



## Factors Causing the Cancellation or Invalidation of Decisions of Local Executive Authorities



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### **Abstract:**

In the conditions of today's Uzbekistan, the most important aspects of the newly revised Constitution are important with the changes related to the provision of a person, his life, freedom, dignity, inviolable rights and interests, development of a free and fair civil society, and the establishment of a democratic legal state. Consistent and systematic reforms aimed at ensuring human rights and freedoms have been implemented in our country in recent years. Of course, any change, especially in terms of ensuring the rights and freedoms of citizens, is implemented by adopting a legal document. After all, the effectiveness of the state administration directly depends on the capacity of the local executive authorities to apply the law in the implementation of the ongoing reforms and penetration into every household. It is necessary for all state bodies, officials, and citizens to follow the new constitutional norms and principles, the Constitution must be a directly applicable document, state bodies, especially the courts, should refer directly to the Constitution in their activities and act based on its norms.

**Keywords:** Constitution, law, citizen, human rights, legal interest, judicial protection, administrative court, convention, charter, contract, authorities, land area.

### **Introduction**

In recent years, the powers of local Councils of People's Deputies have been expanded in our country to address topical issues of socio-economic development of territories, social protection of the population, and large-scale reforms have been carried out to fully implement people's power.

A legal framework has been established to strengthen the oversight activities of local councils. In order to expand the control functions of the Councils of People's Deputies over the activities of local executive authorities, they have been granted more than a dozen additional powers. In

particular, the accountability of the heads of the Prosecutor's Office, justice, internal affairs, finance, taxation, ecology and health has been established.

In accordance with the new version of the Constitution of the Republic of Uzbekistan, the division of powers of representative bodies of state power and executive authorities into local, the positions of chairman of the local kenesh and khokim has become an important step in ensuring the implementation at the local level of the constitutional principle of separation of powers. Article 99 of the Constitution of the Republic of Uzbekistan states that the Councils of People's Deputies, headed by the khokims of regions, districts and cities, are representative authorities that, in the interests of the State and citizens, resolve issues within their competence. National legislation gives territorial governors a number of powers. It should be said that the effective and purposeful use of these powers requires the necessary knowledge, skills and skills from each executive personnel. However, studies show that in law enforcement practice, governors do not always strictly follow legislative norms when making decisions within the competence.[1] Below we will analyze some aspects of this issue.

### **Materials and methods**

It is advisable to use the basic principles of factors that lead to the cancellation or invalidation of decisions of local state authorities as invalid, methods of comparison and comparison aimed at a long-term development strategy of state governing bodies, which provides for large-scale and structural reforms corresponding to national conditions.

### **Research results**

**First**, there are cases of illegal decisions made by local governors, deviating from the scope of their authority. The local governor's Decree No. 365 of 4 February 2022 allocated 150 square meters of land for the construction of a "sewing workshop" building to a citizen from the neighborhood of friendship. The words "friendship" in governor's resolution 365 were later changed to "Gulbag" by local Governor's resolution 370. And from the Gulbag neighborhood, a citizen was allocated 150 square meters of land for the construction of the "sewing workshop" building.

However, According to paragraph 4 of Decree PF-6243, the decree of the President of the Republic of Uzbekistan dated 06/08/2021 "On measures to ensure equality and transparency in land relations, reliable protection of land rights and their transformation into market assets": "the powers of local public authorities on land relations, in particular, to directly allocate land plots, provide them for use, reserve them for further division, attach them, provide for landscaping or otherwise dispose of land, are terminated".

**Secondly**, whether cases are considered without the participation of an interested person or his representative in making a decision contrary to the interests of the parties concerned.

### **Research results and its analysis**

For example, the decision of the khokim of the district, made in the interests of citizen Sh, is canceled. This decision was overturned on the basis of a petition from the prosecutor. However, when the decision was reversed, the person concerned was not allowed to familiarize himself with the documents. There was also no meeting. It can be pointed out that the principle of protecting the applicant's trust was not respected, as well as that without a comprehensive, complete and objective verification of all the factual circumstances relevant to the correct resolution of the case, only the circumstances set out in the protest were taken into account by the authorities and hastily accepted. On the basis of the above, applicant Sh's complaint that his decision No. 387 in respect of the responsible district administration was declared invalid was satisfied by the administrative court.

It is known that according to Article 9 of the law "on administrative procedures", the administrative body gives the interested person the opportunity to express his opinion on all cases of importance

for the adoption of an administrative document; in accordance with Article 10, it is established that administrative procedures are open, transparent and understandable to interested persons; and with Article 60, it is established that[2]

If the administrative document is to be revoked in favor of the person concerned, it can be carried out without holding a meeting. If the administrative body strictly adheres to this norm, it is achieved to prevent violations of the rights of interested persons.

Within the framework of the following example, a more accurate analysis of this issue can be carried out.

In accordance with the Decree No. PF-5466 of the President of the Republic of Uzbekistan dated June 27, 2018, on the "Youth is Our Future" state program, based on the application of E.D., by the decision of the Kogon District Governor No. 5167 dated December 28, 2019, 0.50 hectares of non-agricultural land from the governor's reserve land fund in the territory of the "Uba-Chuli" community of Kogon District, part of contour 3756, was allocated to E.D. for the construction of a "Compressed Gas Filling Compressor Station for Automobiles" (At the time this dispute arose, the district governor had such authority, but this authority does not exist under current legislation).

By the letter No. 10.2-11/21 of the Bukhara Regional Prosecutor's Office dated July 10, 2021, it was requested to annul the decision No. 5167 of the Kogon District Governor dated December 28, 2019. Based on the decision No. 14-2-36-Q/21 of the Kogon District Governor dated July 30, 2021, the decision No. 5167 of the Kogon District Governor dated December 28, 2019, was annulled. The annulment of the decision No. 5167 of the Kogon District Governor dated December 28, 2019, was based on the protest from the Bukhara Regional Prosecutor's Office dated July 10, 2021, which stated that land plots must be allocated through electronic auctions on the "E-IJRO AUKSION" unified electronic trading platform. The land plot was directly allocated to E.D. for the construction of a "Compressed Gas Filling Compressor Station for Automobiles" in violation of the requirements of the President's "Youth is Our Future" state program. According to the minutes of meeting No. 32 of the Architectural and Urban Planning Council under the Bukhara Regional Main Construction Department dated July 30, 2021, the location of the selected land plot from part of contour 3756 in the "Uba-Chuli" community of Kogon District for the construction of buildings for a "Compressed Gas Filling Station" was agreed upon.

Furthermore, E.D. informed that after the land plot was allocated to him, he paid 100,000,000 soums as a sponsorship fee to the "Bukhoroi Sharif" foundation on July 16, 2020, based on the directive of the regional administration. He presented a copy of receipt No. 14 dated July 16, 2020, to the court. According to Article 12 of the Civil Code of the Republic of Uzbekistan, a document issued by a state body that does not comply with legislative acts and violates the civil rights or legally protected interests of a citizen or legal entity can be deemed invalid by the court. According to Article 3 of the Law of the Republic of Uzbekistan "On Local State Authority" dated September 2, 1993, the activities of local state authorities are regulated by the Constitution of the Republic of Uzbekistan, this Law, and other legislative acts of the Republic of Uzbekistan.

Article 25 of this law, titled "Powers of the Governor," states that the regional, district, and city governors have the authority to annul the decisions of subordinate governors if they contradict the Constitution and laws of the Republic of Uzbekistan, documents of the chambers of the Oliy Majlis of the Republic of Uzbekistan, the President of the Republic of Uzbekistan, the Cabinet of Ministers, as well as decisions of higher councils of people's deputies and the governor. Additionally, according to Article 29 of this law, decisions of a governor that contradict the Constitution and laws of the Republic of Uzbekistan, documents of the President and Government of the Republic of Uzbekistan, and are protested by the prosecutor, are subject to reconsideration by the governor himself, a higher governor, or the Cabinet of Ministers of the Republic of Uzbekistan, and if necessary, by the President of the Republic of Uzbekistan.

Article 1 of the Law of the Republic of Uzbekistan "On Administrative Procedures" states that the purpose of this law is to regulate relations in the field of administrative procedures. The main objectives of this law are to ensure the rule of law in relations with administrative bodies and to protect the rights and lawful interests of individuals and legal entities. Article 59 of this law, titled "Annulment, Amendment, or Invalidity of an Administrative Document," states that an administrative document can be annulled or amended by the administrative body that issued it, a higher administrative body, or other bodies specified by law, based on an application or administrative complaint from an interested party. The need to annul or amend an administrative document may arise from changes in legal provisions, the prevention of threats to public interests, the identification of inconsistencies with legal provisions, and other cases provided by law. However, Article 60, part 2, of this law stipulates that the annulment of an administrative document against the interests of the interested party, unless otherwise provided by law, must be done through a meeting review.

Nevertheless, there is no record of the Kogon District Governor's decision being made through a meeting review. In the process of annulling decision No. 5167 of the district governor dated December 28, 2019, based on decision No. 14-2-36-Q/21 of the Kogon District Governor dated July 30, 2021, E.D. was not summoned to the district administration, his participation in the meeting was not ensured, and he was not given the opportunity to express his opinion on the matter, which resulted in a gross violation of Articles 9 and 16 of the Law of the Republic of Uzbekistan "On Administrative Procedures."

Article 15 of the Civil Code of the Republic of Uzbekistan states that if a document issued by a state body or self-governing body of citizens does not comply with legal provisions, or if the unlawful actions (inaction) of their officials cause damage to a citizen or legal entity, the state or the self-governing body of citizens must compensate for the damage.

Although Article 59 of the Law "On Administrative Procedures" provides for the issue of compensating for property damage, the decision of the Kogon District Governor No. 14-2-36-Q/21 dated July 30, 2021, annulling the decision No. 5167 of the District Governor dated December 28, 2019, left open the question of compensating E.D. for the expenses incurred after the decision was made and the land plot allocated, which he paid as sponsorship to the foundation. While the district administration reviewed the prosecutor's protest in accordance with the Law of the Republic of Uzbekistan "On Local State Authority," this law stipulates that the decision should be reviewed based on the prosecutor's protest but does not specify the exact procedure for reviewing the protest. However, ensuring the rule of law in relations with administrative bodies, protecting the rights and lawful interests of individuals and legal entities, and regulating relations in the field of administrative procedures are governed by the Law of the Republic of Uzbekistan "On Administrative Procedures." According to Article 38 of the Law of the Republic of Uzbekistan "On the Prosecutor's Office," the prosecutor submits a protest against an unlawful document to the body that issued the document or to a higher authority. A similar procedure is followed for a protest against an unlawful decision of an official. That is, although Article 59 of the Law "On Administrative Procedures" notes that an administrative document can be annulled or amended by the administrative body that issued it, a higher administrative body, or other bodies specified by law based on an application or administrative complaint from an interested party, and the term "protest" is not explicitly mentioned in the law, this does not mean that the administrations cannot review prosecutor protests in accordance with the requirements of the Law "On Administrative Procedures."

Additionally, according to the third paragraph of Clause 1 of the Decree No. 5495 of the President of the Republic of Uzbekistan dated August 1, 2018, "On Measures for the Radical Improvement of the Investment Climate in the Republic of Uzbekistan," the issue of annulling or amending an administrative document by a state body (official) must be reviewed in a judicial manner if it

pertains to the lawful interests of a bona fide investor or business entity (except in cases where its retention poses a threat to public interests).

According to part 2 of Article 189 of the Code of Administrative Procedure of the Republic of Uzbekistan, if the court determines that the decision or certain parts of the decision of an administrative body, a self-governing body of citizens, or officials, or their actions (inaction) are contrary to legal provisions and violate the rights and legally protected interests of the applicant, the court may declare the decision or certain parts of it invalid or the actions (inaction) unlawful.

Based on the above circumstances and legal requirements, considering that the decision No. 14-2-36-Q/21 of the Kogon District Governor dated July 30, 2021, was issued in violation of legal requirements, the court has decided to satisfy the applicant's claim. The court declares the decision No. 14-2-36-Q/21 of the Kogon District Governor dated July 30, 2021, invalid and obligates the Kogon District Administration to reconsider the protest of the Bukhara Regional Prosecutor's Office No. 10.2-11/21 dated July 10, 2021, regarding the annulment of the Kogon District Governor's decision No. 5167 dated December 28, 2019, in accordance with the legal procedures. The court also imposes the obligation on the Kogon District Administration to inform the court and the applicant about the execution of the court's decision within one month from the date the court's decision becomes legally effective.

It is important to emphasize that the principle of the opportunity to be heard holds great significance in the process of adopting administrative documents. There are two main reasons for this. Firstly, through hearing, it is possible to obtain important evidence and facts necessary for adopting administrative documents. Secondly, the principle of the opportunity to be heard is one of the key elements for making a fair decision. These two reasons are interconnected, and in practice, the principle of the opportunity to be heard is based on these two reasons.

The principle of the existence of the possibility of listening is divided into three categories of listening:

1. Formal oral listening. This type of listening is often used in witness requests and requests.
2. Informal oral listening. This type of listening is characterized by not following procedural procedures. The body uses its discretion in the decision-making process.
3. Written testimony. We can also call testimony in written order listening. It may sound strange, but it's also a kind of listening. This type is a listening that allows the parties to present their own guidelines and arguments.[4]

In general, from the application of the principle of the existence of the possibility of listening, the main goal is to further increase the possibility of ensuring the prism of transparency and openness.

**Thirdly**, cases of the implementation of behavior by governors not with a regulatory legal Act, which was in force at the time of the occurrence of a disputed legal relationship, but with newly adopted regulatory legal acts.[5]

The 97th decision of the Cabinet of Ministers of the Republic of Uzbekistan dated May 29, 2006, "On approval of the Regulations on compensating for damages caused to citizens and legal entities in connection with the allocation of land plots for state and public needs," has been effective for a considerable period of time. This regulation, which allocated land plots to citizen F.O. for state and public needs, continues to be in effect to this day and is supplemented by the 911th decision dated November 16, 2019, "On additional measures to ensure the rights of individuals and legal entities to property and to improve the procedures for allocating land plots and providing compensation."

The provisions regarding the necessity of resolving disputes based on established legal norms and legal documents that have been in effect during the period of actual legal relations cannot be disregarded by the authorities' ability to revisit legislation with a stringent stance.

**Fourthly**, although it should be implemented after official notification by the authorities responsible for overseeing the use and protection of land from which the right to ownership or the right to use permanently or temporarily has been revoked, this requirement has not been fulfilled. For example, in another district, the decision to adopt Resolution No. 775 without notifying "T" LLC in the specified manner resulted in the conclusion that the rights and legal protections of "T" LLC were violated, and the decision of the governor was deemed invalid.

**Fifthly**, instances where land plots are allocated to individuals for temporary or permanent use for a period exceeding two years are observed. For example, based on Resolution No. 224 issued by the district governor on May 5, 2021, a plot of land measuring 800.0 square meters in the area of "A" Street was allocated to citizen S.K. for the construction of a multi-story residential building under the right of permanent use. Initially, this land plot was assigned for use by State Comprehensive School No. 6 according to Resolution No. 720 issued by the city mayor on December 5, 2014. The acceptance of Resolution No. 224 by the district governor on May 5, 2021, did not comply with the requirements of the Land Code of the Republic of Uzbekistan.

In accordance with Article 23 of the Civil Code of the Republic of Uzbekistan, the transfer (alienation) of ownership, use, lease, or property rights of a land plot is carried out only after it has been allocated (sold) in accordance with the procedure specified in this Code and registered in the state register as state property.

**Sixth**, according to Article 12, Section 7 of the Law "On Farming", if the agreement to lease a land plot is terminated due to the failure of the parties to reach an agreement, it may be amended or canceled by the court. For instance, a 30-hectare land plot allocated to "Ch" farming under the district head's Decision No. 47 of July 13, 2020, for leasing was unilaterally canceled and reassigned to another farming entity. The farming entity appealed this decision to the administrative court, questioning its validity, which was subsequently upheld by the court.

It is necessary to emphasize that the purpose of the Law "On Administrative Procedures" is to regulate relationships in the field of implementing administrative procedures related to administrative governance. It ensures the legal rights and interests of physical and legal persons in their dealings with administrative bodies, as well as the provision of public services, and it applies procedural rules in accordance with other administrative-legal activities specified in laws and legal documents. However, the cases highlighted above indicate instances where decisions made by authorities do not always adhere to the procedural rules stipulated by the Law "On Administrative Procedures" regarding administrative and legal activities.

## **Conclusion**

According to the analysis above, decisions made by local authorities, which disregard or incorrectly apply the laws of the Republic of Uzbekistan's Land Code, "On Administrative Procedures", "On Ensuring the Protection of Private Property and Guarantees of Property Rights", and other regulatory documents, often lead to subsequent cancellation or perceived invalidation.

In summary, the head of the local executive authority exercises their powers through the acceptance of normative and administrative documents. This process demands thorough preparation and careful consideration from all aspects of the decision. Metaphorically speaking, "a decision of the head is the order of the head," indicating that the primary duty of the head is to enhance public confidence and security in both present and future days, as expressed in the words of the State leader.

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