ADMINISTRATIVE LIABILITY AND STATE RESPONSIBILITY: A COMPARATIVE ANALYSIS OF UZBEKISTAN, THE UNITED STATES, AND THE EUROPEAN UNION

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Abstract: *The question of when and how the state can be held liable for harm caused by its administrative actions is one of the most fundamental in public law. This article examines the doctrines of administrative liability and state responsibility in Uzbekistan, the United States, and the European Union — three systems that reflect significantly different assumptions about the relationship between citizen and state, the proper scope of governmental immunity, and the institutional mechanisms through which accountability is enforced. The United States federal system relies on the Federal Tort Claims Act and the doctrine of sovereign immunity, with significant gaps in coverage. The European Union has developed a sophisticated state liability doctrine through the Court of Justice's Francovich jurisprudence, requiring member states to compensate individuals for losses caused by breaches of EU law. Uzbekistan's administrative liability framework, grounded in the Code of Administrative Responsibility, has been progressively reformed since 2017 but still reflects the legacy of a system designed primarily to impose liability on citizens rather than on the state. The article identifies the principal gaps in Uzbekistan's current framework and offers reform recommendations informed by comparative analysis.*

Keywords: *administrative liability; state responsibility; sovereign immunity; Francovich doctrine; administrative law; Uzbekistan; judicial review; government accountability; tort claims*

I. Introduction

There is a question that cuts to the heart of what it means to live under the rule of law: when the state causes you harm through the unlawful or negligent conduct of its officials, what can you do about it? The answer to that question varies enormously across legal systems, and the variation is not random. It reflects deep assumptions about sovereignty, the nature of governmental power, and the extent to which citizens are entitled to equality with the state before the courts.

Administrative liability — the set of legal rules governing when and how the state and its officials can be held responsible for harm — is one of the most revealing areas of comparative administrative law. Systems that have advanced, accessible, and fairly administered administrative liability doctrines tend also to have stronger constraints on arbitrary executive action, more effective anti-corruption mechanisms, and greater public

trust in government institutions. Systems where the state enjoys broad immunity from challenge tend to have the opposite. [10]

This article examines administrative liability and state responsibility in Uzbekistan, the United States, and the European Union. The three systems have developed along very different trajectories. American administrative law traces its approach to governmental liability through the common law doctrine of sovereign immunity, substantially modified by the Federal Tort Claims Act of 1946. EU state liability law was largely created by judicial decision, through the Court of Justice's landmark Francovich ruling in 1991. Uzbekistan's framework inherits the structure of Soviet-era administrative responsibility law, progressively modified since 2017 through a sustained reform program that has changed much and left other things intact. [4][5]

Understanding where each system stands — its strengths, its gaps, and what comparative analysis can offer — matters practically for anyone engaged with Uzbekistan's ongoing legal reform agenda. It also matters theoretically, as a case study in how differently even committed reform-oriented governments can approach the fundamental question of state accountability.

II. The United States: Sovereign Immunity and Its Partial Waiver

American law starts from a position that many civil law lawyers find counterintuitive: the federal government cannot be sued without its consent. The doctrine of sovereign immunity, inherited from English common law, establishes that the king — and by extension, the sovereign state — can do no wrong in the legal sense, at least not wrong that can be remedied by the courts without the state's agreement. [2]

The Federal Tort Claims Act of 1946 represents the primary Congressional modification of this immunity. [5] Under the FTCA, the United States waives its sovereign immunity for money damages claims arising from negligent or wrongful acts or omissions of federal employees acting within the scope of their employment, under circumstances where a private person would be liable under applicable state law. The waiver is meaningful but limited. It excludes claims arising from discretionary governmental functions — a judicially crafted exception that shields a wide range of agency conduct from liability, on the theory that courts should not second-guess policy-grounded governmental decisions. [5] It excludes claims arising from certain intentional torts. And it routes claims through federal district courts rather than through any specialized administrative tribunal.

The practical result is that suing the federal government in the United States is possible but difficult, expensive, and subject to significant threshold barriers that many injured citizens cannot overcome. Individual government officials enjoy qualified immunity from personal suits for constitutional violations — a doctrine that the Supreme Court has substantially expanded over time, making it difficult to establish that an official violated a clearly established right. [1] State governments retain their own sovereign immunity under the Eleventh Amendment, subject to Congressional abrogation in limited circumstances.

American scholars have long criticized this framework as inadequate. The discretionary function exception is vague and has been interpreted by courts in ways that

shield genuinely unreasonable governmental conduct. The FTCA's requirement to file first with the relevant agency creates delays. And the exclusion of certain intentional torts means that some of the most serious governmental misconduct — including certain civil rights violations — falls outside the FTCA's reach entirely. [2]

III. The European Union: Liability Through Judicial Construction

The European Union's approach to state liability is remarkable for having been largely created by judicial decision rather than by treaty text or legislation. Article 340 of the Treaty on the Functioning of the European Union provides that the Union shall, in accordance with the general principles common to the laws of member states, make good any damage caused by its institutions or servants in the performance of their duties. [14] But the more consequential development was the Court of Justice's extension of liability principles to member states themselves.

In Francovich and Bonifaci v. Italy in 1991, the Court of Justice established that member states are obligated to compensate individuals who suffer losses as a result of a member state's failure to implement EU law obligations. [4] The Francovich doctrine — subsequently elaborated in Brasserie du Pêcheur and Factortame III — establishes that state liability arises where a member state has breached an EU law rule conferring rights on individuals, the breach is sufficiently serious, and there is a direct causal link between the breach and the damage suffered. This is a sophisticated and demanding legal framework, and it has had significant practical impact: it has given individuals a meaningful legal remedy when member states have failed to transpose directives or have enforced domestic law in ways incompatible with EU rights.

The EU framework is more protective of individual rights than the American approach in several important respects. It does not rely on a waiver of immunity — liability is a constitutional principle, not a grace-and-favor concession by the state. The sufficiently serious breach standard, while demanding, is more principled than the American discretionary function exception. And the availability of direct claims against the state in domestic courts, without the need to exhaust complex administrative pre-requisites, makes access to redress more realistic for ordinary citizens. [14]

The limitation of the EU framework is that it applies primarily to breaches of EU law rather than to all governmental misconduct. State liability for purely domestic administrative wrongdoing remains governed by national law, which varies considerably across member states. The EU framework thus creates a floor, not a ceiling, and the floor is only engaged when EU law is implicated. For citizens suffering harm from purely domestic administrative failures, the quality of their remedy depends on the national law of their member state.

IV. Uzbekistan: Reform in Progress

A. The Current Framework

Uzbekistan's administrative liability framework has two distinct dimensions that are worth keeping separate. The first — and historically dominant — is the Code of Administrative Responsibility, which governs administrative offenses by citizens and

organizations against the state and public order. [3] This Code is primarily about liability imposed on individuals and legal entities for violations of administrative regulations — the traffic fine, the sanitary inspection penalty, the licensing violation. It is a system for holding citizens accountable to the state, not for holding the state accountable to citizens. The liberalization of administrative penalties in the transport and financial sectors introduced in 2022 demonstrates the Code's evolution, though its fundamental orientation remains unchanged. [6]

The second dimension — state liability for harm caused by public administration — is less fully developed and is the more significant gap in the current framework. Under Uzbekistan's Civil Code and constitutional provisions, the state is in principle liable for damage caused by unlawful acts of state bodies and their officials. But the practical mechanisms for pursuing such claims are limited. Economic courts handle disputes between legal entities and the state, but the procedural framework for ordinary citizens seeking compensation for administrative harm is less well-developed than in the American or European systems. [9] The OECD's Digital Government Review of Uzbekistan identifies the development of administrative accountability mechanisms as a priority reform area. [11]

The 2023 reforms to the Economic Procedure Code improved appeal procedures and eliminated the practice of sending cases back to first-instance courts for retrial by appellate courts — a meaningful procedural improvement. [8][13] The Ombudsman institution has been strengthened, with the Helsinki Rule of Law Centre's 2025 assessment noting that genuine progress has been made in building the Ombudsman's operational capacity and independence. [7] The Anti-Corruption Agency has developed genuine investigative functions, and anti-corruption law has been strengthened through the Law on Anti-Corruption Examination of Legislation adopted in 2023. The Administrative Procedure Code, whose reform trajectory has been analyzed by Uzbek legal scholars, continues to develop as a framework for regulating the relationship between citizens and the administrative state. [7][16]

B. Persistent Gaps

Despite the reform progress, several significant gaps remain. The most fundamental is structural: in a system where the WJP Rule of Law Index gives Uzbekistan a score of only 0.38 for constraints on government powers, [7] the availability of nominal legal remedies against the state does not translate automatically into effective practical accountability. Courts that are not genuinely independent of the executive cannot provide meaningful judicial review of executive action, regardless of what the statutory framework formally permits.

The doctrine governing qualified or functional immunity for state officials is not well-developed in Uzbek law. Officials who cause harm while performing their functions enjoy protection that, in practice, makes personal liability rare. [9] The burden of proof requirements for establishing state liability are demanding, and access to the evidence needed to prove a claim — government files, internal communications, decision-making records — can be difficult. The Uzbekistan Law Blog's analysis of the 2024 amendments to

the Code of Administrative Liability notes that reform has been incremental and has addressed specific offense categories rather than the underlying structural architecture of administrative accountability. [15]

The OSCE's 2023 opinion on draft amendments relating to corporate criminal liability in Uzbekistan observed that the personal scope of liability attribution in Uzbek law is not clearly regulated, which undermines the principle of legal certainty. [9] The same observation applies, more broadly, to administrative liability: the conditions under which the state or its officials bear legal responsibility for harm are not articulated with the precision that citizens need to assert their rights effectively.

V. Comparative Lessons and Reform Implications

The most important lesson from the American experience for Uzbekistan is negative: the sovereign immunity model, modified by piecemeal statutory waivers, is not an adequate foundation for administrative accountability in a modern state committed to rule of law. The Federal Tort Claims Act's discretionary function exception has been stretched by courts to protect governmental conduct that should, by any reasonable standard, be subject to legal accountability. Uzbekistan's reformers should not replicate this model, and where they have inherited immunity-based assumptions from the Soviet legal tradition, those assumptions deserve critical re-examination. [5]

The most important lesson from the European experience is positive: a principled, judicially administered framework for state liability — one that does not depend on sovereign grace, that establishes clear conditions for liability, and that provides accessible remedies — can coexist with effective government. The Francovich doctrine has not paralyzed the executive actions of EU member states. It has simply ensured that when states cause harm through breaches of legal obligation, citizens have a meaningful path to redress. [4] The EU's model — liability as a constitutional principle rather than a statutory concession — is the more principled starting point for a system that takes rule of law seriously.

For Uzbekistan specifically, three reforms would meaningfully advance the administrative liability framework. First, a statutory framework for state liability that clearly articulates the conditions under which the state and its officials bear legal responsibility for harm caused in the exercise of administrative functions, with procedural provisions that make claims practically accessible to ordinary citizens. Second, judicial independence reforms that give administrative courts and civil courts the practical ability to rule against the state on the merits without institutional consequences — without this, statutory liability frameworks are largely symbolic. Third, transparency reforms requiring government bodies to maintain and disclose records of administrative decisions in ways that allow citizens to assess and challenge those decisions effectively. [10][12]

VI. Conclusion

Administrative liability is not an abstract doctrinal category. It is the mechanism through which citizens can hold the state accountable for harm caused in the exercise of public power, and systems in which that mechanism is weak tend to have broader rule of

law deficits that compound over time. Uzbekistan's reform program has made genuine progress in strengthening procedural safeguards, developing institutional oversight, and modernizing specific areas of administrative responsibility law. [12]

The comparison with the United States and the European Union shows that more remains to be done, particularly in establishing a coherent doctrine of state liability accessible to ordinary citizens, in developing judicial independence adequate to the task of meaningful review of executive action, and in creating transparency frameworks that make the exercise of administrative power legible and challengeable. [7][9]

None of this diminishes the significance of what has been achieved. Uzbekistan's 2017-to-present reform trajectory is one of the more ambitious in the post-Soviet space, and the commitment to continued legal reform at the highest levels of government is genuine. The question is whether the remaining structural work — the harder, slower work of institutional development and judicial independence — will be undertaken with the same energy that has characterized the legislative reform agenda. The comparative evidence suggests it needs to be.

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