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PROTECTION OF BUSINESS ENTITIES FROM UNLAWFUL INTERFERENCE AND IMPROPER INSPECTIONS: A THEORETICAL AND LEGAL ANALYSIS

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Abstract

The article is devoted to a theoretical and legal analysis of the protection of business entities from unlawful interference by State bodies and from improper inspections in the Republic of Uzbekistan. It reveals the concept of unlawful interference and examines the system of principles that form the legal regime of non-interference — the freedom of entrepreneurial activity, the priority of the entrepreneur's rights, the presumption of the entrepreneur's good faith, and the inadmissibility of unjustified control. The risk-oriented model of State control, the mechanisms of administrative and criminal liability of officials, and the most recent guarantees of 2024–2025 are considered. Conclusions are formulated on the directions for the further improvement of the legislation.

Keywords: Business entities; unlawful interference; obstruction of entrepreneurial activity; State control; inspections; presumption of good faith; priority of the entrepreneur's rights; risk analysis; liability of officials.

Introduction

The freedom of entrepreneurial activity is among the fundamental economic freedoms, and its real content is determined not so much by its proclamation as by the entrepreneur's protection from the arbitrary interference of public authority. By its legal nature, this freedom is in many respects negative: it requires of the State, first and foremost, abstention from unjustified influence on the business entity, and only secondarily active measures to ensure it. From this stems the internal contradiction in the legal position of the State, which simultaneously acts as the guarantor of entrepreneurial freedom and as a potential source of its violation, since it is precisely State bodies that possess the authoritative powers capable of restricting economic autonomy. The resolution of this contradiction constitutes the very essence of the legal regime for protecting the entrepreneur from unlawful interference.

The Constitution of the Republic of Uzbekistan guarantees the freedom of economic activity, the equality and legal protection of all forms of ownership, the inviolability of private property, and also the right of everyone to judicial protection and to appeal against unlawful decisions, acts and omissions of State bodies (Article 55) [1]. These constitutional principles are elaborated in the special legislation on guarantees of the freedom of entrepreneurial activity, which expressly provides that the State guarantees the freedom of entrepreneurship and that the owner, at his own discretion, possesses, uses and disposes of the property belonging to him [2]. Protection from unlawful interference thus appears not as a particular procedural guarantee but as a necessary condition of the very freedom of entrepreneurship, without which the proclaimed rights remain a declaration. The relevance of this set of issues for Uzbekistan has increased in the course of the economic reforms of the last decade, when

the course towards the liberalisation of economic life and the reduction of the State's presence in the economy has required a rethinking of the very philosophy of control — from total supervision to targeted and justified intervention.

From a theoretical and legal point of view, interference in entrepreneurial activity should be understood as any exercise of authority over a business entity that is not based on law and that restricts its autonomy in adopting and implementing economic decisions. The key element of this definition is the feature of unlawfulness: not every act of the State constitutes interference in the impermissible sense, since lawful control, licensing, tax administration and other forms of regulation are a legitimate manifestation of the public function. Interference becomes impermissible when it lacks a legal basis, exceeds the powers conferred, or violates the established procedure. The object of protection is the economic autonomy of the entity — its ability freely to determine the directions and conditions of its activity — together with the inviolability of its proprietary sphere. In form, interference may be direct, where it affects a specific business transaction, and indirect, or regulatory, where autonomy is restricted through unpredictable changes in the general rules; in both cases the legal certainty of the entrepreneur's position suffers.

Positive law reveals the concept of impermissible interference through two adjacent but distinct elements of an offence. Obstruction of lawful entrepreneurial activity covers the violation of the established procedure of State registration, the unlawful refusal to register or to issue a licence, the violation of the procedure for conducting inspections, the restriction of the rights and legitimate interests of the entrepreneur, the demand for reporting not provided for by legislation, and any other unlawful restriction of its autonomy [3]. Unlawful interference in the activity of business entities, as an independent element of an offence, emphasises the wrongful influence of an official making use of his official position [3]. The most dangerous forms of such influence are criminalised: the criminal law sets aside a special chapter on offences connected with obstruction of, and unlawful interference in, entrepreneurial activity, classifying among them the violation of the right of private property, the violation of the procedure for conducting inspections and audits, the unlawful suspension of an entity's activity or of operations on its bank accounts, the unjustified delay in the issuance of monetary funds and a number of other acts [4]. The distinction between administratively and criminally punishable interference is drawn according to the degree of public danger and the gravity of the consequences, which reflects the general principle of the proportionality of liability and makes it possible to construct a differentiated, rather than uniform, response of the legal order to encroachments of differing gravity.

The legal regime of protection from interference is formed not by a single norm but by a system of interconnected principles that serve as the load-bearing structure of the entire institution. The system-forming principle is that of non-interference in the activity of business entities, enshrined among the basic principles of State control alongside the legality, objectivity and openness of the activity of the controlling bodies, as well as the appropriateness of initiating an inspection [5]. Non-interference in this context means not the complete removal of the State from economic life but a presumption of the entrepreneur's freedom, which may be overridden only where a legal basis exists. The principle of legality

establishes the requirement that the controlling body act strictly within the limits of the powers conferred and in the established procedure, while the principle of the appropriateness of initiating an inspection excludes control not warranted by a genuine necessity.

Of particular theoretical significance is the principle of the priority of the rights of the business entity, by virtue of which all irremovable contradictions and ambiguities in the legislation arising in connection with the conduct of entrepreneurial activity are interpreted in favour of the entrepreneur [5]. This principle, functionally close to the presumption of the entrepreneur's good faith, shifts the risk of normative uncertainty from the private person to the State and thereby balances the initial inequality of the parties to a public-law relationship. The presumption of good faith, in its doctrinal understanding, supposes that the entrepreneur is deemed to be acting lawfully until the contrary is proved in the established manner, and the burden of justifying any restrictive influence rests precisely on the State body. From the totality of these principles there follows an important methodological conclusion: control is regarded not as an end in itself but as an exception to the general regime of freedom, permissible only where a legal basis exists and proportionate to the public interest protected. Thus, at the foundation of the entire institution lies the problem classic for administrative law — the balance of public and private interests — and the task of legal regulation consists not in suppressing one of them but in establishing a stable equilibrium between them.

From the standpoint of legal theory, the entire body of means for protecting the entrepreneur from unlawful interference may usefully be systematised according to their functional purpose. Substantive guarantees are formed by the principles considered above and by the prohibitions established by law, which define the limits of permissible authoritative influence. Procedural guarantees set out the manner in which control is exercised — the grounds for and frequency of inspections, the requirements for their documentation, registration and coordination — and it is precisely compliance with procedure that transforms control from potential interference into lawful activity. Institutional guarantees are connected with the existence of special bodies called upon to protect the rights of entrepreneurs, above all the Commissioner for the Protection of the Rights and Legitimate Interests of Business Entities and the system of administrative courts. Protective guarantees, in turn, include the legal liability of officials and the mechanism for compensating the harm caused. Only the interaction of all four groups forms a coherent regime, whereas the weakening of any one of them — for example, where prohibitions exist but real liability is absent — turns protection into a formality.

The sphere most vulnerable to interference remains State control, and it is therefore here that the key guarantees are concentrated. The framework legislation on the State control of the activity of business entities has historically developed in the direction of narrowing the grounds for, and reducing the frequency of, inspections, and its modern model is built on a risk-oriented approach. Preventive measures and inspections are carried out on the basis of the results of the electronic "Risk Analysis" system, with the activity of entities assigned to a low level of risk not being subject to inspection, while in respect of medium and high levels predominantly preventive measures are conducted, aimed at forestalling possible violations [6]. The introduction of the "Risk Analysis" system on 1 January 2025 transferred the

initiation of inspections from the discretion of an individual body to formalised and verifiable criteria, which in itself limits the space for arbitrary interference [7].

An essential procedural guarantee has become the mandatory registration of all inspections in the "Unified State Control" information system: an unregistered inspection is deemed unlawful, while the coordination of inspections and the supervision of the lawfulness of their conduct are entrusted to the Commissioner for the Protection of Entrepreneurs' Rights, by agreement with whom, or upon notification of whom, they are carried out [6]. The entrepreneur, in turn, is granted the right not to admit officials to an inspection if it has not been properly documented, has not been coordinated with the authorised body, or is being conducted without the necessary documents. In this way, non-procedural, spontaneous interference is deprived of a legal basis already at the stage of initiation, and not only at the stage of subsequent appeal. In theoretical terms, this means a shift of the centre of gravity of protection from subsequent, reactive review of lawfulness to preliminary, preventive review, which increases its effectiveness, since a prevented violation causes less harm than a violation eliminated after the fact.

The effectiveness of the regime of non-interference is ensured by the institution of the legal liability of officials, which gives the principles a protective rather than a declarative character. Administrative liability for the obstruction of, and unlawful interference in, entrepreneurial activity is set out in a separate chapter of the legislation on administrative liability [3], while the gravest encroachments entail criminal liability [4]. It is of fundamental importance that the subject of these offences is precisely an official making use of his official position — liability for interference is thus addressed to the State in the person of its representatives, and not to the entrepreneur, which accords with the nature of the public-law relationship, in which the parties are inherently unequal in the scope of their power. A logical continuation of the protective mechanism is the institution of compensation for harm caused to a business entity by unlawful decisions or acts of State bodies, in full, including lost profit; such compensation restores the proprietary sphere of the injured party and at the same time creates a preventive economic incentive for officials to refrain from unlawful influence.

The current stage of reforms shifts the emphasis from the subsequent suppression of interference to its prevention, which corresponds to a transition from a punitive to a preventive model of control. The Decree on enhancing the role of small and medium-sized business introduced, until 1 January 2028, a moratorium on the adoption of normative legal acts imposing new obligations on small and medium-sized business entities; it established the principle of "new rules from a single date", according to which norms that strengthen regulation come into force only on 1 January or 1 July, and also the principle of the "First Opportunity", which exempts a small-business entity that has committed an administrative offence in the sphere of trade and entrepreneurship for the first time from liability during the first year of its activity [8]. These measures have a pronounced theoretical significance: they restrict not only direct interference in a specific business transaction but also regulatory interference through unpredictable changes in the rules, protecting the reasonable expectations of the entrepreneur and the stability of the legal environment. The principle of the "First Opportunity", moreover, reflects the idea of proportionality and of a preventive rather than

purely punitive orientation of public influence, recognising the right of a good-faith entity to make a mistake at the initial stage of its activity.

A special place in the system of institutional guarantees is occupied by the extrajudicial protection exercised by the Commissioner for the Protection of the Rights and Legitimate Interests of Business Entities. Endowed with powers to coordinate inspections, to issue warnings and to make binding submissions, as well as with the right to apply to a court in the interests of entrepreneurs, this institution ensures a prompt response to instances of interference that in many cases does not require recourse to judicial procedure. The combination of preventive control by the Ombudsman and subsequent judicial protection forms a two-tier model in which the greater part of conflicts is resolved at the pre-trial stage, while the court acts as the final guarantee. Such a distribution of functions reduces the entrepreneur's costs and at the same time relieves the judicial system, which corresponds to the idea of procedural economy and the accessibility of protection.

The analysis conducted makes it possible to regard protection from unlawful interference as a comprehensive legal institution founded on the constitutional freedom of entrepreneurship, whose load-bearing structure consists of the principles of non-interference, the priority of the entrepreneur's rights and the presumption of his good faith, reinforced by a risk-oriented model of control and the liability of officials. Unlawful interference is by its nature a disturbance of the balance of public and private interests, and the task of law is to maintain this balance, permitting authoritative influence only as a justified exception. Further improvement of the legislation should be linked to the consistent codification of the principle of non-interference and of the presumption of the entrepreneur's good faith in a single act on State control, to the development of a preventive rather than a repressive model of supervision, and to ensuring real, and not merely declared, compensation for the harm caused by unlawful interference. The realisation of these directions is capable of transforming the protection of the entrepreneur from arbitrary control from a set of disparate guarantees into a coherent and predictable legal regime.

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