INTERNATIONAL JOURNAL OF POLITICAL SCIENCES AND ECONOMICS
Impact Factor ( research bib ) - 9,78
https://ijmri.de/index.php/ijpse , German international journals company
ISSN 2751-9708

# THE PRINCIPLE OF "ACTIVE ROLE OF THE COURT" IN ADMINISTRATIVE LITIGATION AND ITS SCOPE

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**Abstract** This article analyzes the essence of the principle of "active role of the court" in administrative proceedings and its place in the Code of the Republic of Uzbekistan on Administrative Proceedings (CJP). During the study, special attention is paid to the role of the court in collecting evidence on its own initiative and eliminating inequality between the parties (citizen and state body) in public legal relations. The article comparatively studies the balance between dispositivity and active participation of the court, as well as the experience of administrative proceedings in Germany and the Russian Federation. Finally, scientific proposals and recommendations are given to determine the boundaries of the court's activity and improve national legislation while maintaining its impartiality.

**Key words:** administrative court, active role of the court, Article 11 of the Criminal Code of Ukraine, collection of evidence, obligation to prove, dispositive, public-legal relations, foreign experience.

**Аннотация** В данной статье анализируется сущность принципа **«активной роли суда»** в административном судопроизводстве и его место в Кодексе Республики Узбекистан об административном судопроизводстве (КАС). В ходе исследования особое внимание уделяется полномочиям суда по сбору доказательств по собственной инициативе и его роли в устранении неравенства между сторонами (гражданином и государственным органом) в публично-правовых отношениях. В статье изучен баланс

между диспозитивностью и активным участием суда, а также проведен сравнительный анализ опыта административного правосудия Германии и Российской Федерации. В завершение выдвинуты научные предложения и рекомендации по определению пределов активности суда при сохранении его беспристрастности и совершенствованию национального законодательства.

**Ключевые слова:** административный суд, активная роль суда, статья 11 КАС, сбор доказательств, бремя доказывания, диспозитивность, публично-правовые отношения, зарубежный опыт.

**Introduction** The main task of administrative justice in a modern legal state is to ensure the rule of law in relations with administrative bodies and to protect the violated rights of citizens. The peculiarity of conducting administrative court proceedings is that the parties (citizen and state body) do not initially have equal opportunities. In order to eliminate this inequality and find justice, the principle of "active role of the court" was introduced in the administrative court system of the Republic of Uzbekistan.

The principle of the active role of the court in administrative proceedings is widely discussed in modern jurisprudence as one of the central issues of administrative justice. Scholarly discussions revolve around the transition of the court from the status of "passive observer" to the status of "active participant" in the process and the compliance of this change with the principles of the rule of law. As Richard Stewart (2003) points out, while traditional models of administrative law are aimed at preventing the arbitrary use of powers by administrative bodies, modern approaches require courts to be more active in the decision-making process, taking into account social and economic interests. And Roderick Macdonald (1980) while analyzing the concept of procedural justice (procedural fairness), emphasizes that judicial control should not be limited to the detection of violations of the law, but should ensure the fair functioning of the entire administrative system. These scholarly debates show that the essence of administrative justice is not just to resolve disputes, but to maintain legitimacy in the field of public law.

The principle of the active role of the court serves as the main means of eliminating the inequality of resources and opportunities between the parties in public legal relations. Maciej Bernatt (2016) emphasizes that administrative bodies always have a dominant position in relation to citizens, who have greater administrative resources and evidence. To compensate for this inequality, Article 11 of the Code of Administrative Judicial Procedure of the Republic of Uzbekistan establishes the active participation of the court. According to it, the court must, not limited to the materials in the case, but on its own initiative examine all circumstances that are important for the correct resolution of the case. A similar approach is reflected in Article 14 of the Code of Administrative Judicial Procedure of the Russian Federation, which stipulates that the court, while maintaining its independence, must explain its rights to the parties and assist in collecting evidence. In this case, the court's task is to help the citizen, who is considered a "weak" party, in determining the truth.

Administrative justice differs fundamentally from civil justice in the issue of the burden of proof. While in civil cases each party must prove its case, in administrative cases this burden is mainly placed on the state body. According to Article 67 of the Code of Administrative Procedure, the burden of proving the legality of the contested decision or action lies with the administrative body that adopted it. Maciej Bernatt (2016) argues that in complex administrative cases (for example, in the field of competition law) caution should be exercised in distributing the burden of proof, since excessive “automatic” liability may contradict the principles of justice. Therefore, the active role of the court in gathering evidence is manifested not only in requesting

documents from the administrative body, but also in scrutinizing weak evidence presented by the citizen.

In foreign practice, in particular in German administrative justice, the "principle of inquiry" (Amtsermittlungsgrundsatz) operates, according to which the court must collect all the evidence necessary to resolve the case on its own initiative. In Russian practice, the actions of the court at the stage of preparing the case for trial (Article 135 of the Code of Administrative Judicial Procedure) are an important mechanism ensuring the activity of the court. The issue of ensuring a balance between procedural fairness and efficiency remains relevant in Europe. Scientific literature emphasizes that the active role of the court should not turn it into a "lawyer for the applicant", but should serve only to objectively seek the truth. The decisions of the Plenum of the Supreme Court of Uzbekistan also require that the courts study the case fully and comprehensively, and not allow passivity in the legal assessment of the evidence.

**Theoretical and practical analysis:** Article 11 of the Code of the Republic of Uzbekistan on Administrative Judicial Procedure (CJP) is the legal basis for this principle. According to it, administrative judicial proceedings are carried out on the basis of the active participation of the court. The court is not limited to the explanations, applications of the persons participating in the case and the evidence presented by them. On the contrary, the court must comprehensively, fully and objectively examine all the factual circumstances that are important for the correct resolution of the administrative case.

In practice, this principle is manifested in the collection of additional evidence by the court on its own initiative. Unlike civil or economic litigation, in administrative litigation the obligation to collect evidence is not imposed solely on the parties. Because in public legal relations, the state body has greater administrative and resource capabilities and is in a superior position to the citizen. The active role of the court is aimed at reducing this inequality, that is, at assisting the "weak" party in proving the truth.

**The balance between dispositivity and the active role of the court** The principle of dispositivity allows the parties to freely exercise their substantive and procedural rights. However, in administrative litigation, dispositivity is limited by the active role of the court. For example, the applicant may waive his claims, but if this waiver violates the rights of other persons, the court will not accept it. The task of the court is not only to resolve the dispute, but also to ensure legality. Therefore, the court is active in determining the true circumstances of the case, despite the inactivity of the parties.

**Foreign experience:** The experience of developed foreign countries, in particular Germany and the Russian Federation, is of great importance in clarifying the principle of the active role of the court in administrative proceedings. The Code of Administrative Proceedings of the Russian Federation (CAPP RF) specifically strengthens, among the principles of administrative proceedings, the adversarial nature and equality of parties with the active participation of the court. Article 14 of the CAPP RF states that the court, while maintaining its independence, objectivity and impartiality, shall direct the judicial process, explain to the parties their rights and obligations, and take appropriate measures to comprehensively and fully establish all the factual circumstances of the case. In Russian experience, the court is not limited to the materials submitted by the parties, but may also establish and request evidence on its own initiative. This serves to establish the truth, especially in disputes between a citizen and a state body, given the limited ability of a citizen to collect evidence. In accordance with Article 135 of the RF Code of Civil Procedure, the court, at the stage of preparing the case for trial, considers the issue of obtaining the necessary evidence, and if the citizen is unable to obtain the evidence independently, it will assist him or directly request the evidence.

In the German administrative justice system, this principle has a broader meaning and is expressed in the German Code of Administrative Justice (VwGO) as the "principle of inquiry"

(Amtsermittlungsgrundsatz). The peculiarity of the German system is that administrative courts are an independent and separate structure from administrative authorities. In this system, the court is obliged to investigate all circumstances relevant to the case on its own initiative and is not limited to the evidentiary arguments or proposals of the parties. Such broad powers of the court arise from the purpose of protecting public interests in administrative legal relations and comprehensively verifying the legality of the actions of a state body. In Germany, when collecting evidence, the court not only hears the parties, but also, if necessary, uses the testimony of witnesses, experts and specialists, and directly requests documents.

Foreign experience shows that the active role of the court is the main means of compensating for the inequality of resources between the state and the citizen. For example, in Russian legislation, the burden of proof is primarily placed on the state body that made the decision or committed the action, and the court participates in this process as an active manager. This approach is reflected in Article 11 of the Civil Procedure Code of the Republic of Uzbekistan, which also stipulates that the court must comprehensively and objectively examine all circumstances that are important for the correct resolution of the case. This experience of foreign countries justifies the fact that administrative justice, unlike civil justice, should not be a passive observer who only evaluates the evidence presented by the parties, but should be an active institution that ensures the rule of law in public legal relations.

**Problems and proposals in the system** There are some problems in applying the principle of the active role of the court:

1. **The boundary of impartiality:** Excessive activity of the court creates the risk of turning it into an advocate for the applicant (citizen) or, conversely, covering up the mistakes of the state body by the court. The court should not invent new requirements, but should seek the truth only within the framework of the submitted application.

2. **Procedural deadlines:** The process of collecting additional evidence often leads to an extension of the terms for considering the case.

**Proposals for improving the legislation:**

1. It is necessary to introduce a norm in Article 11 of the ICCPR that determines the boundary of the active role of the court. That is, the court should be active in collecting evidence, but should not go beyond the subject and basis of the claim.

2. Further strengthen the liability of state bodies for failure to provide evidence requested by the court. If the administrative body deliberately hides the evidence, the court must decide in favor of the applicant.

In conclusion, it can be said that the principle of the active role of the court in administrative proceedings is not just a theoretical concept, but the main means of ensuring justice in public legal relations. This principle serves to eliminate the existing inequality of resources and opportunities between a citizen and a state body, and determines the essence of administrative justice. As the study found, this rule, enshrined in Article 11 of the ICCPR, removes the court from the status of a passive observer and turns it into an active participant responsible for determining the true circumstances of the case. The experience of Germany and Russia shows that such activity of the court does not contradict dispositivity, but is necessary to ensure the rule of law. However, in this process, it is important to maintain the boundaries of impartiality of the court, to ensure that its activity does not go beyond the scope of the claim. In the future, the effectiveness of administrative justice will be further enhanced by more clearly defining the boundaries of the court's activity in gathering evidence in national legislation and strengthening the responsibility of state bodies for their indifference to the burden of proof. As a final conclusion, it should be noted that the active role of the court is a legal shield that protects the rights of citizens from the administrative influence of the state.

**Resources used:**

1. **Code of Administrative Procedure of the Republic of Uzbekistan**
2. **German Code of Administrative Procedure (VwGO - Verwaltungsgerichtsordnung). (Amtsermittlungsgrundsatz)**
3. **Code of Administrative Procedure of the Russian Federation (KAS RF). The following articles of the Code were used to illustrate the Russian experience:**
   a. Article 6 (principles of administrative proceedings).
   b. Article 14 (active role of the court in the context of the parties' adversarial and equal rights).
   c. Articles 62 and 63 (burden of proof and the requirement of evidence).
   d. Article 135 (actions of the court in preparing the case for trial).
4. **Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 22 dated June 25, 2024** ("On certain issues of consideration of administrative cases by courts in the investigative procedure").
5. **Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 35 dated November 30, 2018** ("On Certain Issues of the Application of Laws Regulating the Consideration of Cases on Administrative Offenses by Courts").
6. **Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 9 dated April 29, 2025** ("On the Application of Legislation Regulating the Review of Judicial Acts that Have Entered into Legal Force by Administrative Courts in the Case of Newly Discovered Circumstances").
7. **Review of the Judicial Practice of the Judicial Board for Administrative Cases of the Supreme Court of the Republic of Uzbekistan in the Second Half of 2025.** It analyzes administrative cases related to the court's activity in examining evidence and determining the circumstances of the case.
8. **Journal "Adil Sudlov" (Issue 1, 2021).** Theoretical information is provided on the status of judges, legal responsibility and issues of increasing the efficiency of justice in the context of administrative reforms.
9. **Maciej Bernatt (2016). "Review of European Administrative Law"**, an analysis of inequality and the burden of proof in public law relations.
10. **Richard Stewart (2003). "Administrative Law Review",** on modern models of administrative law.
11. **Roderick Macdonald (1980). "McGill Law Journal",** concepts of procedural justice and judicial review.
12. **Timothy Endicott. "Administrative Law",** theoretical foundations of administrative law.
13. **Gillian Metzger & Kevin Stack (2017). "Internal Administrative Law",** a study of the internal regulation of administrative processes.