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RESEARCH ARTICLE

Historical and Legal Genesis of Preliminary Protective Measures in Administrative Justice and Trends in Their Development

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Abstract

This article provides a comprehensive examination of the origins, historical evolution, legal nature, and contemporary procedural significance of preliminary protective measures in administrative judicial proceedings. The study explores the early legal foundations of this institution in the interdicts of Ancient Roman law and presents a comparative legal analysis of the distinctive features of interim judicial protection mechanisms developed within continental European and common law legal systems. Particular attention is devoted to the institutional development of administrative justice in Uzbekistan and the legislative recognition of preliminary protective measures as an independent procedural mechanism, including the legal grounds for their application and their practical significance. The article further examines issues relating to the interpretation of evaluative legal concepts, the maintenance of an appropriate balance between the interests of the parties, the timely enforcement of judicial orders, and the establishment of a consistent approach to judicial practice. Based on the findings of the research, the article formulates theoretical and practical recommendations aimed at enhancing the effectiveness of interim legal protection mechanisms within the national system of administrative justice.

KEYWORDS

Administrative justice, preliminary protective measures, interim legal protection, judicial review, administrative authority, rule of law, procedural safeguards, principle of proportionality, effective judicial protection, comparative law.

INTRODUCTION

The establishment and consolidation of the rule of law are determined not merely by the formal recognition of human rights and freedoms in legislation, but primarily by the extent to which such rights are effectively guaranteed and can be restored when violated. In this context, the right to judicial protection constitutes one of the fundamental constitutional safeguards ensuring the legal security of individuals in their relations with the state.

The distinctive nature of legal disputes arising in the sphere of public administration places particular responsibility on the system of administrative justice. In such legal relationships, the parties generally do not possess equal public powers. On the one hand, there is an administrative authority exercising public administrative powers; on the other, there is an individual or legal entity seeking to protect its rights and legitimate interests. This imbalance of legal authority necessitates the establishment of effective procedural

mechanisms for judicial protection.

Certain decisions adopted or actions undertaken by administrative authorities may directly affect the legal status of individuals and give rise to serious consequences within a relatively short period. For example, restrictions imposed on the validity of a business permit, measures taken in relation to property, or the enforcement of a disputed administrative act may create circumstances in which the subsequent elimination of adverse consequences becomes considerably more difficult.

In such situations, waiting until a final judicial decision is delivered may, in certain circumstances, render the protection of individual rights ineffective in practice. Indeed, where the subject matter of a dispute undergoes substantial changes during judicial proceedings, or where the conditions necessary for restoring a violated right cease to exist, the practical significance of a subsequent lawful and well-reasoned judicial decision may be substantially diminished.

It is precisely this necessity that has led to the emergence of temporary procedural mechanisms designed to protect rights before the completion of judicial proceedings. Although these mechanisms have developed in different forms across various legal systems, they share a common objective: preventing violations of rights and ensuring the practical effectiveness of judicial protection.

In Uzbekistan's administrative procedural legislation, this mechanism is legally established under the term *preliminary protective measures*. It constitutes an independent procedural instrument intended to safeguard the rights, freedoms, and legitimate interests of individuals during administrative judicial proceedings.

The purpose of this research is to identify the historical foundations of the institution of preliminary protective measures, conduct a comparative analysis of its development in foreign legal systems, assess its legal regulation under national legislation, and substantiate priority directions for its further improvement.

The research employs historical-legal, formal-legal, systematic, and comparative legal methods.

A proper understanding of the contemporary legal substance of preliminary protective measures requires an examination of the historical origins of this institution. The concept of interim judicial protection did not emerge as the legal product of a single historical period. Rather, it developed gradually under the influence of the social need for the immediate protection of rights at different stages of legal evolution.

The earliest historical and legal roots of this institution may be traced to the system of interdicts in Ancient Roman law. In Roman private law, the interdictum, issued by a praetor, functioned as an authoritative order aimed at prohibiting certain actions, preserving an existing state of affairs, or requiring the performance of specified acts.

The Roman jurist Gaius devoted particular attention to the legal characteristics of interdicts in his Institutes. Interdicts represented a distinctive manifestation of praetorian authority in resolving particular legal disputes and provided protection for possessory relationships and other legally protected interests [6].

An important characteristic of interdicts was their capacity, in certain circumstances, to provide a prompt legal response that differed from ordinary forms of litigation. In this context, legal protection was not confined to remedying the consequences of violations that had already occurred; it also performed a preventive function by restricting potentially unlawful conduct.

Nevertheless, it would be scientifically inaccurate to equate Roman interdicts entirely with the preliminary protective measures applied in contemporary administrative justice. These institutions operated under different social conditions and within distinct legal systems. However, they share conceptual similarities in their objectives of preventive legal protection, temporary stabilization of disputed legal relationships, and the use of prohibitory or mandatory orders issued by competent authorities.

At subsequent stages of historical development, reforms aimed at defining the legal boundaries between judicial authority and public administration contributed to the evolution of interim protective mechanisms in European states.

During the nineteenth century, in particular, the strengthening

of legal oversight over public administration and the emergence of administrative justice as a distinct field marked an important stage in the development of this institution. From that period onward, in addition to reviewing the legality of administrative decisions, increasing attention was devoted to the protection of individuals' legal positions pending the resolution of administrative disputes.

The scholarly contributions of the prominent German administrative law scholar Otto Mayer played a significant role in developing the concepts of limiting public administration through law and establishing judicial oversight of administrative activities [7].

Subsequently, the systematic conception of administrative law advanced by Eberhard Schmidt-Aßmann provided an important theoretical foundation for understanding the interrelationship between the protection of individual rights and the legal regulation of public administration [8].

Accordingly, the historical development of preliminary protective measures may be conditionally divided into three principal stages: the emergence of early mechanisms for the immediate protection of rights; the procedural institutionalization of interim protection through the development of judicial review; and the recognition of such mechanisms as independent guarantees of judicial protection within the contemporary rule-of-law state.

Contemporary forms of preliminary protective measures have not emerged under identical historical and legal circumstances across different jurisdictions. In continental European countries, these mechanisms developed primarily within the framework of administrative justice and public-law relationships. In contrast, within common law systems, their development was closely associated with the courts' equitable powers to provide effective remedies.

The German legal system. In Germany, interim judicial protection is generally referred to as einstweiliger Rechtsschutz. This institution serves to suspend the enforcement of administrative decisions in appropriate circumstances and preserve individual rights during administrative judicial proceedings. Section 80 of the German Code of Administrative Court Procedure (Verwaltungsgerichtsordnung) regulates the suspensive effect of objections and legal actions challenging administrative acts, establishes exceptions to this principle, and provides courts with powers to order or restore suspensive effect where legally justified [9]. Section 123 of the same legislation authorizes courts to issue interim orders designed to regulate disputed legal relationships temporarily or prevent circumstances in which the realization of a particular right may become substantially more difficult [10].

Within the German model, interim judicial protection is directed toward maintaining an appropriate balance between the effectiveness of public administration and the legal security of individuals. Furthermore, the necessity, legal justification, and proportionality of the selected measure in relation to the interests of the parties constitute essential considerations in judicial decision-making.

The French legal system. In France, expedited legal protection within administrative justice is provided through procedures collectively referred to as référé. These mechanisms enable administrative courts to preserve a particular legal situation pending the final determination of a dispute or to respond promptly to serious violations of rights. Article L521-1 of the French Code of Administrative Justice (Code de justice administrative) establishes the référé-suspension procedure, under which a court may temporarily suspend the enforcement of a contested administrative decision when the statutory conditions are satisfied [11].

An especially significant feature of the French system is the référé-liberté procedure established under Article L521-2. This mechanism is designed to provide urgent judicial protection where a public authority has committed a serious and manifestly unlawful interference with a fundamental freedom. Under this procedure, the judge is required to rule within 48 hours [12]. The importance of the French experience lies in its distinction between ordinary forms of interim legal protection and exceptional expedited procedures intended to safeguard fundamental rights.

The English legal system. In English law, interim judicial protection has historically developed through the mechanism of the injunction. Its legal essence consists of a judicial order

prohibiting a person from undertaking specified conduct or, where appropriate, requiring the performance of certain acts. Part 25 of the Civil Procedure Rules of England and Wales regulates interim remedies, including interim injunctions and other procedural protective measures [13].

One notable feature of this system is that, in certain circumstances, an applicant seeking interim relief may be required to provide an undertaking to the court to compensate the opposing party for losses caused by the temporary restriction. This mechanism contributes to the protection of the property interests of the opposing party when interim judicial relief is granted.

The legal system of the United States of America. In the United States, two important forms of interim judicial protection are the temporary restraining order and the preliminary injunction. Rule 65 of the Federal Rules of Civil Procedure regulates the procedures for granting such remedies, the content of the relevant judicial orders, and security requirements applicable in certain circumstances [14].

In United States judicial practice, factors such as the likelihood of irreparable harm, the preliminary merits of the claim, the balance of interests between the parties, and the public interest play an important role in determining whether interim injunctive relief should be granted. At the same time, mechanisms developed within common law systems cannot be transferred directly into the national system of administrative justice without appropriate adaptation. This is because certain aspects of these mechanisms belong primarily to civil procedural law, whereas administrative judicial proceedings are characterized by their distinct public-law nature.

A general analysis of foreign legal experience demonstrates that, despite differences in methods of legal regulation, contemporary mechanisms of interim protection primarily perform three functions: preventing potential harm to rights, temporarily stabilizing existing legal relationships, and preserving the effectiveness of subsequent judicial protection.

The legal nature of preliminary protective measures constitutes a matter of particular importance within procedural law theory. Defining this institution merely as a technical instrument intended to secure the future enforcement of judicial decisions does not fully reflect its legal substance.

In our view, preliminary protective measures represent a mechanism of interim legal protection possessing an independent procedural function and aimed at ensuring the effectiveness of the right to judicial protection.

The basis of this approach lies in the principle that an individual should not remain legally unprotected while an administrative dispute is under judicial consideration. Judicial authority is not limited to identifying violations after they have occurred. In appropriate circumstances, courts must also be capable of preventing consequences that threaten the effective realization of legal rights.

Several essential characteristics distinguish preliminary protective measures from other procedural institutions.

First, these measures are temporary in nature. They do not determine the substantive merits of a dispute but are intended to preserve a particular legal situation or prevent harmful consequences while proceedings remain pending.

Second, preliminary protective measures must be legally connected with the principal claim. Where the selected measure is unrelated to the subject matter of the dispute or does not serve the purpose of protecting the applicant's rights, its procedural justification becomes questionable.

Another important characteristic is their preventive function. This institution prioritizes the prevention of adverse legal consequences rather than their subsequent elimination. Furthermore, preliminary protective measures are based on the authority of the judiciary and are supported by mechanisms of state enforcement within the relevant procedural framework.

The principle of proportionality is of particular significance when such measures are applied. Restrictions imposed to protect the applicant's rights must not cause unjustified or excessive harm to the respondent, third parties, or the public interest. From this perspective, preliminary protective measures perform a dual legal function. On the one hand, they protect applicants against potentially irreversible legal consequences. On the other hand, they require that restrictions affecting public authorities and other participants

be legally justified, necessary, and proportionate.

International legal approaches also recognize that an effective legal remedy must not be limited to the mere formal existence of a judicial or administrative procedure. In particular, in its judgment of 26 April 2007 in Gebremedhin v. France, the European Court of Human Rights emphasized the importance of the suspensive effect of a remedy in certain situations involving a risk of serious and irreversible consequences [15].

Although this approach does not constitute a directly binding legal source for Uzbekistan, it may serve as valuable comparative legal experience in assessing the effectiveness of judicial protection. On the basis of the foregoing theoretical and legal analysis, the following authorial definition of preliminary protective measures may be proposed:

Preliminary protective measures constitute a system of temporary procedural measures imposed by an administrative court, where the statutory grounds are satisfied, for the purpose of preventing potential harm to an individual's rights, freedoms, and legitimate interests, temporarily safeguarding the relevant legal situation, and ensuring the practical effectiveness of judicial protection during proceedings concerning the principal dispute or at stages associated with the enforcement of the resulting judicial decision. This definition reflects the interconnected preventive, protective, and enforcement-related functions of the institution.

The establishment of administrative justice as an independent area of judicial activity in Uzbekistan represents one of the important outcomes of the country's judicial and legal reforms.

In particular, Presidential Decree No. PF-4966 of 21 February 2017 played a significant role in improving the organizational structure of the judiciary and creating the legal foundations for the development of administrative justice [2].

At the subsequent stage, the Code of Administrative Court Procedure of the Republic of Uzbekistan, adopted on 25 January 2018, entered into force on 1 April 2018 [3].

The adoption of this Code established the procedural foundations for judicial consideration of public-law disputes involving administrative authorities. Chapter 8 of the Code introduced specific provisions governing preliminary protective measures.

Under Article 92 of the Code, an administrative court may apply preliminary protective measures where there is a clear risk that the rights of the applicant, or those of the person in whose interests the application has been submitted, may be violated before a judicial decision is adopted, or where the protection of those rights would be impossible or difficult without such measures [1].

The legal scope of this institution was further expanded by Law No. ZRU-833 of 26 April 2023. In particular, the amendments recognized the possibility of courts applying preliminary protective measures on their own initiative and established a mandatory requirement to apply such measures upon the applicant's request in certain cases involving claims for compensation for damage [4].

Article 93 of the Code provides for specific types of preliminary protective measures. These include prohibiting the respondent or other persons from performing actions related to the subject matter of the dispute, suspending the sale of property, suspending the enforcement of a contested administrative act in whole or in part, and attaching the respondent's property or monetary funds. The legislation also permits the simultaneous application of several preliminary protective measures and requires that such measures be proportionate to the claim.

Article 95 of the Code is particularly important from the perspective of procedural effectiveness. It establishes an expedited procedure for considering applications for preliminary protective measures. Specifically, an application submitted during ongoing proceedings must be considered no later than the day following its receipt.

Under Article 97 of the Code, a judicial order applying preliminary protective measures is subject to immediate enforcement. Failure to comply with such an order may entail procedural sanctions prescribed by law.

At the same time, the duration of preliminary protective measures may depend on the outcome of the principal proceedings. In particular, where the application is granted, such measures may remain in effect until the relevant judicial

decision has been effectively enforced. Another significant stage in the development of the national legal framework was the adoption of Resolution No. 19 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated 3 July 2026, entitled "On Certain Issues Concerning the Application of Measures to Secure Claims (Preliminary Protective Measures) by Civil, Administrative and Economic Courts" [5].

This Plenum Resolution provides guidance to courts on the legal grounds for applying preliminary protective measures, procedures for considering applications, the relationship between protective measures and the subject matter of claims, proportionality requirements, enforcement, and the termination of such measures.

Accordingly, the development of preliminary protective measures in Uzbekistan may be characterized through several interrelated stages: the establishment of the initial organizational and legal foundations, the codification of procedural rules, the expansion of judicial protective powers, and the development of interpretative guidance aimed at ensuring consistency in judicial practice.

Although the procedural foundations of preliminary protective measures have been established in national legislation, the question of further improving the effectiveness of this institution remains relevant.

The first issue concerns the legal substance of evaluative concepts and the criteria for their interpretation.

The Code of Administrative Court Procedure identifies circumstances such as a clear risk of a violation of rights, the potential difficulty of obtaining legal protection, or the loss of the opportunity to exercise such protection as important grounds for applying preliminary protective measures.

By their nature, these concepts are evaluative legal categories. While they allow courts to consider the specific circumstances of individual cases, they may also result in differences in judicial interpretation when assessing the degree of legal risk.

Accordingly, there is a need to systematize the factors relevant to the assessment of such risks, including the nature of potential damage, the reversibility of adverse consequences, the condition of the subject matter of the dispute, and the impact of the proposed measure on the interests of the parties.

The second issue relates to the establishment of a stable and consistent approach in judicial practice.

The adoption of the relevant Resolution of the Plenum of the Supreme Court in 2026 represents an important step in this direction. However, the existence of interpretative judicial guidance does not, by itself, guarantee that its provisions will be interpreted and applied uniformly by all courts. It is therefore essential to conduct regular assessments of the reasoning contained in judicial orders, the criteria used to evaluate legal risks, and compliance with the principle of proportionality. Furthermore, any reliable assessment of the extent to which differences exist in judicial practice requires a systematic examination of the relevant judicial decisions and the analysis of statistical data.

The third issue concerns the timely and complete enforcement of judicial orders imposing preliminary protetive measures.

National legislation expressly requires the immediate enforcement of such orders. Nevertheless, the establishment of a legal obligation and its effective practical implementation are not identical. In particular, where a judicial order restricts actions to be undertaken by a specific administrative authority, the timely notification of the relevant institution, effective monitoring of compliance, and appropriate exchange of information become especially important. Consequently, the principal focus in this area should be placed not so much on introducing new obligations as on improving the efficiency and responsiveness of existing enforcement mechanisms.

The fourth issue concerns the impact of preliminary protective measures on the rights and legitimate interests of other participants in proceedings.

The application of temporary restrictions may, in certain circumstances, have economic consequences for respondents or third parties. For example, the temporary suspension of construction activities, restrictions on the use of property, or delays in administrative procedures may create a risk of financial losses. These circumstances demonstrate that courts

must consider not only the interests of applicants but also the rights and legitimate interests of respondents, third parties, and the public when determining whether preliminary protective measures should be applied.

The 2026 Resolution of the Plenum of the Supreme Court explains that, where an administrative claim is ultimately dismissed, a claim for compensation for damage caused by preliminary protective measures may be brought before the competent court [5].

However, the possibility of obtaining compensation subsequently is not equivalent to a mechanism designed to prevent potential losses or provide financial security against such losses. For this reason, the matter requires further comparative legal research.

The findings of the historical and comparative legal analysis indicate that several areas deserve particular attention in order to ensure more effective use of the legal potential of preliminary protective measures.

First, it is advisable to further clarify the criteria for assessing legal risks when determining whether preliminary protective measures should be granted.

In particular, courts may take the following circumstances into account when assessing the existence of a clear risk of a violation of rights:

- ✓ the nature and seriousness of the potential violation;
- ✓ the possibility of subsequently remedying the anticipated harm;
- ✓ the impact of enforcing the contested administrative act on the applicant's legal position;
- ✓ the necessity and proportionality of the proposed temporary measure;
- ✓ the degree of its impact on respondents, third parties, and the public interest.

In order to ensure the consistent application of these criteria, appropriate methodological recommendations could be developed, while judicial practice could be improved by requiring reasoned assessments of these factors in the relevant judicial orders.

Second, it is necessary to ensure the effective implementation of Resolution No. 19 of the Plenum of the Supreme Court dated 3 July 2026 and systematically review judicial practice relating to its application.

This Resolution has established an important legal basis for promoting consistency in the judicial application of preliminary protective measures. The principal task now is to ensure that its provisions are properly reflected in judicial decisions, identify difficulties arising in their application, and develop additional interpretative guidance where necessary.

In this regard, periodic reviews of judicial orders issued by administrative courts, the publication of consolidated summaries of judicial practice, and the preparation of practical recommendations for judges could produce positive results.

Third, special mechanisms should be developed for examining applications for preliminary protective measures in exceptionally urgent circumstances.

Existing legislation already establishes expedited time limits for considering this category of applications. Therefore, the proposed reform should not be directed toward introducing a new general time limit, but rather toward establishing additional procedural opportunities for exceptional circumstances in which the ordinary expedited procedure may still be insufficient. For example, where there is a risk of irreversible harm to a person's life, health, or other fundamental rights, it would be appropriate to expand opportunities for exceptionally urgent judicial consideration, priority processing of electronic applications, and the remote performance of procedural actions.

Fourth, drawing on the French institution of référé-liberté, consideration should be given to developing a special procedure for emergency judicial protection of fundamental rights.

The purpose of such a mechanism would not be to duplicate the existing procedure for preliminary protective measures, but to strengthen the capacity of courts to respond effectively to situations involving an immediate and serious threat to fundamental human rights. The development of this procedure should ensure a coherent relationship between

urgency, the seriousness of the risk of a rights violation, procedural safeguards, and the immediate enforcement of judicial orders.

Fifth, alternative mechanisms for securing compensation for potential damage arising from preliminary protective measures should be examined through comparative legal research.

In this regard, the financial security requirements and undertakings as to damages developed in the legal systems of the United States and England possess certain theoretical and practical relevance. However, the possible introduction of a counter-security mechanism into national administrative proceedings must be approached with caution. Requiring financial security from all applicants could unjustifiably restrict access to judicial protection. Accordingly, it would be appropriate to examine this mechanism as a discretionary procedural instrument applicable only to certain disputes involving property interests, where necessary to maintain a fair balance between the parties and subject to a reasoned judicial assessment.

Sixth, the use of digital technologies in monitoring the enforcement of judicial orders concerning preliminary protective measures should be expanded.

In particular, mechanisms could be improved for the prompt electronic transmission of judicial orders to relevant administrative authorities, the recording of their enforcement status, and the automated notification of responsible institutions concerning orders that remain unexecuted. Such an approach would enhance the practical effectiveness of judicial decisions while strengthening the accountability of administrative authorities for compliance with judicial orders.

Overall, the proposed recommendations are significant because they are directed not only toward introducing new legal mechanisms but also toward ensuring the comprehensive, effective, and consistent use of the opportunities already provided by existing legislation.

The historical and legal analysis of the institution of preliminary protective measures demonstrates that this mechanism has undergone a prolonged and gradual process of development and refinement.

Its earliest conceptual manifestations can be associated with interdicts under Ancient Roman law. Subsequently, the development of judicial review and administrative justice in European countries contributed to the procedural institutionalization of interim legal protection. In the contemporary legal systems of Germany, France, England, and the United States, these mechanisms have evolved into distinct models shaped by national legal traditions and procedural characteristics.

In Uzbekistan, the development of preliminary protective measures is directly associated with the reform of the administrative justice system. The adoption of the Code of Administrative Court Procedure, subsequent legislative amendments, and interpretative guidance issued by the Plenum of the Supreme Court have strengthened the legal foundations of this institution.

The findings of the research demonstrate that the primary purpose of preliminary protective measures cannot be reduced solely to securing the future enforcement of judicial decisions. Above all, this institution serves to protect individual rights while administrative disputes remain pending, prevent violations of rights, and ensure the practical effectiveness of judicial protection.

At the same time, the consistent interpretation of legal criteria governing preliminary protective measures, the systematic review of judicial practice, the enforcement of judicial orders, and the maintenance of a fair balance between the interests of the parties constitute important directions for the further development of this institution.

In our view, the effectiveness of preliminary protective measures should be assessed not merely by their formal existence in legislation, but primarily by their timely, well-reasoned, and proportionate application by courts, together with the actual enforcement of the resulting judicial orders.

Therefore, the further improvement of this institution has substantial theoretical and practical significance for strengthening the principles of the rule of law, ensuring effective judicial oversight of administrative authorities, and

enhancing the practical protection of human rights and legitimate interests.

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