

Historical Formation and Stages of Development of The Institution of Interim Protective Measures

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Abstract: This article examines the historical formation, legal nature, and stages of development of the institution of interim protective measures in administrative proceedings. It analyzes the evolution of this institution from the interdicts of Ancient Roman law to its subsequent development within the legal systems of Germany, France, England, and the United States, as well as its legal consolidation within the administrative justice system of the Republic of Uzbekistan. The study further explores existing challenges associated with the application of interim protective measures, including evaluative concepts contained in legislation and inconsistencies in judicial practice, and proposes recommendations aimed at improving this legal institution. Particular attention is paid to comparative legal analysis and the role of interim protection in ensuring effective judicial protection of rights and legitimate interests.

Keywords: Interim protective measures, administrative justice, judicial protection, human rights, temporary procedural measures, rule of law, administrative authority, judicial review, procedural guarantees, comparative legal analysis.

Introduction: The experience of global legal development demonstrates that the establishment of a state governed by the rule of law and a developed civil society is inextricably linked to the effective protection of human rights and freedoms and the creation of reliable mechanisms for their safeguarding. At present, the institution of judicial protection of human rights is recognized as one of the essential characteristics of a democratic state, while scholarly research in this field constitutes one of the priority areas of legal science.

In particular, ensuring effective judicial review over decisions, actions, or omissions of public administration bodies, local government authorities, and other administrative entities represents one of the principal functions of administrative justice. The existence of administrative adjudication serves to provide legal control over the activities of the executive branch, strengthen the principle of legality in the functioning of state bodies, and restore the violated rights and legitimate interests of individuals and legal entities.

Under conditions of increasingly complex legal relations, a final judicial decision alone is not always sufficient to ensure full protection of an individual's rights and legitimate interests. In practice, situations may arise in which the immediate enforcement of an administrative act or the performance of certain actions may result in serious legal consequences for an individual that are difficult to eliminate subsequently. In some cases, the infringement of rights may be of such a nature that their restoration through a subsequent court judgment becomes practically impossible or requires considerable material and moral costs.

In this regard, legal theory and judicial practice have developed special procedural mechanisms aimed at protecting individual rights before the conclusion of judicial proceedings. These mechanisms are referred to by different terms in international legal doctrine and national legislation. In particular, the Anglo-Saxon legal system employs the term "injunction", international judicial practice uses the concepts of "interim

measures” or “provisional measures”, French law refers to them as “référé”, whereas German law uses the concept of “einstweiliger Rechtsschutz”. In the national legislation of Uzbekistan, this institution is designated by the term “interim protective measures”.

Pursuant to Article 92 of the Code of Administrative Court Procedure of the Republic of Uzbekistan, a court is entitled to apply appropriate interim protective measures if there exists a risk of damage to the rights, freedoms, or legitimate interests of the applicant, or if the protection of such rights would become difficult without the application of interim measures. This provision constitutes one of the important legal instruments guaranteeing the effective protection of individual rights in administrative proceedings.

An analysis of the legal nature and content of interim protective measures makes it possible to identify several of their essential characteristics. First, such measures are temporary in nature and remain effective until the court decision in the main proceedings enters into legal force. Second, their primary purpose is to ensure the effective enforcement of the future judicial decision and to create the necessary conditions for the actual restoration of rights. Third, interim protective measures are imposed by courts vested with state authority and are secured through the coercive power of the state. Fourth, these measures are directly connected with the principal claim, derive from its substance, and serve to guarantee the practical effectiveness of the future judgment.

The significance of interim protective measures is particularly pronounced in the sphere of administrative justice. This institution strengthens the legal protection of individuals who occupy a relatively weaker position in relations with public authorities. It not only preserves the possibility of restoring violated rights in the future but also performs the functions of preventing infringements, eliminating potential harm at an early stage, and ensuring the effectiveness of judicial protection.

International judicial practice also plays a significant role in this respect. In several of its judgments, the European Court of Human Rights has emphasized that the effective remedy provided for in Article 13 of the Convention should not exist merely in theory but must also provide a genuine opportunity for the practical protection of individual rights. Based on this approach established in judicial practice, the institution of interim protective measures is regarded as one of the fundamental guarantees of judicial protection of human rights.

Thus, within administrative proceedings, the institution of interim protective measures plays a crucial role in

implementing the principles of the rule of law, ensuring the effectiveness of judicial protection, and safeguarding the rights, freedoms, and legitimate interests of individuals and legal entities. The theoretical and practical improvement of this institution contributes to enhancing the overall effectiveness of the administrative justice system.

This form of legal protection has undergone a long historical evolution. Its earliest manifestations can be found in Ancient Roman law. In Roman law, the institution of “interdictum”, applied by praetors, represented a special legal remedy aimed at providing prompt protection of individual rights. According to the Roman jurist Gaius, interdicts constituted praetorian orders requiring the performance or prohibition of certain actions and were intended to protect property and personal rights. Ulpian and Paulus also regarded interdicts as an effective form of legal protection [2]. Subsequently, this institution developed within European legal systems. In particular, the emergence of administrative justice in Germany and France during the nineteenth century led to the formation of independent procedural forms of temporary legal protection.

In legal scholarship, various approaches have been advanced concerning the legal nature of this institution. According to the Russian scholar Yu.N. Starilov, interim protective measures constitute an independent procedural guarantee within administrative justice, the principal purpose of which is to ensure the effectiveness of judicial review over the activities of administrative authorities. In the opinion of V.V. Yarkov, security measures represent an integral element of the right to judicial protection, without which it is impossible to ensure the actual enforcement of court judgments. M.S. Shakaryan defines interim protective measures as “a special procedural instrument aimed at ensuring the effectiveness of a judicial decision that may be rendered in the future” [3].

According to the prominent German administrative law scholar Otto Mayer, the true essence of administrative justice lies in protecting individuals against unlawful actions of public authorities, and this objective cannot be achieved without temporary protective measures [4].

Eberhard Schmidt-Assmann, in turn, regards prompt legal protection as an integral component of the principle of the rule of law. In his view, it is insufficient for a court merely to render a final decision; rather, individuals must also be provided with urgent legal protection whenever circumstances so require [5].

Therefore, legal doctrine considers interim protective

measures not as a means of protecting substantive rights per se, but rather as a special form of procedural legal protection.

The principal purpose of interim protective measures is to prevent violations of rights during the course of judicial proceedings and to ensure the effective enforcement of a future judicial decision. This purpose is accomplished through the following functions:

- preventing irreparable violations of rights;
- temporarily suspending the adverse consequences of decisions adopted by administrative authorities;
- maintaining a balance between the interests of the parties;
- guaranteeing the reality and effectiveness of judicial protection;
- preserving the possibility of enforcing a future court judgment.

In Uzbekistan, the formation of this institution has been closely connected with the judicial and legal reforms implemented in the country.

The Decree of the President of the Republic of Uzbekistan No. PF-4966 dated 21 February 2017 established the legal foundations for the development of administrative courts. On 1 April 2018, the Code of Administrative Court Procedure entered into force. Articles 92–99 of the Code regulate the institution of interim protective measures.

According to the Uzbek scholar B.B. Musaev, the principal objective of administrative justice is to restore the rights of individuals and legal entities violated in their relations with public authorities. In his opinion, the effective realization of this task requires courts to possess the authority to apply temporary legal protection measures. He regards interim protective measures as an important procedural guarantee ensuring the actual enforcement of administrative court decisions [6].

Professor A.Kh. Azizkhodjaev emphasizes that the realization of the principle of the rule of law requires effective judicial control over decisions adopted by state authorities. In his view, the institution of interim protective measures constitutes one of the most important instruments for achieving this objective [7].

The findings of the present study demonstrate that the institution of interim protective measures has been formed as a result of a lengthy historical evolution. Its earliest manifestations were reflected in the interdicts of Ancient Roman law, while later it developed into an independent procedural institution within the legal systems of France, Germany, England, and the United States. In post-Soviet states, this institution emerged

during the late twentieth and early twenty-first centuries, whereas in Uzbekistan it acquired legal recognition with the establishment of administrative courts and the adoption of the Code of Administrative Court Procedure.

An analysis of scholarly opinions indicates that no uniform approach exists among legal scholars regarding the institution of interim protective measures. Nevertheless, the majority of researchers agree that its primary function consists in preventing irreparable violations of rights.

Based on the results of the study, the institution of interim protective measures may be defined as follows:

“Interim protective measures are a system of temporary procedural measures applied by an administrative court prior to the adoption of a final judgment in the main proceedings, with the aim of protecting the rights, freedoms, and legitimate interests of the applicant and ensuring the effective enforcement of a judicial decision that may subsequently be rendered.”

It should also be noted that a number of problems arise in the course of applying interim protective measures by administrative courts.

The first problem concerns the insufficiency of clearly defined legal criteria. Specifically, the Code of Administrative Court Procedure employs evaluative concepts such as “the risk of violation of rights, freedoms and legitimate interests” and situations where the protection of rights “would be impossible or difficult.” However, the content and scope of these notions have not been explicitly clarified by legislation. As a result, different courts may adopt different decisions in similar circumstances. The Russian scholar Yu.N. Starilov likewise points out that the prevalence of evaluative concepts may lead to inconsistent judicial approaches.

Another significant problem is the lack of a fully developed body of administrative judicial practice. Administrative courts represent a relatively new institution within the legal system of Uzbekistan. Consequently, a stable and uniform practice regarding the application of interim protective measures has not yet been completely established. While some courts approach the application of such measures with caution, others tend to apply them more broadly. This demonstrates the necessity of ensuring consistency in law enforcement practice.

Administrative courts issue rulings on applications for interim protective measures. A third problem concerns the enforcement of such judicial rulings. In certain cases, despite the granting of interim protective

measures by the court, difficulties arise with respect to their timely execution. Such difficulties may include delays on the part of administrative authorities, deficiencies in enforcement mechanisms, or the absence of an appropriate institutional attitude toward compliance with judicial decisions. In contrast, the legal systems of Germany and France require the immediate execution of such judicial orders.

The fourth problem relates to the insufficient protection of the interests of respondents. In certain cases, interim protective measures may cause losses to the opposing party. Examples include the suspension of construction works, the temporary invalidation of licenses, or delays in public procurement procedures. In the legal systems of the United States and the United Kingdom, applicants may be required to provide financial guarantees in such circumstances. However, this issue has not yet been comprehensively regulated under the legislation of Uzbekistan.

On the basis of a comparative legal analysis of national legislation, law enforcement practice, and the experience of foreign countries, the present study considers it appropriate to put forward the following proposals aimed at further improving the institution of interim protective measures in administrative proceedings.

First, it is necessary to clarify the legal content of evaluative concepts contained in the Code of Administrative Court Procedure of the Republic of Uzbekistan, such as “the risk of harm to rights and legitimate interests,” “the likelihood of serious damage,” and “the difficulty of protecting rights.” Their precise definition either at the legislative level or through official interpretations would ensure uniform and consistent application of legal norms by courts and would also contribute to defining the scope of judicial discretion.

Second, in order to establish a uniform approach to the application of interim protective measures, it appears advisable for the Plenum of the Supreme Court of the Republic of Uzbekistan to adopt a special resolution devoted to this institution. Such a resolution should contain explanations regarding the legal criteria for granting interim protective measures, the procedure for selecting appropriate measures, the standards for assessing the principle of proportionality, and solutions to problematic issues arising in judicial practice.

Third, taking into account the advanced experience of the Federal Republic of Germany in the field of administrative justice, it is advisable to establish specific procedural time limits for the consideration of applications for interim protective measures. The absence of clearly defined time frames may, in certain

cases, hinder the timely protection of rights. Therefore, special procedural rules providing for expedited and simplified consideration of such applications should be introduced.

Fourth, in situations involving a risk of serious and irreparable harm to human rights and fundamental freedoms, it appears appropriate to incorporate into national legislation an expedited judicial procedure similar to the French institution of *référé-liberté*. Such a mechanism would enable courts to adopt decisions within very short periods of time and thereby ensure real and effective protection of human rights.

Fifth, consideration should be given to the gradual introduction into national administrative procedure of the institution of counter-security, which is widely used in the legal systems of the United States and the United Kingdom. This mechanism would provide guarantees for compensating potential damage caused to respondents by the application of interim protective measures and would serve to maintain a balance between the procedural rights of the parties. Consequently, a fair equilibrium between the interests of applicants and respondents would be ensured.

Overall, the implementation of these proposals would contribute to increasing the effectiveness of the institution of interim protective measures in administrative proceedings, strengthening procedural guarantees for the protection of human rights and legitimate interests, and bringing the national administrative justice system into closer conformity with international legal standards.

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