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PROBLEMS.UZ

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Актуальные проблемы социальных и гуманитарных наук

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ИЖТИМОИЙ-ГУМАНИТАР ФАНЛАРНИНГ ДОЛЗАРБ МУАММОЛАРИ

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АКТУАЛЬНЫЕ ПРОБЛЕМЫ СОЦИАЛЬНО-ГУМАНИТАРНЫХ НАУК

ACTUAL PROBLEMS OF HUMANITIES AND SOCIAL SCIENCES

ТОШКЕНТ-2024

БОШ МУҲАРРИР:

Исанова Феруза Тулқиновна

ТАҲРИР ҲАЙЪАТИ:

07.00.00-ТАРИХ ФАНЛАРИ:

Юлдашев Анвар Эргашевич – тарих фанлари доктори, сиёсий фанлар номзоди, профессор, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Мавланов Уктам Махмасабирович – тарих фанлари доктори, профессор, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Хазраткулов Аброр – тарих фанлари доктори, доцент, Ўзбекистон давлат жаҳон тиллари университети.

Турсунов Равшан Нормуратович – тарих фанлари доктори, Ўзбекистон Миллий Университети;

Холикулов Ахмаджон Боймахамматович – тарих фанлари доктори, Ўзбекистон Миллий Университети;

Габриэльян Софья Ивановна – тарих фанлари доктори, доцент, Ўзбекистон Миллий Университети.

08.00.00-ИҚТИСОДИЁТ ФАНЛАРИ:

Карлибаева Рая Хожабаевна – иқтисодиёт фанлари доктори, профессор, Тошкент давлат иқтисодиёт университети;

Насирходжаева Дилафруз Сабитхановна – иқтисодиёт фанлари доктори, профессор, Тошкент давлат иқтисодиёт университети;

Остонокулов Азамат Абдукаримович – иқтисодиёт фанлари доктори, профессор, Тошкент молия институти;

Арабов Нурали Уралович – иқтисодиёт фанлари доктори, профессор, Самарқанд давлат университети;

Худойқулов Садирдин Каримович – иқтисодиёт фанлари доктори, доцент, Тошкент давлат иқтисодиёт университети;

Азизов Шерзод Ўктамович – иқтисодиёт фанлари доктори, доцент, Ўзбекистон Республикаси Божхона институти;

Хожаев Азизхон Саидалохонович – иқтисодиёт фанлари доктори, доцент, Фарғона политехника институти

Холов Актам Хатамович – иқтисодиёт фанлари бўйича фалсафа доктори (PhD), доцент, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Шадиева Дилдора Хамидовна – иқтисодиёт фанлари бўйича фалсафа доктори (PhD), доцент в.б, Тошкент молия институти;

Шакаров Қулмат Аширович – иқтисодиёт фанлари номзоди, доцент, Тошкент ахборот технологиялари университети

09.00.00-ФАЛСАФА ФАНЛАРИ:

Ҳакимов Назар Ҳакимович – фалсафа фанлари доктори, профессор, Тошкент давлат иқтисодиёт университети;

Яхшиликов Жўрабой – фалсафа фанлари доктори, профессор, Самарқанд давлат университети;

Ғайбуллаев Отабек Мухаммадиевич – фалсафа фанлари доктори, профессор, Самарқанд давлат чет тиллар институти;

Саидова Камола Усканбаевна – фалсафа фанлари доктори, "Tashkent International University of Education" халқаро университети;

Ҳошимхонов Мўмин – фалсафа фанлари доктори, доцент, Жиззах педагогика институти;

Ўроқова Ойсулув Жамолиддиновна – фалсафа фанлари доктори, доцент, Андижон давлат тиббиёт институти, Ижтимоий-гуманитар фанлар кафедраси мудири;

Носирходжаева Гулнора Абдукаххаровна – фалсафа фанлари номзоди, доцент, Тошкент давлат юридик университети;

Турдиев Бехруз Собирович – фалсафа фанлари бўйича фалсафа доктори (PhD), доцент, Бухоро давлат университети.

10.00.00-ФИЛОЛОГИЯ ФАНЛАРИ:

Ахмедов Ойбек Сапорбаевич – филология фанлари доктори, профессор, Ўзбекистон давлат жаҳон тиллари университети;

Кўчимов Шухрат Норқизилович – филология фанлари доктори, доцент, Тошкент давлат юридик университети;

Ҳасанов Шавкат Аҳадович – филология фанлари доктори, профессор, Самарқанд давлат университети;

Бахронова Дилрабо Келдиёровна – филология фанлари доктори, профессор, Ўзбекистон давлат жаҳон тиллари университети;

Мирсанов Ғайбулло Қулмуродович – филология фанлари доктори, профессор, Самарқанд давлат чет тиллар институти;

Салахутдинова Мушарраф Исамутдиновна – филология фанлари номзоди, доцент, Самарқанд давлат университети;

Кучкаров Рахман Урманович – филология фанлари номзоди, доцент в/б, Тошкент давлат юридик университети;

Юнусов Мансур Абдуллаевич – филология фанлари номзоди, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Саидов Улугбек Арипович – филология фанлари номзоди, доцент, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси.

12.00.00-ЮРИДИК ФАНЛАР:

Ахмедшаева Мавлюда Ахатовна – юридик фанлар доктори, профессор, Тошкент давлат юридик университети;

Мухитдинова Фирюза Абдурашидовна – юридик фанлар доктори, профессор, Тошкент давлат юридик университети;

Эсанова Замира Нормуротовна – юридик фанлар доктори, профессор, Ўзбекистон Республикасида хизмат кўрсатган юрист, Тошкент давлат юридик университети;

Ҳамроқулов Баҳодир Мамашарифович – юридик фанлар доктори, профессор в.б., Жаҳон иқтисодиёти ва дипломатия университети;

Зулфиқоров Шерзод Хуррамович – юридик фанлар доктори, профессор, Ўзбекистон Республикаси Жамоат хавфсизлиги университети;

Хайитов Хушвақт Сапарбаевич – юридик фанлар доктори, профессор, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Асадов Шавкат Ғайбуллаевич – юридик фанлар доктори, доцент, Ўзбекистон Республикаси Президенти ҳузуридаги Давлат бошқаруви академияси;

Утемуратов Махмут Ажимуратович – юридик фанлар номзоди, профессор, Тошкент давлат юридик университети;

Сайдуллаев Шахзод Алиханович – юридик фанлар номзоди, профессор, Тошкент давлат юридик университети;

Ҳакимов Комил Бахтиярович – юридик фанлар доктори, доцент, Тошкент давлат юридик университети;

Юсупов Сардорбек Баходирович – юридик фанлар доктори, доцент, Тошкент давлат юридик университети;

Амиров Зафар Актамович – юридик фанлар бўйича фалсафа доктори (PhD), Ўзбекистон Республикаси Судьялар олий кенгаши ҳузуридаги Судьялар олий мактаби;

Жўраев Шерзод Юлдашевич – юридик фанлар номзоди, доцент, Тошкент давлат юридик университети;

Бабаджанов Атабек Давронбекович – юридик фанлар номзоди, доцент, Тошкент давлат юридик университети;

Раҳматов Элёр Жумабоевич - юридик фанлар номзоди, Тошкент давлат юридик университети;

13.00.00-ПЕДАГОГИКА ФАНЛАРИ:

Хашимова Дильдархон Уринбоевна – педагогика фанлари доктори, профессор, Тошкент давлат юридик университети;

Ибрагимова Гулнора Хавазматовна – педагогика фанлари доктори, профессор, Тошкент давлат иқтисодиёт университети;

Закирова Феруза Махмудовна – педагогика фанлари доктори, Тошкент ахборот технологиялари университети ҳузуридаги педагогик кадрларни қайта тайёрлаш ва уларнинг малакасини ошириш тармоқ маркази;

Каюмова Насиба Ашуровна – педагогика фанлари доктори, профессор, Қарши давлат университети;

Тайланова Шохида Зайниевна – педагогика фанлари доктори, доцент;

Жуманиёзова Муҳайё Тожиевна – педагогика фанлари доктори, доцент, Ўзбекистон давлат жаҳон тиллари университети;

Ибрахимов Санжар Урунбаевич – педагогика фанлари доктори, Иқтисодиёт ва педагогика университети;

Жавлиева Шахноза Баходировна – педагогика фанлари бўйича фалсафа доктори (PhD), Самарқанд давлат университети;

Бобомуротова Латофат Элмуродовна - педагогика фанлари бўйича фалсафа доктори (PhD), Самарқанд давлат университети.

19.00.00-ПСИХОЛОГИЯ ФАНЛАРИ:

Каримова Васила Маманосировна – психология фанлари доктори, профессор, Низомий номидаги Тошкент давлат педагогика университети;

Ҳайитов Ойбек Эшбоевич – Жисмоний тарбия ва спорт бўйича мутахассисларни қайта тайёрлаш ва малакасини ошириш институти, психология фанлари доктори, профессор

Умарова Навбаҳор Шокировна – психология фанлари доктори, доцент, Низомий номидаги Тошкент давлат педагогика университети, Амалий психологияси кафедраси мудири;

Атабаева Наргис Батировна – психология фанлари доктори, доцент, Низомий номидаги Тошкент давлат педагогика университети;

Шамшетова Анжим Карамаддиновна – психология фанлари доктори, доцент, Ўзбекистон давлат жаҳон тиллари университети;

Қодиров Обид Сафарович – психология фанлари доктори (PhD), Самарканд вилоят ИИБ Тиббиёт бўлими психологик хизмат бошлиғи.

Содиқова Шоҳида Мархабоевна – социология фанлари доктори, профессор, Ўзбекистон халқаро ислом академияси.

22.00.00-СОЦИОЛОГИЯ ФАНЛАРИ:

Латипова Нодира Мухтаржановна – социология фанлари доктори, профессор, Ўзбекистон миллий университети кафедра мудири;

Сеитов Азамат Пўлатович – социология фанлари доктори, профессор, Ўзбекистон миллий университети;

23.00.00-СИЁСИЙ ФАНЛАР

Назаров Насриддин Атақулович –сиёсий фанлар доктори, фалсафа фанлари доктори, профессор, Тошкент архитектура қурилиш институти;

Бўтаев Усмонжон Хайруллаевич –сиёсий фанлар доктори, доцент, Ўзбекистон миллий университети кафедра мудири.

ОАК Рўйхати

Мазкур журнал Вазирлар Маҳкамаси ҳузуридаги Олий аттестация комиссияси Раёсатининг 2022 йил 30 ноябрдаги 327/5-сон қарори билан тарих, иқтисодиёт, фалсафа, филология, юридик ва педагогика фанлари бўйича илмий даражалар бўйича диссертациялар асосий натижаларини чоп этиш тавсия этилган илмий нашрлар рўйхатига киритилган.

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Боғланиш учун телефонлар:

(99) 602-09-84 (telegram).

М У Н Д А Р И Ж А

07.00.00 – ТАРИХ ФАНЛАРИ

Hamroyev Asliddin Umed o‘g‘li
“GULSHANUL MULUK” (“SHOHLAR GULSHANI”) ASARI – MANG‘ITLAR HUKMRONLIGI DAVRI MUARRIXLIGI NAMUNASI 13-18

Bazarbayeva Shohsanam Muratovna
SIRDARYO VILOYATIDA VETERINARIYA SOHASIGA OID ISLOHOTLAR (XIX ASR OXIRI – XX ASR BOSHLARI) 19-23

Asadova Dilnoza Innatovna
O‘ZBEKISTONDA RAQS SAN’ATI SOHASIDA KADLAR TAYYORLASH MASALASI TARIXI VA BUGUNI 24-28

Ҳайитов Умед Яҳёевич
ЎЗБЕКИСТОН ССР МУВАҚҚАТ ИНҚИЛОБИЙ ҚЎМИТАСИ (МАРКАЗИЙ РЕВКОМ)НИНГ ТАШКИЛ ТОПИШИ ВА ФАОЛИЯТИ 29-34

Омонова Сарвиноз Ориф қизи
ЎЗБЕКИСТОНДА СОВЕТ ДАВРИДА ЖИСМОНИЙ ТАРБИЯ ВА СПОРТНИНГ ҲОЛАТИ... 35-42

08.00.00 – ИҚТИСОДИЁТ ФАНЛАРИ

Алимханова Нигора Алимхановна
ТОВАР-МОДДИЙ ЗАХИРАЛАР АУДИТИНИ ТАКОМИЛЛАШТИРИШ 43-52

Mahmudova Dilafruz Hasanovna
KORPORATIV BOSHQARUVNING AYRIM NAZARIY JIHATLARI 53-60

Toxirov Akbarxon Toirxon o’g’li
SANOAT KORXONALARIDA IQTISODIY XAVFSIZLIKNING EKONOMETRIK

MODELLASHTIRISH 61-69

Мехмоналиев Улугбек Эркинжон угли
СУЩНОСТЬ ОРГАНИЗАЦИИ СЛУЖБЫ ВНУТРЕННЕГО АУДИТА НА ПРЕДПРИЯТИЯХ . 70-75

Паязов Мурод Максудович
“ЎЗБЕКИСТОН ТЕМИР ЙЎЛЛАРИ” АЖДА ТРАНСФОРМАЦИЯЛАШ ЖАРАЁНЛАРИНИ АМАЛГА ОШИРИШ МЕТОДИКАСИ 76-86

Шадибекова Дилдор Абдурахмановна
ЛОГИСТИЧЕСКИЙ РЫНОК УЗБЕКИСТАНА И ПРОБЛЕМЫ ЕГО РАЗВИТИЯ 87-92

Malikova Dilrabo, Khudoiberdieva Maftunabonu
INNOVATIVE HR MANAGEMENT: NECESSITY AND METHODS OF APPLICATION 93-99

Мамажонова Одинахон Алишер қизи
КОРХОНАЛАР БОШҚАРУВИДА ИННОВАЦИЯЛАРДАН ФОЙДАЛАНИШ ЖАРАЁНЛАРИНИНГ РИВОЖЛАНИШ ТЕНДЕНЦИЯЛАРИ 100-106

Nozimov Eldor Anvarovich
ELEKTRON TIJORATNI RIVOJLANISHDA O‘ZBEKISTON VA XORIJIY DAVLATLARNING O‘RNI 107-115

Буранова Жазира Эргаш қизи
ВЛИЯНИЕ ЦИФРОВИЗАЦИИ ЭКОНОМИКИ НА ИНКЛЮЗИВНЫЙ РОСТ ГОСУДАРСТВА 116-120

Худойназаров Фахритдин Хаитович
КИЧИК БИЗНЕС ВА ХУСУСИЙ ТАДБИРКОРЛИК ФАОЛИЯТИДА РАҚАМЛИ ТЕХНОЛОГИЯЛАРНИНГ ИҚТИСОДИЙ АҲАМИЯТИ 121-127

Бахтиёров Бобур Баходир ўғли
ТИЖОРАТ БАНКЛАРИ РЕСУРСЛАРИДАН ФОЙДАЛАНИШ ВА БАНК ЛИКВИДЛИЛИГИНИ БОШҚАРИШНИНГ МЕТОДОЛОГИК АСОСЛАРИ 128-136

Isomitdinova Gulbaxor Kurbonaliyevna
OʻZBEKISTON SHAROITIDA INVESTITSIYA RISKLARINI BOSHQARISH SAMARADORLIGINI OSHIRISH 137-145

Yuldashev Shadiyor Shuxrat o'g'li
OLIY TA'LIM O'QUV JARAYONLARIDA ZAMONAVIY VEB TEXNOLOGIYALARI INTEGRATSIYASI 146-150

Baxtiyorov Asrorbek Azizjon oʻgʻli
TIJORAT BANKINING KREDIT SIYOSATI ASOSLARI, UNING IQTISODIY MOHIYATI 151-159

Saidov Shohruh Mirzo
SOCIO-ECONOMIC ANALYSIS OF CONDITIONS OF DEVELOPMENT OF HIGHER EDUCATION INSTITUTIONS 160-169

Kunduzova Kumrixon Ibragimovna
IQTISODIY RIVOJLANISHNING HOZIRGI BOSQICHIDA XOʻJALIK YURITUVCHI SUBYEKTLAR FAOLIYATIDAGI JORIY AKTIVLAR TUSHUNCHASI VA UNING OʻRNI 170-177

Inomjon Matkarimov
AGROKIMYO BIOKIMYO XIZMATLARI IJTIMOIY IQTISODIY SAMARADORLIGINI TAʼMINLASHNING SWOT TAHLILI 178-183

09.00.00 – ФАЛСАФА ФАНЛАРИ

Gʻaybullayev Otabek Mixammadiyevich
JAMIYATDA ESTETIK MADANIYAT RIVOJLANISHINING FALSAFIY ASOSLARI 184-189

Masharipova Gularam Kamilovna
MAHMUD IBN MUHAMMAD IBN UMAR AL-CHAGʻMINIYNING «AL-MULAXXAS FI-L-HAYʼA» RISOLASINING NUSXALARI VA QOZIZODA RUMIYNING SHARHI 190-198

Абдуллаханова Гулбахор Саттаровна
ФИЛОСОФСКИЕ ВЗГЛЯДЫ ИБН СИНО И ИХ РОЛЬ В УКРЕПЛЕНИИ ДУХОВНО-ЦЕННОСТНЫХ ОСНОВ СОВРЕМЕННОГО РАЗВИТИЯ ЦИВИЛИЗАЦИИ 199-206

Urinov Xushnudjon Abdulomitovich
TAʼLIM VA KASB-HUNAR ISLOHOTLARI GENEZISI: KASBIY FAOLIYAT VA MEHNATGA MUNOSABATNING TARIXIY SHAKLLANISHI 207-220

Азизқулов Акрам Абдурахмонович
ШАРҚШУНОС УИЛЬЯМ ЭРСКИН ТАДҚИҚОТЛАРИДА БОБУРИЙЛАР СУЛОЛАСИ ТАРИХИНИНГ ЁРИТИЛИШИ 221-227

Kenjayev Ulugʻbek Muratovich
BEFARQLIK HAQIDAGI FALSAFIY FIKRLAR RIVOJI 228-232

Gʻaybullayeva Laylo Safarboyevna
MAHALLADA YOSHLAR SIYOSIY FAOLLIGINI OSHIRISHDA IJTIMOIY-FALSAFIY RIVOJLANISH MASALALARI 233-238

Xoʻjanova Tamara Joʻraevna
YOSHLAR MA’NAVIYATIGA TAHDID VA ULARDAN OʻZINI ONGLI HIMOYA QILISH KOʻNIKMALARI 239-245

Jabborova Saodat Sattorovna
MA’NAVIY SALOHIYATNING IJTIMOIY TARAQQIYOT MANBAI SIFATIDA XUSUSIYATLARI 246-252

Xusanov Gʻolib Elmurodovich
OʻZBEK OILALARINING RIVOJLANISHIDA AXLOQIY TAFAKKUR MASALALARI 253-257

Агзамходжаева Шахноза Саидматмабовна
МУСУЛЬМАНСКОЕ БОГОСЛОВИЕ, СВЯЩЕННЫЙ КОРАН И ТВОРЧЕСТВО НАВОИ В КОНТЕКСТЕ ФИЛОСОФСКОЙ КОМПАРАТИВИСТИКИ 258-265

O’razov Bobir Baxtiyorovich
IJTIMOIY DAVLATNING NAZARIY VA METODOLOGIK ASOSLARI: VUJUDGA KELISH SHARTLARI, BELGILARI VA FUNKSIYALARI 266-270

Qunishev Ulugʻbek Ulashevich
NEMIS KLASSIK FALSAFASIDA JAMIYAT RIVOJLANISHIGA TA’SIR ETUVCHI AXLOQIY VA ESTETIK OMILLAR 271-275

Турдибоев Бозор Худойбердиевич
ЦИВИЛИЗАЦИЯЛАР ТАРИХИЙ ЯХЛИТЛИК НАМОЁН БЎЛИШ ШАКЛЛАРИ СИФАТИДА 276-282

Kenjayeva Dilrabo Rominovna
MARKAZIY OSIYO MUTAFAKKIRLARI TA’LIMOTIDA OʻZLIKNI ANGLASH TUSHUNCHASI VA UNING OʻZIGA XOS XUSUSIYATLARI 283-287

Azamatova Gulrukh Islom qizi
SOCIOCULTURAL ASPECTS IN KARL POPPER'S PHILOSOPHY IN THE CONTEXT OF MODERN EDUCATION 288-293

Тошпулатова Ширин Мухиддиновна
ЭТИЧЕСКИЕ ОРИЕНТИРЫ ГОСУДАРСТВЕННОЙ ГРАЖДАНСКОЙ СЛУЖБЫ В РЕСПУБЛИКЕ УЗБЕКИСТАН 294-302

Yuldasheva Dilorom Yuldashevna
SCIENTIFIC ATTITUDE TO CONSCIOUSNESS AND ITS INFLUENCE ON THE FIELD OF EDUCATION 303-307

Bekchanov Xudoybergan Oʻrinivich, Yusupova Firuza Hajiboy qizi, Yulliyeva Sohiba Shuhrat qizi
MAKTABGACHA YOSHDAGI KATTA GURUH TARBIYALANUVCHILARDA IJTIMOIY VA KOMMUNIKATIV QOBILYATNING RIVOJLANISHI 308-314

10.00.00 – ФИЛОЛОГИЯ ФАНЛАРИ

Ткебучава Ирина Георгиевна
ПРОБЛЕМЫ И ПЕРСПЕКТИВЫ ФОРМИРОВАНИЯ КОММУНИКАТИВНОЙ КОМПЕТЕНТНОСТИ СТУДЕНТОВ ПРИ ОБУЧЕНИИ ИНОСТРАННОМУ ЯЗЫКУ 315-320

Ikromxonova Firuza Ikromovna, Jazira Nursultanqizi
TIPOLOGIK TAHLIL - KOMPOZITSIYA VA JANR (TARIXIY ASARLAR MISOLIDA) 321-327

Ashurova Maftuna Asqar qizi
LINGUACULTURAL PECULIARITIES OF THE CONCEPT “HAPPINESS” IN ENGLISH AND UZBEK LANGUAGES 328-334

Mustafayeva Saodat Burxanovna
SALIM ASHUR SHE’RLARIDA LINGVOMADANIY BIRLIKLAR VOSITASIDA VOQELIKNI BADIIY TALQIN ETISH 335-340

Abdulxayeva Nodirabegim Ixtiyorjon qizi
DRAMATIK ASARLARNI TARJIMA QILISHDA LEKSIK-SEMANTIK, LINGVOKULTUROLOGIK MASALALAR 341-346

Xajiyeva Dilfuza Adambayevna
FOLKLOR VOSITALARINING ZAMONAVIY ADABIYOTDAGI O‘RNI VA O‘RGANILISHI 347-351

Jumanova Sevara Xolmurod qizi
KIYIM KECHAK NOMLARI TILNING BOYISH MANBAI SIFATIDA 352-356

Hojaliyev Ismail Tadjibayevich, Ismailova Sayyora Tolkinovna
MATN NAZARIYASINING SHAKLLANISHI 357-366

Abdullaev Ulmasbek Khairullayevich
LITERARY WORKS AS THE MOST IMPORTANT AND WELL-ACCLAIMED COMPONENTS OF THE CULTURAL HERITAGE OF THE NATION 367-370

Maxmudova Fotima Maqsud qizi
TYPES OF MEDIA TEXT LANGUAGE 371-375

Maxmudova Zuhra Maqsud qizi
BADIIY TARJIMANING TILSHUNOSLIKDAGI AHAMIYATI 376-380

Davronova Zulfiya Boboyevna
UZBEK- FRENCH RELATIONS AS A BINDING PART OF INTERNATIONAL CULTURAL AND HISTORICAL EXPERIENCE 381-386

Hakimova Dilrabo Yo‘ldoshovna
TERMINOLOGIYA SOHASINING TARIXI VA DOLZARB MUAMMOLARI XUSUSIDA 387-392

Мадрахимов Тулибай Абдукаримович
СЎЗЛАШУВ НУТҚИНИНГ ТИЛ ФУНКЦИОНАЛ ВАРИАНТЛАРИ ОРАСИДА ТУТГАН ЎРНИ 393-395

12.00.00 – ЮРИДИК ФАНЛАР

Ergashev Ikrom Abdurasulovich
SOLIQ INTIZOMINI BUZISH BILAN BOG‘LIQ HUQUQBUZARLIKLAR UCHUN JAVOBGARLIKNING AYRIM JIHATLARINING ILMIY-NAZARIY TAHLILI 396-402

Куатбек Гулнар Куатбековна
ВОПРОСЫ СОВЕРШЕНСТВОВАНИЯ МЕЖДУНАРОДНЫХ СТАНДАРТОВ ТРАНСПАРЕНТНОСТИ ПРЕДСТАВИТЕЛЬНЫХ ОРГАНОВ МЕСТНОЙ ВЛАСТИ 403-409

Jurayev Dilmurot Mukhtarovich
ANALYSIS OF THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN ON ALTERNATIVE RESOLUTION OF DISPUTES ARISING FROM ADMINISTRATIVE AND PUBLIC LEGAL RELATIONS 410-415

Mirakhmedova Fazilat Khokim kizi
CRIMES OF MANUFACTURING AND SELLING PHARMACEUTICALS IN A WAY TO DANGER THE LIVES AND HEALTH OF INDIVIDUALS (Evaluation of Türkiye and Uzbekistan legal system) 416-428

Касимов Нодиржон Содикжонович
ҚАСДДАН ОДАМ ЎЛДИРИШ ЖИНОЯТЛАРИНИНГ УМУМИЙ ВИКТИМОЛОГИК ПРОФИЛАКТИКАСИНИ ТАШКИЛ ЭТИШ 429-438

Кутыбаева Елизавета Дуйсенбаевна, Есенбаев Джанибек Таирович
ЭКОЛОГИК ТУСДАГИ ФАВҚУЛОДДА ВАЗИЯТЛАРДАН МУҲОФАЗА ҚИЛИШНИНГ ҲУҚУҚИЙ АСОСЛАРИНИ ТАКОМИЛЛАШТИРИШ 439-445

Джалилов Сардор Шавкатович
ҲУҚУҚ МАНБАЛАРИ ВА НОГИРОНЛИГИ БЎЛГАН ШАХСЛАРНИНГ ҲУҚУҚЛАРИНИ КОДИФИКАЦИЯ ҚИЛИШ ЖАРАЁНИ 446-453

13.00.00 – ПЕДАГОГИКА ФАНЛАРИ

Mirzayev Qodir Toirovich
ZAMONAVIY XOR SAN'ATI TA'LIMINI TAKOMILLASHTIRISH MASALALARI 454-458

Васильченко Ольга Анатольевна
ИСТОРИЯ И МЕТОДОЛОГИЯ РАЗВИТИЯ ВОКАЛЬНО-ХОРОВОГО ИСКУССТВА В УЗБЕКИСТАНЕ 459-463

Эрназаров Алишер Эргашевич, Бекмурадов Зариф Хуррамович
ЎҚУВ МАШҒУЛОТЛАРИНИНГ МОДУЛЛИ ВА ЛОЙИҲАЛАШТИРИЛГАН ТУРЛАРИ ҲАМДА АХБОРОТ ТЕХНОЛОГИЯЛАРИДАН ФОЙДАЛАНИШ 464-470

Mattiyeva Feruza Begmatdulobovna
TARJIMONLIK MALAKASINI SHAKLLANTIRISHNING PSIXOLINGVISTIK VA DIDAKTIK XUSUSIYATLARI 471-477

Jurayev Bobomurod Tojiyevich
ABU ALI IBN SINO QARASHLARIDA TA'LIM-TARBIYA MASALALARI 478-482

Umurova Ma'rifat Yoshiyevna
XALQ QO'SHIQLARI VATANPARVARLIK TUYG'USINI RIVOJLANTIRISH VOSITASI SIFATIDA 483-486

Raxmanova Dildora Abdulxamid qizi
INGLIZ TILIDA AKADEMIK YOZUV TUSHUNCHASI VA UNING TALABALAR ILMIY FAOILIYATIDAGI AHAMIYATI 487-492

Rajabiy Aziz Xasanovich
VOKAL ARTISTI FAOLIYATIDA SAHNA MAHORATINING O'RNI 493-497

Omanov Rashid Sherqobilovich
O'QUVCHILARDA EKOLOGIK TAFAKKURNI SHAKLLANTIRISH JARAYONLARINI TO'G'RI TASHKIL ETISH 498-501

Салимов Акром Хайитович
БЎЛАЖАК ЎҚИТУВЧИЛАРДА ОИЛА, МАҲАЛЛА ВА МАКТАБ ҲАМКОРЛИГИНИ АМАЛГА ОШИРИШНИНГ АФЗАЛЛИКЛАРИ 502-507

Mamatmurodov Sharofjon Khudoyarovich
TA'LIM SIFATINI OSHIRISHDA INNOVATSION TEXNOLOGIYALARNING O'RNI 508-514

Ли Екатерина Владимировна
СИНЕРГЕТИЧЕСКИЙ АНАЛИЗ ИННОВАЦИЙ И ИННОВАЦИОННОЙ ДЕЯТЕЛЬНОСТИ 515-523

Ахмедова Нафиса Исаходжаевна, Азаматов Абдулло Исахўжа ўғли, Лутфуллина Румия Анваровна
ЁШ ТЕННИСЧИЛАРНИНГ ЖИСМОНИЙ ТАЙЁРГАРЛИГИНИ РИВОЖЛАНТИРИШДА ҲАРАКАТЛИ ЎЙИНЛАРНИНГ АҲАМИЯТИ 524-533

Очилова Мехрибон Суратовна, Хамроева Феруза Асроровна
АНАЛИЗ СОВРЕМЕННЫХ ОБРАЗОВАТЕЛЬНЫХ ПЛАТФОРМ И ИХ КЛАССИФИКАЦИЯ 534-541

Amonov Mirjon Namozovich
IJTIMOIY PEDAGOGIK FAOLIYAT VA UNING ASOSIY FUNKSIYALARI 542-547

Sharipov Habibullo Abduqahhorovich
TALABALARNING IJODKORLIGINI RIVOJLANTIRISHDA MUSTAQIL TA'LIMNING O'RNI VA AHAMIYATI 548-552

Yaxiyaxonova Muxiba Maxtudjonovna
RAQAMLI TA'LIM MUHITIDA BOSHLANG'ICH SINF O'QUVCHILARINING IT SAVODXONLIGINI OSHIRISH METODIKASINI TAKOMILLASHTIRISH 553-560

Xakimova Gulshan Abduxalilovna
JISMONIY TARBIYA VOSITALARI ORQALI YOSH BOLALARNI SIFATLARINI TARBIYALASH 561-565

Nazarov Rustam Irkinovich
TECHNOLOGY FOR DEVELOPING COMMUNICATIVE COMPETENCE OF STUDENTS IN HIGHER TECHNICAL EDUCATION FIELDS (IN THE EXAMPLE OF ENGLISH LANGUAGE) 566-570

Muqimova Fotima Abduqaxor qizi, Muqimova Zuxra Abduqahor qizi
CHIZMACHILIK DARSLARIDA O'QUVCHILARNING GRAFIK SAVODXONLIGINI RIVOJLANTIRISHDA O'YINLI TEXNOLOGIYALADAN FOYDALANISHNING AFZALLIKLARI 571-576

Sulaymanova Dildora Nazarovna, Giyasova Shaxnoza Abdurafikovna
BO'LAJAK O'QITUVCHILARNING KREATIV TAFAKKURINI LOYIHAGA ASOSLANGAN O'QITISH VOSITASIDA RIVOJLANTIRISH MODELI 577-585

Usmonova Matluba Nosirovna
O'QUVCHILARDA MILLIY VA UMUMINSONIY QADRIYATLARNI TARBIYALASH METODIKASINING KREATIV PEDAGOGIK YONDASHUVI 586-590

Ustaev Abdurazzoq Qurbonovich
MILLIY KURASH SPORT TURINING FUNKSIYALARI VA MAQSADGA ERISHISHDAGI VOSITALARI 591-596

Shoimqulova Nigina Xolmurodovna, Yadigarova Sitora Bahromovna
ADDRESSING CHALLENGES IN TEACHING ENGLISH IN CENTRAL ASIAN COUNTRIES: A SCHOLARLY EXAMINATION 597-603

Yeshanov Marat Urazaliyevich
INGLIZ TILINI O'QITISHDA BO'LAJAK CHET TILI O'QITUVCHILARINING KOMMUNIKATIV KOMPETENSIYASINI TAKOMILLASHTIRISHDA PRAGMATIKANING AHAMIYATI LANGUAGE) 604-616

Tursunova Shahnoza Bekchanovna
JAMOATCHILIK FIKRINI SHAKLLANTIRISHDA JAMOATCHILIK BILAN ALOQALARNING O'RNATISH 617-622

Atoyeva Gulshoda Rabimovna
OILADAGI ZO'RAVONLIKNING O'SMIR XULQIGA PSIXOLOGIK TA'SIRI 623-628

Musinova Ruxshona Yunusovna, Qurbonova Aziza Davlat qizi
JABRLANUVCHI SINDROMI, UNING ASOSIY SABABLARI VA BELGILARI 629-635

Jamolova Mokhigul Bakhtiorovna
METHODS OF DEVELOPING THE CRITICAL THINKING ABILITY OF PRIMARY CLASS STUDENTS THROUGH FAIRY TALES 636-641

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ANALYSIS OF THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN ON ALTERNATIVE RESOLUTION OF DISPUTES ARISING FROM ADMINISTRATIVE AND PUBLIC LEGAL RELATIONS

Abstract. This article analyzes the legislation of the Republic of Uzbekistan on the use of procedural rules in resolving administrative disputes in court.

Key words: legislation, decree, alternative dispute resolution, agreement settlement, mediation, judge-mediator, mediator, administrative, civil, economic court process

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АНАЛИЗ ЗАКОНОДАТЕЛЬСТВА РЕСПУБЛИКИ УЗБЕКИСТАН ОБ АЛЬТЕРНАТИВНОМ РАЗРЕШЕНИИ СПОРОВ, ВОЗНИКАЮЩИХ ИЗ АДМИНИСТРАТИВНЫХ И ПУБЛИЧНЫХ ПРАВООТНОШЕНИЙ

Аннотация. В данной статье проводится анализ законодательства Республики Узбекистан о применении процессуальных норм при разрешении административных споров в суде.

Ключевые слова: законодательство, постановление, альтернативное разрешение споров, мировое соглашение, медиация, судья-посредник, посредник, административный, гражданский, хозяйственный судебный процесс.

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МАЪМУРИЙ ВА ОММАВИЙ ҲУҚУҚИЙ МУНОСАБАТЛАРДАН КЕЛИБ ЧИҚАДИГАН НИЗОЛАРНИ МУҚОБИЛ ҲАЛ ЭТИШДА ЎЗБЕКИСТОН РЕСПУБЛИКАСИ ҚОНУНЧИЛИГИ ТАҲЛИЛИ

Аннотация. Ушбу мақолада маъмурий ва оммавий-ҳуқуқий муносабатлардан келиб чиқадиган низоларни Ўзбекистон Республикаси қонунчилигига кўра муқобил усулда ҳал этиш таҳлил қилинган.

Калит сўзлар: қонунчилик, фармон, қарор, муқобил усулда ҳал этиш, келишув битими, медиация, судья-медиатор, маъмурий, иқтисодий, фуқаролик суд процесси

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The decree of the President of the Republic of Uzbekistan dated September 11, 2023 No. PF-158 "Uzbekistan - 2030" Strategy, in paragraph of 85 tasks to increase the resolution of disputes before the trial 50% was set[1].

In addition, The decree of the President of the Republic of Uzbekistan dated January 28, 2022 No. PF-60 "On the development strategy of Uzbekistan for 2022-2026" aims to establish effective judicial control over the activities of state bodies and officials and to increase the level of access to justice for citizens and business entities, and to resolve disputes It was decided to create the necessary organizational and legal conditions for the wide use of alternative methods of communication, to further expand the scope of the institution of reconciliation[2].

Furthermore, according to paragraph 2 of the decision of the President of the Republic of Uzbekistan dated January 29, 2022 No. PQ-107 "On measures to ensure the effective protection of the rights of citizens and business entities in relations with state bodies and to further increase the public's trust in the courts", the conduct of administrative court cases is international in order to improve based on the standards, the goal was to introduce mechanisms for reaching reconciliation between the parties in cases arising from public-legal relations[3].

On April 26, 2023, the Law of the Republic of Uzbekistan "On Amendments and Additions to Certain Legislative Documents of the Republic of Uzbekistan in Connection with Taking Additional Measures to Ensure the Effective Protection of the Rights of Citizens and Business Entities in Relations with State Bodies" the opportunity arose[4].

In the development of the draft law, it is aimed to ensure effective protection of the rights of citizens and business entities by administrative courts in relations with state bodies, and to turn administrative courts into real defenders of citizens by improving the conduct of administrative court cases based on international standards.

The ability of this draft law to resolve administrative disputes through amicable procedures, to develop the rules for the conclusion of a settlement agreement in the resolution of such disputes, and to apply mechanisms for reaching conciliation in cases considered on the basis of complaints by citizens or entrepreneurs, has been studied from the experience of countries such as Azerbaijan, Estonia, and Kazakhstan[5].

According to Article 6 of the Law, amendments and additions to the Code of Administrative Court Proceedings of the Republic of Uzbekistan are determined, and within the framework of Chapter 15^1 of the Code, Article 126^1 on the agreement of the parties, on the form and content of the agreement, Article 126^2 on the approval of the agreement Article 126^3 on consideration of the issue, Article 126^4 on the court ruling on approving the settlement agreement, and Article 126^5 on the refusal to approve the settlement agreement are established.

From the content of the new provisions introduced into this code on the settlement agreement, it is established that the parties can resolve the dispute in full or in part by concluding a settlement agreement based on the principles of voluntariness, cooperation and equal rights, at all stages of administrative court proceedings and in the process of executing court documents. Also, it is confirmed by the law that the agreement of the parties can only be implemented if the agreement of the parties is related to their rights and obligations as the subjects of public legal relations in dispute, and it can be implemented if the parties are allowed to make mutual concessions.

In addition, this new law defines the requirements for the form and content of the settlement agreement, the rules for considering the issue of approval of the settlement agreement and formalizing its results.

As well, the general rules of conducting administrative court proceedings are enriched with the provisions on the conclusion of a settlement agreement, in particular, the law to the code:

- failure to conclude an agreement on behalf of the applicant by the prosecutor, representative;

- approval of the settlement agreement by the court is the basis for the termination of proceedings;

- non-execution of the court ruling on the approval of the settlement agreement is the reason for the imposition of a court fine;

- if there is a ruling of the administrative court on approving a settlement agreement between the same persons, on the same subject and on the same grounds, the judge refuses to accept the application (complaint) for proceedings;

- the appellate court cancels the decision of the first instance court, if a settlement agreement was concluded between the parties and it was approved by the appellate court;

- changes and additions were made that the cassation instance court annuls the decision of the first instance court, the decision of the appellate instance court, if a settlement agreement was concluded between the parties and it was approved by the cassation instance court.

Also, according to these changes and additions to the legislation, the way to the conclusion of an agreement on the cases provided for in clauses 1, 3, 4 and 5 of the first part of Article 27 of the Criminal Code of the Republic of Uzbekistan, as well as on cases that provide for the conditions related to the rights and legal interests of third parties it is determined not to be placed.

From this we can see that the categories of disputes in which conciliation procedures are not applied in disputes arising from administrative and public legal relations are clearly defined in the legislation.

Of course, the introduction of alternative methods of administrative dispute resolution in the legislation is a great achievement for legislation, justice and society. However, in order to ensure the validity of these norms, in other words, it is necessary to further develop the legislation and further improve the practical rules. Because, as we said before, in order to develop the alternative resolution of disputes, we need to develop a number of developing rules for the court hearing of disputes, otherwise these rules on the reconciliation of the parties will remain as passive procedural law rules in economic and civil courts.

Also, with Law No. 833, a new paragraph 11 was added to Article 140 of the Administrative Code of Uzbekistan regarding the actions of the judge to prepare the case for trial, and it is established that the judge shall take measures to reconcile the parties during the preparation of the case for trial no later than five days from the date of receipt of the application (complaint).

However, the question arises, what can be the actions of the judge to take measures to reconcile the parties?

In the first place, of course, in order to show that the judge has fulfilled the requirements of the law in the traditional way, in the ruling on assigning the case to the court hearing, he

should state to the parties that according to Article 126[1] of the Code, the parties can resolve the dispute in full or in part by concluding a settlement agreement at all stages of administrative court proceedings and in the process of executing the court document. Possible but this is nothing more than the usual procedural formality.

Secondly, the judge in his decision may suggest to the parties that the dispute can be settled by agreement, while studying the case documents, he can study whether the legal documents on the settlement of the dispute gave the respondent administrative discretion (discretionary authority) or not. After all, the law stipulates that the agreement of the Parties is allowed only when the defendant has administrative discretion (discretionary authority). If the judge has found that the defendant has discretion on the subject of the dispute during the investigation of the case, can the judge continue the measures to reconcile the parties even after the five-day period stipulated in Article 140 and explain this to the parties during the trial? If so, what will be the judge's next steps in conciliating the parties?

In this regard, the legislation should be further improved. After all, the provision regarding the judge's taking measures to reconcile the parties, included in Article 140 of the Code, is included in Chapter 17 (preparation of the case for trial) of the Code.

According to the new law No. 833, an amendment was also made to the provisions of the Code regarding court proceedings in connection with the application of settlement procedures in resolving disputes in court. It is only when a party applies to the court for assistance in resolving the dispute by agreement that the court can adjourn the trial.

However, the new legislation or any other legislation of the Republic of Uzbekistan does not specify that after the parties have agreed to the agreement, the judge has the right to continue the measures to reconcile the parties in any form, and there is no procedural practice for this.

We can see this deficiency in the procedural legislation in the procedural legislation related to civil and economic affairs. In our opinion, this deficiency in procedural legislation reduces the use of alternative dispute resolution in court.

By this, we mean the need to develop procedural rules related to the agreement of the parties, which will be conducted by the court after the trial or before the trial.

Because, according to the legislation of the Republic of Uzbekistan, the economic, civil, and administrative procedural rules do not specify the rules for helping the court conclude a settlement agreement after the parties agree to reconciliation. In such a case, usually in court practice, the court is satisfied with postponing the trial and giving time to the parties so that the parties can mutually implement the settlement agreement. However, the court does not conduct the procedure of conciliation of the parties. In this case, the parties act independently of each other.

However, in foreign practice, the actions of the judge to reconcile the parties regarding the dispute are clearly defined, the judge hearing the case at the court first evaluates the possibility of reconciling the parties with the case situation and legal grounds, and if it is possible to reconcile the parties in the case, he sends the case to the judge engaged in mediation, and the mediator-judge agrees on the case on the basis of the principles of procedure, helps the parties reach an agreement on the most favorable terms and informs the main judge who hears the case about the outcome of the case. If the parties fail to reach an agreement, the case will be

returned to the main judge for a substantive hearing and will keep confidential the information about the parties that was disclosed during the settlement process.

Also, in many developed countries, there is a separate training system for judges involved in mediation.

According to the judge M. Shtender, a judge who hears a case in mediation should have a special education in mediation, and should have mastered the knowledge of psychology well. Also, in his opinion, the success of mediation depends on the knowledge, experience, and good understanding of human psychology of the judge-mediator. For this reason, there is a separate training system for mediator-judge in Germany[6].

If the judge who hears the dispute in mediation and the judge who hears the content of the case are separated from each other, the specialization of the judge and the judge-mediator, impartiality, confidentiality of the mediation is ensured.

For this reason, it is necessary to put into practice the formation of separate judges or mediators who will conduct the process of reconciliation of the parties according to the procedures for settling the case in mediation.

At the same time, it is necessary to introduce cooperation meetings between the parties on reconciliation procedures, which are conducted in the spirit of friendship and cooperation, which are different from the usual court sessions.

Also, it is necessary to develop the practice of passing disputes through mandatory settlement procedures when applying the agreement procedures between the parties. This will lead to a reduction in court cases and build the ability of the administrative body to resolve disputes internally.

In the Republic of Uzbekistan (civil, economic, administrative) the legislation on the application of the rules of the agreement procedure was developed separately for each area and the application of the rules of other legislation is not envisaged.

For example, according to Article 173 of the German Code of Administrative Procedure, if this law does not contain rules for the conduct of court proceedings, the provisions of the Law on the Organization of the Court and the Code of Civil Procedure can be used in the conduct of administrative court proceedings[7].

Although the German Code of Administrative Court Proceedings stipulates that it is possible to use conciliation procedures at the stage of resolving administrative disputes in court, this code does not specify the procedural rules for conducting conciliation procedures in court resolution of disputes. In this regard, the German Code of Administrative Procedure provides for the application of the rules of civil procedure[8].

Also, the activity of a mediator-judge in this country is regulated by the law Mediation Act (MediationsG) (amended by the tenth regulation on the adjustment of jurisdiction of August 31, 2015) [9].

In our opinion, the establishment of such general procedural rules in the legislation of the states creates convenience in the application of the legislation. In part, this can be attributed to the fact that disputes in foreign countries are heard in courts of general jurisdiction. However, we can see from the German judicial system that, while administrative disputes are resolved in a separate court jurisdiction, the administrative-procedure code provides for the application of civil procedural rules in certain matters.

If we compare the provisions of economic, civil, administrative procedural laws existing in our national legislation regarding the conclusion of a settlement agreement, we can see that they exactly repeat each other. For this reason, it is necessary to generalize the various legislations on this issue into one legislation.

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