



## THE GROUNDS GOVERNING THE CONSIDERATION OF CASES INVOLVING A REPRESENTATIVE FOR THE PROTECTION OF BUSINESS RIGHTS IN ECONOMIC COURTS

**Alimardanova Iroda Vakhid Qizi**

Tashkent Regional Court for Economic Affairs

Senior Assistant of Judge

Email address: [alimardanovairoda@mail.ru](mailto:alimardanovairoda@mail.ru)

<https://www.doi.org/10.5281/zenodo.7965020>

### ARTICLE INFO

Received: 12<sup>th</sup> May 2023

Accepted: 23<sup>th</sup> May 2023

Online: 24<sup>th</sup> May 2023

### KEY WORDS

*Administrative barrier, state economic policy, business code, tax presumption, contradictions, and uncertainties.*

### ABSTRACT

*This article consists of differences in which the legal mechanisms that ensure the rights of entrepreneurs, their classification, the benefits granted by the economic courts to the subjects of entrepreneurs, and their mutual comparison with the reforms in our legislation and in practice are obtained.*

The business community is primarily responsible for increasing the country's GDP (Gross Domestic Product), but as experience has shown, not always is the government prepared to protect business interests, ensure that there are no administrative barriers to doing business, or provide protection from irrational demands from tax authorities, and investigation authorities, the promise of safety.

It should be remembered that the Constitution of the Republic of Uzbekistan guarantees the right to participate in entrepreneurial activity<sup>1</sup>, but the majority of government officials maintain the view that everything that isn't permitted is criminal. Because of this, businessmen frequently suffer at the hands of the court government. The President has been made aware of this imbalance in judicial practice on numerous occasions, though laws and acts are continually changing, administrative barriers are being lowered, and checks are generally limited.

The State policy aimed at building the rule of law and thereby ensuring the rule of law is embodied in strategic documents in the field of human rights. Such a document is the National Strategy of the Republic of Uzbekistan on Human Rights approved by Presidential decree in June 2020. One of its main tasks is to establish the principle of the rule of law, Uzbekistan's entry into the top 50 countries of the world in international rankings and indices in the field of human rights and freedoms. In accordance with this document, by the decision of the Chamber of the Oliy Majlis, a Parliamentary commission on compliance by the Republic of Uzbekistan with international obligations in the field of human rights was established. The

<sup>1</sup> The Constitution of the Republic of Uzbekistan, article 65.



same decree approved the "roadmap" for the implementation of the National Strategy of the Republic of Uzbekistan on Human Rights, consisting of 78 points.<sup>2</sup>

One of the leading State bodies dealing with human rights issues and building a rule of law is the National Center for Human Rights of the Republic of Uzbekistan. Its activities aim to ensure the interaction of state bodies and other organizations to fulfill Uzbekistan's international obligations, prepare national reports on human rights, and expand cooperation with international organizations to protect human rights. At a meeting of the Parliamentary Commission held in January this year, information was heard from the National Center for Human Rights of the Republic of Uzbekistan on the implementation of the National Human Rights Strategy by state bodies. It was noted that to ensure the fulfillment of the tasks defined by the national strategy, 12 decrees and resolutions of the President and six resolutions of the Cabinet of Ministers were adopted.

Among the democratic institutions in the field of protection of human rights and freedoms are the Commissioner of the Oliy Majlis for Human Rights (Ombudsman), the Commissioner of the Oliy Majlis for the Rights of the Child (Children's Ombudsman), as well as the Authorised Legal person under the President of the Republic of Uzbekistan for the Protection of the rights and legitimate interests of business entities. In their activities, they are guided by the principles of legality, justice, humanism, and the priority of human rights and legitimate interests — one of the main components of the rule of law.

If we maintain our position while abiding by the order of Uzbekistan's normative legal acts, the Republic of Uzbekistan's laws come next after its Constitution.<sup>3</sup>

The Civil Code, the Economic Procedure Code, Tax, and Customs, among others, are some of the current important codes for the list of codes that safeguard company and entrepreneur rights. Also, The draft code of entrepreneurship is being discussed with the participation of international experts, and it is expected that on a fast day, another new code will be created in the legal system. The draft code was submitted to 8 leading international organizations, including USAID, the World Bank, the Asian Development Bank, the European and Reconstruction Development Bank, the International Finance Corporation, the German economic group Berlin Economics, the Organisation for Economic Co-operation and Development<sup>4</sup>, from which conclusions and proposals were drawn on the results of the examination.

Today, on the basis of these proposals, the draft entrepreneurial code is prepared by specialists.

In order to give entrepreneurs a number of freedoms and ease their burden, their rights and privileges are guaranteed in economic courts. In particular, according to Part 4 of Article 13 of the economic code written that, when considering cases of disputes between business entities and state bodies, including law enforcement and regulatory bodies, as well as banks, all persistent contradictions and ambiguities in legislation arising in connection with the

---

<sup>2</sup>“Народное слово” newspaper, February 23, 2023, article by Shukhrat Vafoev, Chairman of the Committee of the Legislative Chamber of the Oliy Majlis on Democratic Institutions, Non-Governmental organizations and self-government bodies of Citizens

<sup>3</sup> Law of the Republic of Uzbekistan on “Normative legal acts”, article 6, dated 04.20.2021, № LRU-682

<sup>4</sup> “Народное слово” newspaper, December 13, 2022.



implementation of entrepreneurial activity shall be interpreted in favor of the business entity.<sup>5</sup>

Unfortunately, the legally fixed presumption of the entrepreneur's rightness does not work in practice, the competent authorities simply do not see "irremovable contradictions and ambiguities" in the regulations from the entrepreneur's arguments. They are all clear. How, then, to use this norm, how to prove that there are unavoidable ambiguities and contradictions in legal acts? Why is it so difficult to do this? Now let's examine the acts' wording.

The Tax Code (TC) Article 11 establishes that "All glaring inconsistencies and ambiguities in the tax legislation are stoked in the taxpayer's favor." These legally mandated protections represent a significant advancement in fostering an entrepreneurial environment and form the cornerstone of granting small and private firms the freedom to engage in entrepreneurial economic activity. On how to interpret Article 11 of the Tax Code, however, business representatives and regulatory agency representatives disagree in the practice of law enforcement. On the one hand, there is a strong legislative foundation intended to completely exclude any chance of ambiguities, conflicting interpretations, etc. in the legal acts. (See the Law "On normative legal acts," the Rules for the preparation and adoption of programs for the development and submission of draft laws and other normative legal acts to the Oliy Majlis of the Republic of Uzbekistan, as well as overseeing their implementation (Appendix No. 1 to Resolution KM dated August 5, 2011, N 227), and the Law "On normative legal acts". The mechanism for applying the guarantee of priority of the entrepreneur's rights, even in the tax field, is not defined, and there are no clear and specific definitions of the phrases "irremediable," "contradictions," and "ambiguities" in the statute. We believe that all of this renders this notion impractical and essentially devoid of any legal significance. In particular, it is still necessary to establish the existence of these specific inconsistencies or ambiguities in the legislative acts and their inevitability before using this guarantee, which is currently impossible due to the lack of legal regulation of the procedure for such proof.

First of all, for law enforcement practice, the terms "irremediable," "contradictions," and "ambiguity" themselves require concretization and determination of semantic meaning.

The rightness of the taxpayer principle began to apply to all interactions between business entities and government authorities at all levels, law enforcement regulatory authorities, and commercial banks and became known as the principle of the rightness of the taxpayer with the adoption of the Decree of the President "On Additional Measures to Create the Most Favorable Business Environment for the Further Development of Small Business and Private Entrepreneurship".<sup>6</sup> Contradictions, that is, cases when there are inconsistent regulations and prescriptions on one issue in a regulatory act regulating certain relationships. Or there is one regulatory act, the provisions of which do not correspond to the provisions of another. The concept of "contradiction" should be understood not only as a direct denial of

---

<sup>5</sup> Economic procedure code of the Republic of Uzbekistan, article 13.

<sup>6</sup> Decree of the President of the Republic of Uzbekistan, dated 24.08.2011 No. UP-4354, "on additional measures to create the most favorable business environment for the further development of small business and private entrepreneurship".



the norm fixed by one law, the norms established by other laws but also as the existence of two laws or by-laws that establish different requirements.

Ambiguity - that is, cases when the provisions of the law do not allow to determine the specific rights and obligations of the parties, obligations of the parties, the mechanism of action, etc. On the one hand, the meaning of the provisions of the law is clear, but it is unclear in which cases they are subject to application, or refer to other provisions of the law that do not regulate the ambiguities or contradictions that have arisen.

Now the most important thing: contradictions and ambiguities must be irremediable. Here a fair question arises: what kind of unavoidability should be? Unavoidable in law enforcement practice? How and by whom should it be determined that the contradictions or ambiguities that have arisen are irremediable?

Unfortunately, not everyone is aware that a businessman in Uzbekistan works at his own risk and that his activity is intended to help society, specifically to generate new employment and pay taxes so that schools may be established. In order to ensure the interests of businessmen and preserve their rights, we must introduce distinct conceptions into law and practice. It is regarded as a collection of tools and techniques put forth by the legislator in a number of normative acts for the defense of interests that have been violated, and its application is carried out with the aid of the state's enforcement apparatus, including its structures, the authorities of the Federation's subjects, and particular officials.

At the same time, it is necessary to take into account Article 16 of the Law "On Normative Legal Acts", which establishes the ratio of various normative legal acts. The ratio of various normative legal acts according to their legal force is determined in accordance with the Constitution of the Republic of Uzbekistan, the competence and status of the body that adopted the normative legal act, as well as the types of acts. A regulatory legal act must comply with regulatory legal acts that have a higher legal force. If there are discrepancies between regulatory legal acts, the regulatory legal act is applied. (an act with higher legal force)

In case of divergence of normative legal acts having equal legal force, the provisions of the act adopted later shall apply. A regulatory legal act adopted by a ministry, state committee, or department has greater legal force in relation to a regulatory legal act of another ministry, state committee, or agencies of the same level if the body that adopted such an act is specifically authorized to regulate a certain area of public relations. Thus, there are no sufficiently detailed regulations on the application of Article 11 of the Tax Code and Article 16 of the Law "On Regulatory Legal Acts". Are the provisions of these articles of the Tax Code or the Law "On Regulatory Legal Acts" subject to application in cases where there are contradictions in two regulatory legal acts and one of them is a special one that regulates this particular area of relations?

What to do if a business entity indicates the presence of irremediable contradictions and ambiguities in the norms of tax legislation, and an investigation is already underway on it - we do not know of a single case when the investigative authorities would take into account the arguments about the irremediability of the contradiction and ambiguity and the priority of the taxpayer's right. Subsequently, the investigation materials are confirmed by the verdict of the criminal court, which established the "guilt" of the subject's employees the verdict becomes



the basis for a positive consideration of the application of the tax authority on the application of financial sanctions to the business entity. A whole chain is being built in the functioning of the law enforcement and judicial system, the beginning of which is in the absence of a clearly defined legal mechanism for applying the principle of presumption of the rights of the taxpayer and entrepreneur.

If irremediable contradictions and ambiguities are determined by the court, at what point and in what order? According to the application for recognition of the incident as an irremediable contradiction or ambiguity, or when considering a dispute? There are significantly more questions in this article than we can give answers. In our opinion, it is necessary to form opinions of practicing lawyers, business entities, regulatory authorities, and scientists on this issue during the public discussion. After that, apply to the Constitutional Court, which must give an official interpretation of Article 11 of the Tax Code and Article 16 of the Law "On Normative Legal Acts", eliminating all contradictions and ambiguities!