tortishuvi prinsipi amal qilishiga imkon bersa, ikkinchi tomondan, dalillar baholanishining haqqoniyligiga erishish imkonini beradi. Bular birgalikda birinchi instansiya sudida taraflar o‘rtasidagi ehtimoliy nizolar bartaraf etilishini ta’minlaydi [7, 52-b.]. A. Davletov ta’kidlaganidek, ishni sudga qadar yuritish bosqichlarida taraflar tengligi va tortishuv prinsipi ta’minlanishi uchun eng kamida amaldagi dastlabki tergov tizimini tubdan o‘zgartirish kerak. Tergov sudyasi institutini joriy etib, himoya tarafiga ham bir vaqtning o‘zida tergov qilish huquqini taqdim etish hamda isbotlashda taraflarning teng huquqlar bilan ta’minlanishi talab etiladi [11, 22-b.].

Amaldagi qonunchilikda sud nazoratini amalga oshirishning samarali va optimal mexanizmlari yaratilmaganligi O‘zbekiston Respublikasi JPKning 27-moddasida qayd etilgan protsessual harakat va qarorlar yuzasidan shikoyat qilish huquqi

hamda O‘zbekiston Respublikasining “Sudlar to‘g‘risida”gi Qonunining 14-moddasida belgilangan sud himoyasida bo‘lish huquqini cheklaydi. Tergov sudyasi qamoqqa olish, tintuv o‘tkazish, DNK tahlillarini o‘tkazish, telefon-so‘zlashuv qurilmalarini eshitish kabi prokuror murojaatlari bo‘yicha tegishli tartibda qaror qabul qilish mas’uliyatini o‘z zimmasiga oladi. Tergov sudyasi faoliyati muhim ahamiyat kasb etishi tegishincha advokat faoliyatiga ham ta’sir etmasdan qolmaydi. U politsiya va prokuratura harakatlarini ko‘rib chiqqan holda, ushbu organlar faoliyatining muvofiqligi va qonuniyligini tekshiradi. Bundan tashqari, tegishli tartibda politsiyaning harakatlarini cheklaydi. Bu esa, o‘z navbatida, advokatlar uchun muhim ahamiyat kasb etadi. Vaholanki, ish tergov sudyasi qo‘lida bo‘lgan vaqt davomida u himoyachi ish materiallari bilan tanishib chiqmaguniga qadar qaror qabul qilmaydi. Bu esa, o‘z navbatida, himoyachining ish faoliyatiga ijobiy ta’sir etibgina qolmay, himoyachi uchun ish yuzasidan prokuratura idoralarida mavjud bo‘lgan jami ma’lumotlar bilan o‘z vaqtida tanishish imkoniyatini beradi. Natijada advokat o‘z himoyasini to‘g‘ri va samarali amalga oshirishga erishadi. Shu orqali taraflar teng imkoniyatlarda harakatlanishi mumkin bo‘ladi [12, 7-b.].

Hozirgi vaqtda MDH va boshqa mamlakatlarda ham tergov sudyasi institutini joriy etish ishlari keng amalga oshirilmoqda. Xususan, 2002-yilda Litva (JPK 158-m.), 2003-yilda Moldaviya (JPK 41-m.) va Estoniya (JPK 21-m.), 2005-yilda Latviya (JPK 210-m.), 2013-yilda Ukraina (JPK 3-m.), 2015-yilda esa Qozog‘iston (JPK 55-m.), Gruziya (JPK 20-m.) va Qirg‘iziston (JPK 31-m.)da ushbu institut joriy etildi. Armanistonda esa tergov sudyasi institutini joriy qilish masalasi ko‘rib chiqilmoqda [13].

Xulosalar

Xulosa o‘rnida aytish mumkinki, yuqoridagilardan kelib chiqib, tergov sudyasi institutini qonunchilikka implementatsiya qilish va uning faoliyat mexanizmini tartibga solish maqsadida JPKning 28-moddasini yangi tahrirda bayon etishni taklif etamiz.

Yuqorida keltirilgan fikrlardan xulosa qilib aytganda, sud muhokamasining sud tergovi jarayoni tortishuv prinsipini amalga oshirishning muhim bosqichi sanaladi. Xususan, ushbu tamoyilni to‘liq ta’minlash maqsadida sud tergovida amalga oshiriladigan dalillarni tekshirish navbatini aniq belgilash, sudlanuvchini taraflar tomonidan so‘roq qilish ketma-ketligini tartibga solish, shuningdek, sudning protsessda faol rolini kamaytirib, ko‘proq xolis sifatida ishni hal qilish vazifalarini qat’iylashtirishimiz maqsadga muvofiq. Chunki sudning haddan tashqari faolligi uning jinoyat protsessidagi funksiyasidan chetga chiqishi va tomonlarning o‘z vakolatlarini amalga oshirishlariga to‘sqinlik qilishi, jinoyat protsessida tortishuv prinsipiga mos kelmaydigan, tomonlarning sud jarayoni va natijalariga ta’sir ko‘rsatish qobiliyati amalga oshishiga yordam berishi mumkin.

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EDUCATIONAL AUTONOMY IN THE CONTEXT OF A COMPETENCE-BASED APPROACH IN TEACHING ENGLISH AS A FOREIGN LANGUAGE

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Abstract. *The article highlights issues of implementing a competence-based approach in teaching English as a foreign language and the formation of educational autonomy as one of the key concepts training student's foreign language skills. The need for the formation of educational autonomy is conditioned by the requirements of the modern world, the paradigm of "lifelong learning", the ability of a modern person to "learn", readiness for self-study. The main objectives of reforming the system of higher education are revealed. The article comprehensively examines the essence of the competence-based approach and presents a number of problems associated with its implementation in the educational process. The article is based on the online course "English for law students", developed by the authors on the Moodle platform. The work of students is analyzed; conclusions are drawn about how much online courses contribute to the formation of learner autonomy.*

Keywords: *competence-based approach, EFL, ESL, Moodle, self-study, self-education, educational autonomy, lifelong learning, learning about learning, learning by doing.*

INGLIZ TILINI CHET TILI SIFATIDA O'QITISHDA KOMPETENSIYAGA ASOSLANGAN YONDASHUV MAZMUNIDA TA'LIM AVTONOMIYASI

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Annotatsiya. *Maqolada ingliz tilini chet tili sifatida o'qitishda kompetensiya (malaka)ga asoslangan yondashuv orqali talabalarga chet tilini o'rgatishning asosiy tushunchalaridan biri bo'lgan mustaqil ta'lim olishning (ta'lim avtonomiyasi) dolzarbligi masalalari yoritilgan. Ta'lim avtonomiyasini shakllantirish zarurati zamonaviy dunyo talablari, "uzluksiz ta'lim" paradigmasi, zamonaviy insonning "til o'rganish" qobiliyati, mustaqil ta'lim olish qobiliyatini shakllantirish bilan uzviy bog'liq. Maqolada kompetensiyaga asoslangan yondashuvning mohiyati har tomonlama ko'rib chiqilgan bo'lib, ushbu tushunchani ta'lim jarayoniga tatbiq etish bilan bog'liq bir qator muammolar ko'rsatilgan. Maqola Moodle platformasida ishlab chiqilgan "Yuristlar uchun ingliz tili" onlayn moduliga asoslangan bo'lib, onlayn kurslar o'quvchilarning mustaqil ta'lim olish qobiliyatini shakllantirishdagi hissasi haqida xulosalar chiqariladi.*

Kalit so'zlar: *kompetensiyaga asoslangan yondashuv, EFL, ESL, Moodle, mustaqil ta'lim, o'z-o'zini tarbiyalash, ta'lim avtonomiyasi, umrbod ta'lim, o'rganish haqida o'rganish, amalda o'rganish.*

ОБРАЗОВАТЕЛЬНАЯ АВТОНОМИЯ В УСЛОВИЯХ КОМПЕТЕНТНОСТНОГО ПОДХОДА В ОБУЧЕНИИ АНГЛИЙСКОМУ ЯЗЫКУ КАК ИНОСТРАННОМУ

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Аннотация*. В статье освещаются вопросы реализации компетентностного подхода в обучении английскому языку как иностранному и формирования образовательной автономии как одной из ключевых концепций обучения студентов иноязычным навыкам. Необходимость формирования образовательной автономии обусловлена требованиями современного мира, парадигмой «обучения через всю жизнь», способностью современного человека учиться, готовностью к самообучению. Выявлены основные задачи реформирования системы высшего образования. В статье комплексно рассматривается сущность компетентностного подхода и представлен ряд проблем, связанных с его реализацией в образовательном процессе. Статья подготовлена на основе онлайн-курса «Английский язык для юристов», разработанного авторами на платформе Moodle. Анализируется работа студентов, делаются выводы о том, насколько онлайн-курсы способствуют формированию самостоятельности учащихся.*

Ключевые слова: *компетентностный подход, EFL, ESL, Moodle, самообучение, самообразование, образовательная автономия, обучение на протяжении всей жизни, обучение обучению, обучение действием.*

Introduction

The rapid development of ICT, the internationalization of the international labor market, increased rate of migration, and, finally, globalization led to the fact that many states, including Uzbekistan, were forced to reform their education system. Countries which realized that the success of the economy, in general is directly related to education, promptly accepted this challenge and reformed the education system taking into account the needs of the modern world. There has been a paradigm shift: that is, from «education – for life» to «lifelong learning»; from the knowledge paradigm to the competence one, a learning model aimed at the learners is developing, the main categories of which are «learning autonomy» and «learning to learn», the central role is assigned to the learner, learning is focused on development personal qualities of the students, on competence. The reforms carried out in the education system caused an ambiguous, mostly negative reaction in society, where people are laconic towards changes and are prone to keeping the existing obsolete education system. However, it is impossible to keep the old school system without adapting and adopting the modern standards. Another question is when the reform of the education system does not take into account the cultural, mental characteristics of society, the transformation is carried out by copying another system. As is known, in Uzbekistan, the major stakeholder in education is the state, which controls education, regulates the qualification requirements for training specialists formulated in educational standards. In 2010 As we all are aware, Uzbek universities train specialists on the basis of a three –step system: bachelor's - master's - doctoral studies. With the competence approach, the focus of attention shifts to the ability of the student to use the acquired knowledge, and the concepts of «competence» and «competence» form the basis of this approach.

According to E.V. Bryzgalina, among the reasons for the introduction of the

competence approach, three main ones should be identified: the first reason for changing the forms of fixing the results of education is the transition to advanced education. In a post-industrial society, the basis of professional and personal growth is, as before, high-quality education, but the very interpretation of the quality of education is being transformed. In modern society, a person's success is directly related to his willingness to improve himself, to be ready for continuing education. The second reason is so-called human capital, i.e., by investing in the education, a person seeks to get in the future not only a more profitable place, but also satisfaction from work. Like any phenomenon, the competence-based approach has both strengths and weaknesses, the advantages include the fact that with a competence-based approach, not only knowledge and skills are important, but to a greater stress is put on how this knowledge and skills are used. It is also important not only the ability of a person to carry out a certain activity, but also to be responsible for it. If before the educational approaches were primarily theoretical, detached from practice, then the competence model meets the requirements of the time in the sense that it is practice-oriented.

However, without detracting from all the advantages of the competence approach, we should not just focus on the problems that still are taking place, and one of the disadvantages of the competence model is the fragmentation of knowledge, i.e. when forming competencies, the emphasis is often not on knowledge. With a competence-based approach, the focus on fixing universal educational actions leads to the fact that the emphasis shifts to competence, for example, when forming a communicative competence, the emphasis is on the ability to conduct discussions, but often the subject of discussion itself can fade into the background. And, the question naturally arises: "How should the educational process be built in order to smooth out this dissonance?"

In the foreign-language didactics, since the end of the twentieth century, a competence-based approach has been actively used in teaching foreign languages, and, language textbooks are compiled according to the principles of this approach. Textbooks such as Fly High and English Matters are actively used in language courses, as well as in teaching English as a foreign language. The Teens A1, Teens A2, English B1 textbook series has the same structure, each textbook includes a basic textbook/ Course book and a workbook/, and consists of 10 modules, which, in turn, contain 20 topics. The tasks are aimed at developing four skills of speech activity, special attention is paid to speaking, ready-made phrases and constructions are given for the formation of communicative competence, expressing, for example, agreement, disagreement, proposal and reaction to the proposal. Having analyzed these common textbooks of the English language, we can state that they are of an applied nature, i.e. the textbooks are structured so that a person can learn certain situational phrases and constructions within a short time, and the tasks are situational in nature. But here we must take into account the learners objective for which a person studies English, if the goal is to leave for permanent residence in English speaking countries, and a person for a certain period must confirm his level of knowledge of the English language and receive an appropriate certificate, then textbooks perfectly perform their function. At English language courses, the learning process turns into training students to achieve the necessary competencies without a sufficient amount of basic knowledge, which in principle does not contradict the goals of language teaching, most importantly, a person in a short time receives the

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necessary communicative competence that will allow him to navigate the language environment. These textbooks clearly demonstrate how a competent approach can be implemented when teaching English as a foreign language.

However, we are talking about the language training of future foreign language teachers and translators, respectively, the purpose of teaching a foreign language is different. Today, you can often meet students who have a good command of a foreign language, but do not know how to operate with grammatical terminology, which they need when learning both a second foreign language and in their further professional activities. The language competence of a future foreign language teacher or translator includes, among other things, knowledge about the structure of the language, knowledge about how the functions of the language elements work. What is necessary to form the necessary competencies based on fundamental knowledge? The limited study time creates significant difficulties for achieving a harmonious combination of fundamentals and competencies.

And it seems to us that this harmony can be achieved with the help of educational autonomy. As we all know, one of the key concepts of the competence approach is learner autonomy. In the system of higher education, it is the principle of educational autonomy that becomes more relevant when it comes to training a specialist who can think critically and act consciously [2].

The concept of "autonomy" corresponds to the spirit of the times and the idea that students should have educational autonomy is perceived as "something" that a modern person should strive for, which is especially inherent in Western culture. The idea of autonomy fits the new paradigm of the education system "lifelong learning" as well as it is an integral part of this paradigm. Modern digital realities require more autonomy from a person, independence, let's take at least distance learning, the so-called e-learning, e-government, online purchases or banking services provided online. All this requires certain competencies from a person, which they achieve mostly independently, and they may not be based on knowledge, for example, in order to buy something online or use banking services, a person does not necessarily have knowledge in the field of information technology. In this context, academic autonomy seems to be a magic formula that satisfies both individual and social needs of the individual. In recent years, the concept of "learner autonomy" has been idealized by both didactics and teachers, hardly anyone will say that they do not support the idea of the formation of educational and learner-autonomy. The very word "autonomy" carries a trail of good, something that everyone should achieve, but the idealization of the concept has led to the fact that there is no clear picture. How can autonomy be considered within the framework of a foreign language lesson? How realistic and expedient is the development and formation of learner autonomy in Uzbek universities?

In everyday life, we talk about autonomy, when people act according to their own scenario and makes decisions on their own. To define the concept in everyday life, the ability of an individual to act independently plays a central role. The use of the concept in everyday life as independence leads to certain difficulties in defining the concept within the framework of foreign language didactics. The article will focus on the importance of autonomy in the educational process.

The first definition of the concept of learner autonomy belongs to Holecy (1979), which implied the ability of a student to take responsibility for his/her learning, i.e. to make a decision himself/herself regarding all stages of learning, including learning goals,

choice of material and teaching methods, time allocation, i.e. setting his/her learning regime, as well as evaluation as a process, and learning outcomes. Holec considered this ability as a necessary requirement for the organization of self-regulated training in self-learning centers [3]. The idea of Holec was continued by Little. Translating the perspective to school education, based on the constructivist theory of learning, he emphasizes that the student's learning autonomy can be formed in interaction with the teacher. If Holec's approach to learning autonomy is competitive, then Little's approach focuses on the psychological aspect [4]. If we follow the theory of Little and consider educational autonomy within an institutional framework, then the question arises as to how much autonomy can be discussed if the learning process is regulated. As the analysis of scientific literature shows, the term "learner autonomy" is used in those situations where it is a question of independent work of the student, the formation of skills and competencies necessary for self-regulated learning. The range of meaning of this definition is very wide, autonomy does not mean isolation, we interpret educational autonomy as the interaction of two subjects of the learning process, one of whom knows how to learn, and the other helps him in this.

Materials and methodology

In the 2019-2020 academic year, Tashkent state university of law developed and implemented an online English language course "English for law students" on the Moodle platform. The Moodle platform is widely used in the higher education system, especially for organizing online courses.

The online course "English for law students" as a core course offered to junior students studying English as a foreign language, an algorithm of actions was developed, making which students will have to learn to make decisions on their own regarding their studies within this course. 925 students were registered for the course, 720 of them were actively working, the ratio of registered and actively working suggests that students worked without external influence or coercion.

As the goal of the course, we defined the development of students' communication skills, as for the content of the course "English for law students", it consists of primarily 24 Legal English topics, which, in turn, were divided into subtopics. The algorithm for completing the tasks was built, the structure of the tasks of the entire course is the same, it includes the compilation of an associograms on a topic, i.e. students first, as an introductory part, make associograms on a specific topic using coggle.it web site with those words that are included in their mental lexicon, which they operate actively or passively. The next stage is work on the text, students had to read certain texts, work through them, this also included working with a dictionary, with new words, various types of work with a dictionary offered, including drawing up examples. Then the course participants discussed the texts they had read and problematic issues on the topic in the forum. The next type of work is working with a podcast. As an example, we give tasks on the first topic "What do lawyers do".

Students were invited to listen to the podcast "Areas of law", which they could upload to a folder on their desktop, then they should have familiarized themselves with new words on the topic, and made examples with them. In this block, students also got acquainted with the models of word formation of the English language. Students were also offered questions on understanding the text, and questions that required a more detailed presentation. In this way, students learnt to express their thoughts, express their subjective opinion on a particular problem. This block also includes

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grammatical exercises corresponding to level B1+, in particular, subordinate clauses. It is worth noting that the textbooks students were offered to perform tasks, whether it was a reading text or grammar exercises, were preliminarily uploaded to the platform. For the convenience of work, students could download and save these textbooks in their folders.

The next type of task is working with video material. On all topics of the course, participants were offered videos from the Lawyers English Language Course book thematic series. Participants have the opportunity from the website distant.tsul.uz download video materials or watch them directly on the website https://www.youtube.com/watch?v=RGELRDRY6-4/. The advantage of these videos was that they have subtitles in both English and Russian. Students could use their knowledge of foreign language as a basic foreign language.

Information and communication technologies play an important role in the development of educational autonomy, which contribute to the proper organization and effectiveness of educational autonomy. L. Lee in his article describes the possibilities of autonomous learning in a fully interactive learning environment, including the implementation of task-based instructions in combination with Web 2.0 technologies [5]. As you know, modern technologies that have significantly changed the nature of human cognitive activity include Web 2.0 resources, which represent a more active and potentially changing paradigm, an environment for creating and sharing knowledge. If Web 1.0 Internet services of the first generation only provided information and the user was only a passive consumer of services, then Web 2.0 services provide the user not only with access to information, but also help him to create content and post it on the Internet, which, in turn, increases motivation to learn. The integration of Web 2.0 resources into the educational process, the expediency of their use in teaching foreign languages is one of the widely studied topics in foreign language linguo-didactics [6; 7]. According to the researchers, the use of Web 2.0 resources is the exchange of information, improving communication not only between the lecturer and students, but also between students, a good start for the use of student collective intelligence, the development of critical thinking [8; 9], however, effective use of the potential of Web 2.0 resources is impossible without the support of a teacher [10].

The content of the online course "English for law students" included tasks requiring the use of Web 2.0 resources. For example, Wordle, the so-called "word cloud", can be used to visualize and define the lexical topic being introduced.

This Wordle was created on wordle.net a student of the Public law faculty, A1 group Abdurashidova Zamira on the topic "Areas of law". Wordle is a very accessible Web 2.0 tool that does not require registration and allows you to generate a "word cloud" from a specified source. The cloud can be represented in any color scheme and set a different position of words in the cloud. The keyword "law" is visually different from the rest of the words, respectively, it will not be difficult to find it. Wordle can be used not only for visualization, but also for structuring vocabulary on a specific topic. As the final stage of work on a certain vocabulary, students can compose a Wordle, which will allow them to structure their knowledge. Both for visualization and for fixing and expanding the vocabulary of vocabulary, learners used Coggle / mental map.

This mental map was compiled by a student of the JOSF A2 group, Zukhra Ashurova, and is an associograms by which students learn to find a connection between concepts, based on the topic as a center,

find further details and ideas in the form of branches.

If, at the initial stage, the students presented the vocabulary with which they operate as an introductory task in the form of an associogram, then upon completion of work on the subject, they had to present in the form of a mental map the vocabulary that they had accumulated during the work.

To determine the effectiveness, advantages and disadvantages of the course after its completion, a survey of participants was conducted, which included five questions:

1. Give an assessment of the structure of the online course on a 5-point scale.

2. Give an assessment of the content of the online course on a 5-point scale.

3. Are you satisfied with your online course work?

4. Have you interacted with other participants of the online course? How?

5. Give an assessment of the activity of the teacher (the teacher of the course) online courses on a 5-point scale.

Research findings

70% of students rated the structure as "5", noting that "Various tasks are given on the same topic in order to develop different skills. The structure of the site is easy to learn, all the materials are easy to download. There are no difficulties with access to the personal account. The course itself is presented in a logical order, which is very convenient when working", "Everything is clear, it is convenient to have a private office and your personal journal where you can see about a third of the assessment".

30% of students noted that "The structure is not always clear, what and how, for what time, what to do and everything according to different textbooks, programs, etc. According to the structure, personally, it is easier for me to animate from one textbook, or a program, since they are structured, and in the online course I get lost"; "For me, this site became clear at once. It's complicated, I think it would be better to simplify the creators of this site. The process of downloading and uploading documents takes time" and, accordingly, the structure of the site was rated at "4" and "3".

The content of the online course was rated "5" by almost all students (96%): "Various types of tasks, working with podcasts and videos, creating a sociogram I learned to do in Wordle, although there were problems with this program"; "The content of the online course is very informative and interesting. Most of all, I enjoyed working with students on books and videos"; "The training course contains a lot of useful materials. Those m s of the course touch on important aspects of life and Despite the fact that the material is quite complex, it is quite understandable and well understood and assimilated"; 4% rated it "4", as a comment noted that "There is not enough grammar, its knowledge. Listening to modern speech is certainly good, but our lively speech is lacking, we don't talk much ourselves, we only do tasks. I think it is necessary to practice speaking and the ability to use grammar correctly." It should be noted here that students had to discuss certain topics in a forum, in a chat, and also send voice messages. However, as practice has shown, the majority of students preferred to do grammar tasks, they devoted a lot of time to this type of activity, although discussion in the forum or correspondence in the chat contribute to the development of communication skills.

To the 3rd question about satisfaction with their work on the online course, 13% gave a positive answer, 87% answered negatively: "My dissatisfaction with the work in this course can only be explained by my negligent attitude to study, in general"; "There is not enough time for an online course", "Solely due to personal factors. For example, work in Wordle could not be done

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due to an application conflict on my PC. Also, sometimes there is not enough time for a more detailed study of the material", "The language is difficult for me, and I am sure that this is due to lack of practice, laziness and my poor ability to focus on anything", "It is easier for me to work on one program that includes everything, both writing and listening, both words and grammar. It is inconvenient to work in online courses and it is not always clear what and how to do, where to look for information and what is required of us." As a reason for dissatisfaction with their work in the online course, students mostly indicate laziness, lack of time. But there were also students who were not satisfied with the very structure and presentation of the material.

To question 4, all students gave a positive answer: "Yes, we are discussing certain tasks, how they should be performed", "We are discussing topics of interest to us and questions about completing tasks". Students rated the activity of the teacher by 5 (65%): "Tasks are clearly set and examples of tasks are given. If you have any questions, you can consult with the teacher", "The assessment is, in principle, fair. I want the knowledge of the language to be evaluated, and not by some programs, for example, "Wordle", "The teacher is always ready to explain incomprehensible material. Help with tasks. To provide the material in a timely manner" – 4 (35%): "There are no complaints, but I learn the information better when the teacher explains the topic independently. And with an online course, especially at home, I personally do not know how to work. Information is better absorbed after the teacher explains the topic", "In my opinion, it is necessary to add more tasks to study grammatical topics."

Conclusions

Summing up our observations, as well as the results of the survey, we can state that our students are not yet ready to work independently, i.e. set educational goals for themselves, reflect on their educational activities, they are more inclined to do their usual tasks, for example, the same tasks in grammar.

Analyzing the work of students in an online course, we came to the conclusion that educational autonomy can be successful only if the student has a clear idea of what specific steps are required to achieve the goal, this applies both to the development of a certain topic and the ultimate learning goal. Feedback, clear strategies and approaches will allow students to develop the ability to make decisions independently, reflect on their studies, and thus form academic autonomy. Here, the role of a teacher is indispensable, who helps the student in organizing training, who, like the student, must reflect on strategies and methods for achieving teaching goals.

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INTERACTIVE METHODS AS A MEANS OF THE FORMATION OF STUDENTS' COMMUNICATIVE COMPETENCE (IN AN EXAMPLE OF TSUL)

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Abstract. *The paper examines the interactive methods of forming communicative competence of law students at Tashkent State University of Law. Indeed, communicative competence is a set of knowledge about the language system and its units, their construction and functioning in speech, the methods of constructing thoughts in the target language and understanding others' judgments, the national and cultural characteristics of native speakers of the target language, and the specifics of various types of discourses in teaching a foreign language; this is a language learner's ability to communicate through multiple types of speech activity in line with the communicative tasks at hand, as well as to comprehend, interpret, and make coherent statements. In the article, the terms "competence" and "competency" are also discussed along with the views of various scholars and the author puts an emphasis on different interactive methods employed in this very context to enhance communicative competence of the learners.*

Keywords: *competence, competency, communication, communicative competence, interactive methods, speech, concepts, learning process.*

INTERFAOL METODLAR TALABALARNING KOMMUNIKATIV KOMPETENSIYASINI SHAKLLANTIRISH VOSITASI SIFATIDA (TDYU MISOLIDA)

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Annotatsiya. *Maqolada Toshkent davlat yuridik universiteti talabalarining kommunikativ kompetensiyasini shakllantirishning interfaol usullari haqida so'z boradi. Darhaqiqat, kommunikativ kompetensiya – bu til tizimi va uning birliklari, ularning nutqda tuzilishi va faoliyati, o'rganilayotgan tilda fikrni shakllantirish va boshqa odamlarning mulohazalarini tushunish usullari, ona tilida so'zlashuvchilarning milliy va madaniy xususiyatlari haqidagi bilimlar majmuyi, chet tilini o'rgatishda har xil turdagi nutqlarning o'ziga xosligi; til o'rganuvchilarning qo'yilgan kommunikativ vazifalarga muvofiq nutq faoliyatining bir necha turlari orqali muloqot qilish, shuningdek, tushunish, izohlash va izchil fikr bildirish qobiliyatidir. Maqolada, shuningdek, "kompetensiya" va "kompetentlik" terminlari hamda turli olimlarning fikr-mulohazalari ko'rib chiqilgan. Muallif ushbu kontekstda o'rganuvchilarning kommunikativ kompetensiyasini takomillashtirishda qo'llaniladigan turli interfaol usullarga e'tibor qaratadi.*

Kalit so'zlar: *kompetensiya, kompetentlik, muloqot, kommunikativ kompetensiya, interfaol usullar, nutq, konseptlar, o'quv jarayoni.*

ИНТЕРАКТИВНЫЕ МЕТОДЫ КАК СРЕДСТВО ФОРМИРОВАНИЯ КОММУНИКАТИВНОЙ КОМПЕТЕНЦИИ СТУДЕНТОВ (НА ПРИМЕРЕ ТГЮУ)

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Аннотация. *В статье рассматриваются интерактивные методы формирования коммуникативной компетентности студентов-юристов Ташкентского государственного юридического университета. Действительно, коммуникативная компетенция – это совокупность знаний о языковой системе и ее единицах, их построении и функционировании в речи, способах построения мыслей на изучаемом языке и понимании чужих суждений, национально-культурных особенностях носителей языка и специфика различных типов дискурсов при обучении иностранному языку; это способность изучающего язык общаться посредством нескольких видов речевой деятельности в соответствии с поставленными коммуникативными задачами, а также понимать, интерпретировать и делать связные высказывания. В статье также обсуждаются термины «компетенция» и «компетентность», приведены мнения различных ученых, автор делает акцент на различных интерактивных методах, используемых именно в этом контексте для повышения коммуникативной компетентности учащихся.*

Ключевые слова: *компетенция, компетентность, общение, коммуникативная компетенция, интерактивные методы, речь, концепты, процесс обучения.*

Introduction

Both at the concept level and at the level of its components, the word "communicative competence" is marked by ambiguity and confusion. The cause of this phenomenon is, first and foremost, the inclusion of the term in the conceptual apparatus of a variety of sciences, including linguistics, psychology, psycholinguistics, pedagogy, sociology, cultural studies, philosophy, and others, all of which bring various aspects of the concept to the mainstream. The sociolinguistic and linguadidactic investigations of L.K. Geichman, J. Habermas, D. Hymes, N. Chomsky, L.F. Bachman, and others demonstrated a multilateral scientific interest in the topic of communicative competence formation. L.L. Balakina, L.K. Geikhman, N.N. Dolovova, O.I. Muravyov, and others explore the difficulties of the formation of this very competence in intercultural and interpersonal interaction in pedagogical research. In addition, foreign researchers use the concepts of "communication", "communicative" to describe the process of communication.

Let us establish the action component of the communication process as a critical condition of the pedagogical process of developing a person's communicative characteristics. The activity approach in learning and personal development is one of the most fundamental methodological foundations that establishes the key quality of communication. The theories of purposeful activity and verbal activity underpin this approach. Because the student's development is accomplished through the "zones of proximal development", which are generated during the learning process, in communication. This is Vygotsky's position, which states that a child can only undertake a new action on his own when interacting with others [1, p. 76]. Researchers A.A. Leontiev, A.N. Leontiev, and S.L. Rubinshtein note that speech through a message (expression,

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impact) incorporates human awareness in the process of real practical connections, the general activity of people [2, p. 10]. Speech allows person's consciousness to become a given for another. A human perceives and experiences reality, so influencing it; perceives the objective meaning generated in a word, thereby influencing the object and exposing its function in the social activity system [3, p. 113]. V.I. Slobodchikov puts forward the view that a person lives, first and foremost, in a system of real-life interactions with others. The ontological root of mankind is the event community of people. Sociality and active awareness manifest themselves in methods of doing, thinking, and forming relationships that are not the inventions of a single person, but rather mastered talents, abilities that are in some manner fixed in cultural items, tools, language, and so on [4, p. 123]. In the process of completing diverse functions by people, any types of communication are included in specific forms of collaborative action. One person's action invariably intersects with the activities of others, and this intersection establishes specific relationships between a person and the subject of his activity as well as other individuals. Communication allows each of its participants to convey specific elements, beginning with the purpose or objectives, objects of action, generalized information about participants' experience in the activity, and finishing with the personality attributes required for decision-making. Communication differs from other forms of interaction in that it manifests and shapes an individual's psychological attributes. Building a plan for collaborative activities necessitates that each individual has a thorough awareness of the goals, objectives, the object's characteristics, and their own abilities. The presence of the communication in this process enables for the "coordination" or "mismatch" of the participants' activities. Coordination is feasible thanks to a feature of communication known as its inherent function of influence, which manifests as the "reverse influence of communication on action" [5, p. 74]. Richards notes in his description of the notion of "communication" that a similar connection between action and communication is employed by foreign scholars to use the term "communication". Although he gave the definition in 1928, it reflects modern dialogical changes in the analysis of interaction, taking into consideration the impact of human factor itself, the engagement of participants in the process of communication: "Communication occurs when one human consciousness acts on its environment in such a way that it experiences another human consciousness, and an experience similar to the experience in the first consciousness arises in this other consciousness" [6, p. 97].

Materials and methodology

The article presents the results of using the complex as theoretical methods (studies special, scientific literature of the psychological and pedagogical direction, systematization and generalization of innovative pedagogical consulting practices, analysis of the products of educational, research activities of students, etc.), and empirical methods (analysis and evaluation of interactive teaching methods, etc.).

The practical significance of the study served as the basis for improving the efficiency of the formation communicative competence of students of the Tashkent State University of Law.

Research findings

The terms "competency" and "competence" are used in the context of the competence-based approach. Because these principles are new to pedagogy, they are interpreted differently by various scientists. Furthermore, these concepts were imported from foreign pedagogical literature and appeared in the categorical apparatus not as a result of its own growth. Several scientists

have identified these concepts, with a focus on competency practicality. The following are the views of scientists in this field on the concept of competence/competency:

- a way of existence of knowledge, skills, education, contributing to personal self-realization, finding one's place in the world [7, p. 30];
- the sphere of relations existing between knowledge and action in human practice [8, p. 78];
- motives, traits, self-concept, attitudes or values, content of knowledge, cognitive and behavioral skills [9, p. 114].

The supporters of the second path make a fundamental distinction between these notions, emphasizing competence as the most important one. Competency, according to these experts, is not merely a collection of knowledge, skills, capabilities, and personal attributes, but also the ability to apply them in a given context and participate in activities. Competence is defined as "a societal requirement (norm) for a student's educational preparation, necessary for his high-quality productive activity in a certain area" [10, p. 110].

Many Russian scholars have also opined about competence. For example, it is defined by I.A. Zimnyaya as "some internal, potential, concealed psychological neoplasms (knowledge, ideas, programs (algorithms) of actions, systems of values and relationships) that are subsequently manifested in human competences as actual, activity manifestations" [11, p. 34]. Competence, according to G.K. Selevko, is a type of knowledge, skills, and abilities that allows one to define and achieve goals in order to change the environment [12, p. 29]. Competence is characterized by E.F. Zeer and E.E. Symanyuk as "integrative integrity, efficacy of knowledge, and experience in professional action" [13, p. 35]. Competence, according to S.E. Shishov, is a broad ability based on knowledge, experience, values, and inclinations acquired via learning, as well as an individual's capacity and preparedness for activity [14, p. 26]. As a result, disclosing our perspective on the idea of "competence", we consider competence and competency to be mutually subordinate components of the subject's activity.

In fact, I.A. Zimnyaya provides the most comprehensive classification of competence. It is carried out in accordance with the category of activity with which it has a special relevance.

The author divides competence into three categories:

1) competences relating to the person as a person, the subject of activity, and communication;

2) competences relating to a person's social interaction and the social environment;

3) competences relating to human activities.

Each group has a different set of competences. The first set of competences includes health preservation, value-semantic world orientation, integration, citizenship, self-improvement, self-regulation, self-development, personal and subject reflection, meaning of life, professional development, language and speech development, mastery of the native language's culture, and knowledge of a foreign language. Competences in the second group include social interaction and communication. Activity competences, cognitive activity, and information technology make up the third group [15, p. 21]. As can be seen, all three categories of competences represent communicative competence, which is defined as social interaction, speech development, and a culture of native and foreign language ability.

The phrase "language competence" appears in the works of American linguist N. Chomsky in foreign studies of this period (since the middle of the twentieth century). It indicates the ability to understand and

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construct an infinite number of linguistically correct sentences using learnt linguistic signs and the rules for their connection, according to N. Chomsky. This refers to the ability to conduct specific, mostly linguistic activities in the vernacular. Language competence, as he said, is an ideal grammatical knowledge that is always connected with language system knowledge [16, p. 55]. When it comes to the origins of the term "communicative competence", we can see that A.A. Leontiev expressed concern in the early 1970s that a line had been drawn between linguistics and psychology, leaving a wide range of issues, such as the structure and functioning of human language ability, largely unexplored. By the end of the 1960s, the terms "language competence" and "language use" had become diametrically opposed. These phrases distinguish between "linguistic capacity" and "linguistic activity", which refers to actual speech in real-world situations. D. Himes examined and expanded on N. Chomsky's idea, saying that "linguistic theory should broaden the concept of competence beyond the limitations of grammatical knowledge" [17, p. 92]. According to his definition, communicative competence is a set of knowledge and abilities that a speaker possesses regarding the use of language. Many scientists believe that it was at this time that one of the first attempts to break down the barriers between linguistics, psychology, and sociology in the study of speech was made. D. Himes distinguishes four types of communicative competence: grammatical (officially conceivable), psycholinguistic (practical in use), sociocultural (appropriate for the setting), and actual (visible) knowledge, as well as the speaker's and listener's capacity to apply it. As a result, N. Chomsky's idea of grammatical competence was broadened, and the grammatical element was reduced to one of four factors of communicative competence. He describes the concept of "competence" as the most generalized concept of human talents. Competence, in his opinion, is based on both information and the capacity to use it, and it is vital to include both the cognitive (without breaking it down into emotional and volitional aspects) and motivational factors.

Following that, researchers L.F. Bachman, J. Habermas, D. Himes, S.W. Littlejohn, and J.M. Wiemann developed the concept of communicative competence within the framework of the theory of communicative action, considering a person to be competent when his action is adequately correlated with three life worlds: objective (events occurring in the objective world), social (interpersonal interactions governed by norms). They also communication competence as a multifaceted concept with five primary components: linguistic, sociolinguistic, sociocultural, discursive, and strategic competence. This view is especially pertinent to foreign language teaching methodology [7; 18].

Based on the views of various scholars, we will reveal the meaning of the presented communicative competences as follows:

- Linguistic competence is defined as the ability to comprehend and construct an infinite number of linguistically correct sentences using learnt linguistic signs and rules for connecting them.

- Sociolinguistic competence is defined as the ability to comprehend and generate speech that is appropriate for the sociolinguistic environment in which an act of communication is performed.

- From the perspective of native speakers, sociocultural competence is defined as the ability to employ those components of the sociocultural context that are relevant for the generation and perception of speech: customs, rules, norms, social conventions, rituals, social stereotypes, and so on.

- Discursive competence is defined as the ability to construct discourse, or the ability to use and interpret the forms of words and

their meanings to create texts, as well as the ability to organize language content into a coherent (connected) text. Thus, a person with high discursive competence understands how to employ connectives (pronouns, conjunctions, adverbs, and other grammatical tools) effectively, how to establish thought unity and correspondence in the text, and how to communicate relationships between distinct ideas in context.

- If it is necessary to improve the rhetorical effect of a spoken message or a pause in communication, strategic (or compensatory) competence entails the employment of verbal and non-verbal communication tactics to compensate for a lack of grammatical expertise.

The range of components that make up communicative competence is enormous, ranging from linguistic, linguistic organizational, pragmatic, sociolinguistic, discursive, strategic, educational, thematic, speech, compensatory, to sociocultural and social. We agree with L.K. Geikhman that the mentioned competences are most typically subject-oriented, leaving apart personal neoplasms acquired during communication learning [19, p. 18]. When it comes to developing competence, it's critical that the individual's ways of action, knowledge, and values are appropriated and become a personal trait.

Review of research findings

Indeed, in this research the main purpose is to develop communicative competence of law students at Tashkent State University of Law. For this we deem that interactive methods are of utmost importance, because the primary goal of interactive learning is to engage students in the learning process and allow them to reflect on what they know and believe. Students share their expertise and opinions via cooperative activities. In order for the learning process to be more effective, the teacher must establish conditions in which the student can feel successful and confident, which will aid in the removal of the language barrier when learning a foreign language. A person's linguistic talents degrade while they are experiencing negative emotions (fear, impatience, rage). A person in a state of tense excitement finds it much more difficult to formulate his thoughts in a foreign language. The scientist emphasizes the importance of a quiet, comfortable environment for effective and successful learning. Currently, the issue of incorporating numerous technologies into the educational process is compounded by the requirement to select one teaching technique over another. In the context of this project, we define interactive teaching methods as types of activity in which students interact with the teacher and with each other in a comfortable setting, resulting in an increase in the learning process' effectiveness. Currently, the issue of incorporating numerous technologies into the educational process is compounded by the requirement to select one teaching technique over another and we define interactive teaching methods as types of activity in which students interact with the teacher and with each other in a comfortable setting, resulting in an increase in the effectiveness of the learning process.

Let us define the main objectives of using interactive teaching methods as follows: students' independent search for solutions to a set educational problem; stimulating students' interest in work; development of life and professional skills; effective assimilation of educational material; formation of teamwork skills; formation of students' own point of view. In these circumstances, the teacher's position becomes less important. He/she now just organizes the process by preparing the essential tasks, consulting, and overseeing task order. As a result, the following interactive learning characteristics can be identified: independent problem-solving; activation of the student's creative and

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cognitive activity; interactive nature of interactive methods; stimulation of interest in learning; most effective assimilation of educational material; formation of life and professional skills; formation of students' own opinion on the problem. The use of interactive teaching methods in the educational process helps students develop their creative activity, increase their motivation to study the subject, improve their communication skills, and build a proactive life stance. Discussion, game, reflective, and methods of organizing collective mental activity are among the interactive methods used in teaching a foreign language. For the formation of communicative competence of the law students in this very context, the following interactive approaches are employed. Let's look at them thoroughly:

Discussion. Students are given the opportunity to formulate their point of view on the topic, and discussion approaches aid in the formation of a respectful attitude toward opposing viewpoints. Students gain the ability to pose questions, explain their points, and improve motivation to study a foreign language as a result of the employment of various discussion methods in the educational process. Besides, the discussion is now frequently employed in the learning process since it increases student involvement and fosters reflective thinking. "Round table", "forum", "symposium", "conference", and "debate" are all examples of discussion. Students' cognitive activity is stimulated, their creative capacities are developed, their capacity to articulate their point of view is formed, their ability to listen to opponents is developed, and their ability to think critically is developed. Before the discussion, a preparation stage is necessary: discussion of the problem in a group or pairs, working out new vocabulary, compiling dialogues. During the discussion, students can be divided into groups with a distribution of roles. Participants are given a chance to speak in turn during the conversation. Following the discussion, it is suggested that the parties' speeches be analyzed. We can improve our speaking abilities and create communication competence by using this strategy.

Case technology, also known as the case method or the method of specific situations (situational analysis method), is a teaching method that involves the description of real-life situations and the development of specific tasks. The method's goal is to use a group of students' combined efforts to assess a situation that develops in a specific case, frame a problem, suggest solutions, and choose the best of them together. The cases are based on real-life situations or are quite close to them. The case approach aids with the development of skills such as analyzing a situation, evaluating alternatives, selecting the best choice, and planning its implementation. These abilities will be in high demand in future career endeavors.

Game tactics (role-playing and business games, simulations, and intellectual games) aid in the creation of mental stress in students, as well as the reduction of shyness and nervousness. Also, a game is an example of learning in action. It aids in the development of attention and cognitive interest, as well as the establishment of a positive psychological climate in the classroom. An interactive game is one of the most effective interactive pedagogical strategies for fostering participant development and self-realization during the educational process. Role-playing games are a type of educational game that is one of the components of interactive teaching methods. The role-playing game influences language choice, encourages oral communication development, and allows to acquire dialogical speech abilities in interpersonal contact in a range of scenarios. Role-playing games have the advantage of being close to real-world communication scenarios in the workplace

or in everyday life. Role-playing fosters cooperative and collaborative relationships, which are beneficial not only to learning but also to the development of the student's personality. This strategy allows students to acquire the intricacies of using the learned educational material in speech more properly and deliberately.

The interview is a type of role-playing game that aids in the development of necessary skills within the context of a communication approach. It is a game communicative exercise in the form of a dialogue or polylogue based on a specific plot within the topic under study, involving the distribution of roles (interviewer/s and interviewee/s) with subsequent independent preparation for the role, and aimed at the formation of speech functions that allow students to acquire the skills needed in a real-life situation. Students learn to ask questions, respond spontaneously to the interlocutor's statements, adopt an acceptable communication style, and gain new skills. An interview can be structured as a sort of pair work, in which one student asks questions and the other responds, or as a presentation in which one student prepares a topic and the rest of the interview participants offer questions based on what they heard. At the conclusion of the interview, the teacher analyzes the work results with the pupils and offers any necessary remarks.

Reflective approaches are related with the psychological mechanisms of reflection being used to modify one's own mental and practical action. The employment of reflecting approaches ensures that the student's emotional environment is stabilized and harmonized. Clustering and brainstorming are methods for organizing collective mental activity aimed at developing the skill of independent search for solutions, developing the ability to work in a group and speak in public, and preparing students for subsequent scientific activities. Students' capacity to express and defend their opinions, enter into an argument, obtain required information, work in a team, develop leadership traits, and form communication skills and abilities are all enhanced by the use of interactive methods in foreign language instruction.

The project method is one of the most interactive methods for improving creative abilities. It helps to put a practical focus on the learning process. The project method refers to a group of students working together to solve a scholarly or socially important pragmatic challenge. This strategy allows to do both individual creative and autonomous cognitive-search work. It is vital to offer students with the opportunity to tackle real problems in order to develop communication competence outside of the language context. The student is involved in the conception and execution of the research project. The project is broken down into many stages: 1) selecting a topic; 2) drafting a work plan and debating data collection methods; and 3) project design and presentation. The project approach aids in the development of communication skills, the cultivation of a communication culture, the formation of the ability to formulate one's thoughts, the navigation of the information space, the use of current technology, and the teaching of critical thinking.

Conclusions

The teacher's use of interactive forms and teaching methods allows students to better master the necessary skills and abilities, reveal the inner source of motivation, encourage students to learn and self-develop, allow them to include all students in the work, form communication skills, and cooperate. They also assist the instructor in creating a welcoming, creative environment in the classroom, as well as contributing to the formation of emotional bonds, raising students' self-esteem, and developing a sense of self-confidence.

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