



THE INSTITUTION OF THE PRELIMINARY HEARING: A COMPARATIVE LEGAL ANALYSIS (ON THE EXAMPLE OF ADMINISTRATIVE COURTS)

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ABSTRACT

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In this article, the views and opinions of scientists and practicing experts on the specific aspects of the introduction of the institution of preliminary hearing in proceedings at the first instance court in administrative courts were studied, and the foreign practice in this regard was discussed in detail.

The system of administrative courts in the Republic of Uzbekistan was established between 2017 and 2018 through a series of comprehensive reforms. The Decree of the President of the Republic of Uzbekistan dated October 21, 2017, set forth measures aimed at further improving the organization and operation of the administrative judiciary. This document was directed at strengthening the mechanisms for judicial protection of the rights and freedoms of citizens that had been violated by state authorities.

The primary objective of administrative court proceedings is to ensure the legally accurate and expeditious examination of violations of the rights of citizens and business entities by state authorities and their officials, and to achieve a fair resolution of disputes. However, challenges such as increasing caseloads and the time required to adjudicate cases have given rise to the need for mechanisms allowing disputes to be resolved through preliminary hearings and judicial order proceedings.

The institutions of preliminary hearings and judicial orders enable the prompt and efficient resolution of disputes in accordance with the principle of procedural economy. These institutions serve to reduce the caseload of courts, minimize enforcement costs, and facilitate the resolution of disputes between the parties.

Pre-trial procedures are widely employed in foreign jurisdictions. In Germany, the United States, and Russia, institutions such as the pretrial conference and settlement (including mediation) constitute essential components of administrative procedural law.

Since these institutions are relatively new in the practice of Uzbekistan, scientific research into their application, effectiveness, limitations, and avenues for improvement is necessary. The legal nature of the preliminary hearing and judicial order institutions, their procedural legal mechanisms, the rights and obligations of the parties, the role of courts, and other related matters require thorough examination.

In the field of administrative procedural law in Uzbekistan, scholars such as Sh.N. Abdullaev, Kh.B. Babaev, and L.B. Khvan have conducted foundational research. A comparative legal analysis of pre-trial procedures has been authored by L.B. Khvan. The fundamentals of administrative procedural law are set out in detail in the textbook by Sh.N. Abdullaev, which addresses the substance of administrative procedural relations, the parties thereto, the functions of the court, and other matters. In the Russian Federation, scholars such as N.G. Salishcheva¹, Yu.N. Starilov², and A.B. Zelentsov³ have conducted in-depth studies of the theory and practice of administrative judicial proceedings.

In Germany, F.O. Kopp and W-R. Schenke have conducted foundational research in administrative procedural law and authored practical commentaries, while in the United States, P.L. Strauss⁴ and others are regarded as authors of classical textbooks on administrative law.

Nevertheless, research into the distinctive features of the preliminary hearing and judicial order institutions in our country, the challenges encountered in judicial practice, and proposals for their improvement remains insufficient. The present dissertation therefore holds considerable scientific and practical significance.

Definition and Purpose of Pre-Trial Procedures

Pre-trial procedures refer to the totality of procedural acts performed prior to the substantive examination of an administrative dispute by a court. The primary purpose of such procedures is to resolve the dispute before trial or, at a minimum, to prepare and simplify the judicial process.

A preliminary hearing shall be conducted during the preparation of a case for trial — specifically, in cases concerning challenges to decisions, acts, or omissions of administrative authorities, local self-governance bodies, and their officials that are inconsistent with legislation and that violate the rights and legally protected interests of citizens or legal entities.

A preliminary hearing shall be conducted for the following purposes:

- 1) to clarify circumstances material to the proper examination and resolution of the administrative case;
- 2) to determine the sufficiency of evidence in the administrative case;
- 3) to identify any missed deadlines for filing an administrative claim with the court;
- 4) to procedurally consolidate the voluntary actions of the parties in preparing the administrative case for trial;
- 5) to ascertain the possibility of resolving the administrative dispute prior to trial, including through conciliation procedures.

The judge shall conduct the preliminary hearing no later than twenty days from the date of receipt of the application by the court; this period shall not be included in the time limit set for the trial.

In the course of conducting the preliminary hearing, the judge shall:

- 6) clarify the claims of the applicant and the objections of the respondent;

¹ <https://op.raj.ru/serijnye-izdaniya/20-izbrannoe/102-salishcheva-n-g-izbrannoe>

² <https://law.vsu.ru/structure/admlaw/personal/starilov.html>

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⁴ Peter L. Strauss // <https://www.law.columbia.edu/faculty/peter-l-strauss>

- 7) take measures to remedy deficiencies in the application;
- 8) provide explanations to the applicant regarding the evidence necessary to substantiate the claims, and to the respondent regarding the submission of a written statement of position;
- 9) render a preliminary legal assessment of the claims set forth in the application and the evidence on file (including substitution of improper parties, joinder of additional respondents, etc.). A final determination on the merits of the case under consideration shall not be permitted at this stage.

The parties shall be notified of the time and place of the preliminary hearing session by registered mail or by other means of communication that ensure the recording of the fact of notification.

A record (minutes) of the preliminary hearing session shall be drawn up, indicating the following: the date and place of the session; the name of the court conducting the proceedings; the surname and initials of the judge and the court secretary (judicial assistant or senior assistant); information on the parties and the explanation of their procedural rights and obligations; and the explanations submitted by the parties.

Persons participating in the case may attend the preliminary hearing by means of videoconferencing or web-conference.

In the event that the parties fail to appear, the judge shall carry out the actions specified in the Code of Administrative Court Proceedings. In such case, no record (minutes) of the preliminary hearing shall be drawn up.

At the preliminary hearing, the parties, other participants in the case, their representatives, or — where the case must be conducted with a representative — the representatives alone, may present evidence, submit motions, and set out their arguments on issues arising during the hearing session.

At the preliminary hearing, the court may fully or partially suspend or terminate the proceedings in the administrative case, or decline to consider the administrative claim without examination, where grounds therefor exist and, in the manner, established by the Code for the resolution of the relevant matters — except for administrative cases subject to collegial examination by the court.

Significance of the Preliminary Hearing in Administrative Proceedings

1. Procedural economy — reduces the duration of case examination and conserves judicial resources;
2. Pre-determination of evidence — expedites the judicial process;
3. Possibility of resolving the dispute through settlement or mediation — satisfies the interests of both parties;
4. Ensuring legal certainty — enables the parties to formulate their claims and objections with greater precision.

The effectiveness of the preliminary hearing depends on the active role of courts and the good-faith conduct of the parties. At the pre-trial stage, the court discharges the function of explaining the law to the parties and encouraging them to reach a settlement.

Historical Development of the Preliminary Hearing Institution

The institution of the pretrial conference first emerged in the United States in the 1930s. The Federal Rules of Civil Procedure⁵, adopted in 1938, established the procedural framework for the preliminary hearing. The institution was subsequently adopted in European states as well.

In Germany, preliminary hearing measures are regulated in detail by the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung — VwGO). Article 87a of the Code constitutes the legal basis authorizing the conduct of a preliminary hearing⁶.

The historical development of the preliminary hearing institution proceeded through three principal stages:

First Stage (1930–1960) — Emergence of the Institution. In the United States, a mechanism for case preparation was introduced due to the high caseload of the courts. The preliminary hearing was conducted by a deputy judge or magistrate judge.

Second Stage (1960–1990) — Development of the Institution. The preliminary hearing began to be actively applied in European states. The scope of the hearing was expanded — from mere preparation to also encompassing orientation toward settlement.

Third Stage (1990 — Present) — Refinement of the Institution. Digitization, remote hearings, and integration with mediation. The preliminary hearing has become an integral part of modern administrative procedure.

In Russia, the preliminary hearing institution was regulated following the adoption of the Code of Administrative Court Proceedings. Since 2015, the preliminary hearing has been widely applied in Russian administrative courts.

Experience of Germany

Administrative court proceedings in Germany are distinguished by their high efficiency. Article 87a of the German Code of Administrative Court Procedure grants the court the right to conduct a preliminary hearing without the participation of the full bench, at which the factual and legal aspects of the dispute are discussed.

Distinctive features of German practice:

1. The preliminary hearing is conducted by a judge or a reporting judge;
2. Minutes of the hearing session are drawn up and communicated to the parties;
3. The results of the preliminary hearing are taken into account in the course of the trial;
4. The parties may clarify their proposals regarding evidence at the preliminary hearing.

According to the 2023 Annual Report of the Bundesverwaltungsgericht (Federal Administrative Court — BVerwG)⁷, approximately 35 percent of cases were resolved or settled at the preliminary hearing stage.

Experience of the United States

In the United States, the preliminary hearing is established by the Federal Rules of Civil Procedure,^[8] which constitute the uniform national set of procedural rules governing the adjudication of civil cases in United States federal district courts, including contractual disputes, civil rights violations, and claims for damages. These Rules were adopted in

⁵ <https://www.uscourts.gov/forms-rules/current-rules-practice-procedure/federal-rules-civil-procedure>

⁶ https://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html

⁷ www.bundesverfassungsgericht.de/SharedDocs/Downloads/EN/Jahresbericht/jahresbericht_2023.html

1938 and are periodically updated by the Supreme Court. Their primary objective is to ensure that any judicial proceeding is resolved in a just, speedy, and inexpensive manner.

Structure of the principal rules and chapters:

Title I: Scope of the Rules (Rules 1–2): Establishes the uniform character of the proceedings and the objectives of the judicial process.

Title II: Commencing an Action (Rules 3–6): Filing a complaint to initiate proceedings, service of summons, and calculation of time limits.

Title III: Pleadings and Motions (Rules 7–16): Pleadings of the parties, written motions addressed to the judge, standards of plausibility, and the pretrial conference procedure.

Title IV: Parties (Rules 17–25): Plaintiffs, defendants, third parties participating in the case, and the legal basis for class actions.

Title V: Disclosures and Discovery (Rules 26–37): The most important pre-trial stage — disclosure of evidence by the parties (discovery), encompassing depositions, interrogatories, and document production.

Title VI: Trials (Rules 38–53): Jury trial, bench trial, and the procedure for calling witnesses.

Title VII: Judgment and its Enforcement (Rules 54–63).

Titles VIII and IX (Rules 64–86): Provisional remedies, special powers, and local court rules⁸.

The preliminary hearing is conducted by a magistrate judge or a specially appointed master. Distinctive features of United States practice include:

Discovery — the process of mutual disclosure of evidence;

Settlement conference — dedicated settlement sessions;

Mandatory mediation — required in certain cases;

Case management — scheduling and management of case proceedings.

The 2023 Manual of the Federal Judicial Center⁹ pays considerable attention to pre-trial procedures and provides courts with recommendations for the effective conduct of hearing sessions.

Procedural Stages of the Preliminary Hearing

Yu.N. Starilov has conducted a thorough analysis of the theory and practice of administrative judicial proceedings in Russia. In his view, pre-trial procedures are necessary for the effective administration of administrative justice.

First Stage — Preparation. The date of the preliminary hearing is scheduled and the parties are notified. The parties may prepare written explanations of their respective positions.

Second Stage — Conduct of the Session. The judge (or deputy judge), the parties, and their representatives participate in the session. The judge explains the nature of the dispute and hears the positions of the parties.

Third Stage — Discussion. The parties set out their claims and present evidence. The judge puts questions to the parties and explains the legal aspects of the dispute.

⁸ <https://www.uscourts.gov/forms-rules/current-rules-practice-procedure/federal-rules-civil-procedure>

⁹ <https://www.acus.gov/>

Fourth Stage — Outcomes. The preliminary hearing may lead to three outcomes: (a) a settlement agreement is concluded; (b) the dispute is partially resolved; (c) the dispute is not resolved and the case is scheduled for trial.

Possible Outcomes of the Preliminary Hearing

First outcome — Full Settlement. If the parties fully resolve the dispute and reach a settlement agreement, the court shall approve such agreement. Upon approval of the settlement agreement, the proceedings shall be terminated. The settlement agreement shall carry the force of an enforcement document.

Second outcome — Partial Settlement. The parties reach a settlement on certain aspects of the dispute, but not all issues are resolved. In such case, the matters on which agreement has been reached shall be excluded from the subject of the dispute, and the trial shall continue with respect to the remaining issues.

Third outcome — No Settlement. If the parties fail to reach a settlement, the case shall be examined by the court in the ordinary manner. However, the hearing session is not rendered futile — the substance of the dispute has been clarified, evidence identified, and the judicial process thereby facilitated.

Proposals for Legislative Amendments

Drawing on the experience of foreign states and with a view to improving the national administrative procedural legislation, the following amendments and additions to the Code of Administrative Court Proceedings (hereinafter — the Code) are proposed:

1. Amendment to Article 105 — addition of the following sub-paragraph 21):

"21) where, as a result of the preliminary hearing, the applicant has filed a petition to leave the application without consideration;"

2. Amendment to Article 130 — addition of the following Part Two:

"Where extraterritorial jurisdiction is selected, a corresponding petition of the applicant shall also be appended to the application (complaint);"

3. Retitling of Chapter 17 to read: "Preparation of a Case for Trial and the Preliminary Hearing";

4. Amendment to Article 139, Part Two — addition of the following sentence:

"...except in cases where a preliminary hearing is to be conducted;"

5. Amendment to Article 140 — addition of the following Part Three:

"Where a preliminary hearing has been conducted, the period for preparing the case for trial shall not exceed twenty days;"

6. Addition of new Article 140¹:

Article 140¹. Preliminary Hearing

A preliminary hearing shall be conducted during the preparation of a case for trial — specifically, in cases concerning challenges to decisions, acts, or omissions (failures to act) of administrative authorities, local self-governance bodies, and their officials that are inconsistent with legislation and that violate the rights and legally protected interests of citizens or legal entities.

The judge shall conduct the preliminary hearing no later than twenty days from the date of receipt of the application by the court; this period shall not be included in the time limit set for the trial.

In the course of conducting the preliminary hearing, the judge shall:

- 1) clarify the claims of the applicant and the objections of the respondent;
- 2) take measures to remedy deficiencies in the application;
- 3) provide explanations to the applicant regarding the evidence necessary to substantiate the claims, and to the respondent regarding the submission of a written statement of position;
- 4) render a preliminary legal assessment of the claims set forth in the application and the evidence on file (including substitution of improper parties, joinder of additional respondents, etc.). A final determination on the merits of the case under consideration shall not be permitted at this stage.

The parties shall be notified of the time and place of the preliminary hearing session by registered mail or by other means of communication that ensure the recording of the fact of notification.

A record (minutes) of the preliminary hearing session shall be drawn up, indicating the following: the date and place of the session; the name of the court conducting the proceedings; the surname and initials of the judge and the court secretary (judicial assistant or senior assistant); information on the parties and the explanation of their procedural rights and obligations; and the explanations submitted by the parties.

In the event that the parties fail to appear, the judge shall carry out the actions specified in Article 140 of this Code. In such case, no record (minutes) of the preliminary hearing shall be drawn up.

Based on the results of the preliminary hearing, a ruling shall be issued on: leaving the application without consideration; approval of a settlement agreement; or scheduling the trial.

Conclusion

Within the framework of ongoing reforms to improve the administrative justice system of the Republic of Uzbekistan, the issue of introducing the preliminary hearing institution in administrative cases is of urgent significance. This institution has been widely applied in the procedural legislation of the United States, Germany, and the Russian Federation, and has proven its effectiveness in practice.

The incorporation of this institution into the Code of Administrative Court Proceedings of the Republic of Uzbekistan should be assessed as the logical continuation of the country's judicial reform process.