



THE PROCEDURE FOR ORGANIZING PUBLIC EXPERTISE OF DRAFT REGULATORY LEGAL ACTS AND SOME ISSUES OF IMPROVING ITS LEGAL MECHANISMS

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ABSTRACT

The article analyzes the procedure for organizing public expertise of draft regulatory legal acts, its current state and existing problems, as well as the issues of using modern information technologies in this process. Also in the scientific work, the issue of compliance of the regulation.gov.uz "Mening Fikrim" portals available on the Internet, other sites and public discussion of regulatory legal acts with the requirements of the time was raised. In the final part of the article, a number of substantiated proposals are put forward for the transformation of public expertise into an effective mechanism of democracy in the era of the development of modern Internet technologies and intelligent regulatory mechanisms.

Introduction

It should be noted that the process of rule-making is becoming more and more complicated and expanding, and the requirements for normative legal acts regulating various aspects of social relations are also increasing in accordance with the time. From this point of view, the importance of legal expertise at different stages of adoption of laws in matters of expertise of normative legal acts, it is necessary to improve the organizational and legal mechanisms related to the form, structure, bases of giving a conclusion to the draft law, and public expertise.

As the head of our state Sh.M. Mirziyoev noted, "In the organization of work in this regard, first of all, it is necessary to develop

draft laws carefully and to the extent that they directly regulate social relations, especially to drastically reduce departmental acts" [1]

At this point, the Head of State suggested the need to introduce modern information and communication technologies in order to know the attitude of the people on important issues, and for this purpose, they proposed to create a special web page on the Internet called "Mening fikrim".

However, in the article, we will try to focus on the question of how long the public discussion of this portal and normative legal act meets the requirements of the time.

Material and methods



In the preparation of this scientific article, it was used that logical and scientific methods of scientific knowledge, in particular, logical analysis, historical, comparative legal methods were used. In addition, it was analyzed empirical materials, in particular, statistical data, legislation and practice of foreign countries.

Research results

Professor M. Akhmedshaeva mentioned these points to the diversity of social relations today and the need to adopt thousands of normative legal acts every year to regulate them: “A rapid increase in the number of legal acts aimed at regulating social relations and ensuring their execution, in turn, should lead to an increase in the effectiveness of regulating social relations. However, it should be noted that this situation is rarely observed in practice” [2].

If we look at the regulation of issues of expert expertise of normative legal acts by organizing public discussion in Uzbekistan, first of all, these processes are reflected in the Law of the Republic of Uzbekistan “On Public Control”.

Among the eight forms of public control specified in the Article 6 of this law, public discussion and public expertise were taken as the object of this dissertation research, and these forms serve to examine the quality of normative legal acts. According to Article 9 of this law, public discussion is considered socially important issues, as well as drafts of normative legal acts and other resolutions of state bodies.

It is indicated that non-governmental non-benefit organizations, self-government bodies of citizens and mass media are represented as subjects of public discussion.

Public discussion can be held with the participation of representatives of various social groups, including persons whose rights and legal interests are affected or may be affected by the discussed issue.

This refers to the persons whose rights and legal interests may be affected by the legal act that is planned to be adopted here.

The public discussion is public and open. Participants of the public discussion have the right to freely express their opinion and make suggestions regarding the issues included in the public discussion.

Another important issue is that, based on this article, public discussion can be held through mass media and using information and communication technologies.

The organizer of the public discussion announces the information about the issues included in the public discussion, the period and order of the discussion.

In this case, the organizer ensures that all participants of the public discussion can freely use the materials at their disposal, which are related to the issues included in the public discussion.

Now, let's pay attention to the content of the institution of public expertise provided for in Article 12 of the Law of the Republic of Uzbekistan “On Public Control”.

Public expertise consists of studying and **evaluating drafts of normative legal acts and other resolutions** of local state bodies to **determine their compliance with** the rights and legal interests of citizens, legal entities and the interests of society.

As subjects of public expertise, non-governmental non-benefit organizations, self-management bodies of citizens and mass media can conduct it in the cases provided for by law.

The organizer of the public expertise may also attract specialists with the necessary



knowledge and experience in the relevant sphere on the basis of the public.

In our opinion, the aims of public expertise should be as follows:

to implement the right of citizens to participate in the management of state affairs established by the Constitution;

to comply the rights and freedoms of people and citizens in the legislative process and providing the interests of civil society;

to improve the effectiveness of the current legislation.

The discussion in this form is almost no different from the above public discussion, two main differences can be demonstrated:

First, the expertise **focuses on determining the compliance of draft normative legal acts and other resolutions** of state bodies with the rights and legal interests of citizens, legal entities, and the interests of society

Second, evaluating of **draft normative legal acts and other resolutions of state bodies**;

Third, involving specialists with the necessary knowledge and experience in order to evaluate drafts of normative legal acts and other resolutions of state bodies, that is, not a wide range of subjects, but a narrow range of specialists who are aware of the issue envisaged in this draft.

The issues of implementation of public control in the form of public expertise were defined in the following laws:

the first part of Article 24 of the Law of the Republic of Uzbekistan “On the Protection and Use of Flora” on September 21, 2016, LRU-409; the first part of Article 22 of the Law of the Republic of Uzbekistan “On the Protection and Use of Animal World” on September 19, 2016, LRU-408; in the Article 27 of the Law of the Republic of

Uzbekistan “On Nature Protection” on December 9, 1992, LRU-754-XII. Other acts describe it as a public discussion rather than a public expertise.

The lawyer Kh.Khaitov noted about the importance of the conclusion of the public expertise as follows: “The conclusion of the public expertise should be prepared by highly qualified experts with special knowledge, moreover, the stated approach shall be based on reliable evidence and shall consist of specific suggestions and recommendations on the draft law. First of all, this will allow the authors of the draft law to look at this draft with new eyes and improve its text. After all, the conclusion prepared as a result of the public expertise and the suitability of the recommendations expressed in it to the situation, the possibility of implementation - this is an important factor of the effectiveness of the expertise” [3].

It is necessary to achieve one of the following positive consequences as a result of the public expertise of normative legal acts:

a) to ensure the high quality, reasonableness, legality and timeliness of the drafts of normative legal acts being prepared;

b) to create a scientifically based system of adopted normative legal acts, to ensure their compliance with existing legal norms;

v) to determine the negative social, economic, legal, ecological and other possible consequences of the adopted acts [4].

Based on the above, the difference between public discussion and public expertise institutes specified in Articles 9 and 12 of the Law of the Republic of Uzbekistan “On Public Control” is not clearly indicated, these two institutes can acquire one



content in the person who studied for the first time.

Therefore, in our opinion, it is necessary to develop a new version of the concept of the institution of public expertise provided for in Article 12 of the Law of the Republic of Uzbekistan "On Public Control".

In our opinion, **"public expertise consists of studying, evaluating and giving conclusions by experts and citizens who have special knowledge to determine whether drafts of normative legal acts and other resolutions of state bodies are in accordance with the rights and legal interests of citizens, legal entities and the interests of society"**.

Now, let's pay attention to the procedure for studying public opinion in the preparation of a draft normative legal act, as defined in Article 23 of the Law of the Republic of Uzbekistan "On Normative Legal Acts".

According to this article, a number of obligations are assigned to the developer in the preparation of the draft normative legal act, according to which the initiator:

to determine the social need for legal regulation, causes and conditions affecting the effectiveness of legislation;

to summarize the proposals of some citizens, materials of the mass media, advice and recommendations of scientific and other organizations, scientists and specialists, data of other means of determining public opinion and uses them;

to study the results of scientific research related to the subject of legal regulation of the draft normative legal act, articles in the mass media, the Internet global information network and appeals of individuals and legal entities [5].

It can be seen that the developer of the draft of normative legal act is obliged to

fulfill the above tasks, most of them are related to the public, from ordinary citizens to the results of scientific research, articles published in mass media, and the opinions of citizens.

Another important situation is that draft laws of the Republic of Uzbekistan can be submitted to public discussion in accordance with the procedure established by the Law of the Republic of Uzbekistan "On Public Discussion of Draft Laws".

In the article 23 of the Law of the Republic of Uzbekistan "On Normative Legal Acts" provides general requirements for submitting draft legal acts to the public or experts for discussion differs from in the article 9 and 12 of the Law of the Republic of Uzbekistan "On Public Control". In the article 23 of the Law of the Republic of Uzbekistan "On Normative Legal Acts" provides for the public discussion of draft normative legal acts of interested state bodies, as well as self-government bodies of citizens and other institutions of civil society, other will be held with the participation of representatives of organizations, scientists, experts and citizens.

The most important thing is that the suggestions and opinions given by citizens and experts in the results of public discussions has a recommendation feature and should be considered by the developer. The materials of the discussion of the draft normative legal act shall be submitted simultaneously with the submission of the draft normative legal act for review to the state body that has the right to adopt a normative legal act [6].

The article 24 of the Law of the Republic of Uzbekistan "On Normative Legal Acts" is a special article devoted to public discussion of draft normative legal act.



The drafts of normative legal acts are placed by the developer on the portal for public discussion in accordance with the procedure established by legislation.

The developer places the draft of the normative legal act on the portal before submitting it to the body adopting the normative legal act.

The initiator determines **the period of public discussion** of the draft normative legal act on the portal based on the specific characteristics of regulated social relations, and this period should **not be less than 15 days** from the date of placing the draft normative legal act on the portal

In this case, the legislator set the minimum period of discussion as 15 days, and based on the specific characteristics of social relations regulated by the legal act, they can increase this period. In this case, the power is assigned to the developer state body.

The developer takes into account the comments and (or) suggestions received from the participants of the public discussion on the draft normative legal act by finalizing the draft in accordance with the received comments and (or) suggestions.

The most important thing that suggestions received in accordance with the requirements of this article adopted in the new version and (or) in case of **rejection of feedback**, the developer must justify the reason for their rejection.

The results of the public discussion of draft normative legal acts, as a rule, indicating the results of the consideration of the received opinions and (or) proposals submitted by the relevant ministries, state committees, agencies and other organizations send to the Ministry of Justice of the Republic of Uzbekistan (for

legal expertise) and to the state body with the right to adopt normative legal acts (for review).

The most important issue that we paid attention to during the analysis of this law is that it states that the draft normative legal act must undergo legal and anti-corruption expertise, and there are **no provisions on public expertise at all**.

Another issue is that **all expertise are carried out according to the decision** of the developer of the draft normative legal act or the body that has the right to adopt a normative legal act.

As the types of expertise economic, financial, scientific, linguistic, ecological expertise is shown.

It can be seen that the Law of the Republic of Uzbekistan "On Normative Legal Acts" does not provide for the institution of public expertise specified in the Law of the Republic of Uzbekistan "On Public Control". In our opinion, it is necessary to consider the necessary elements of the public expertise of the law as a structure of the institution of public discussion. Therefore, within the framework of this dissertation, these two institutions are analyzed as the same form.

Now let's pay attention to how the procedure for conducting public discussions of draft normative legal acts is defined in the normative legal acts under the law.

The resolution of the President of the Republic of Uzbekistan "On additional measures to increase the effectiveness of public discussion over reforms in the socio-economic sphere in our country, as well as the activity of citizens in democratic amendments" on October 4, 2019, RP-4473 the results of the public discussion of the drafts of normative legal acts placed on



the portal of the Unified Interactive State Services of the Republic of Uzbekistan by the organizations that develop normative legal acts shall be submitted to the Ministry of Justice (for legal expertise) and the Cabinet of Ministers of the Republic of Uzbekistan (for review), in which, as a rule, the results of the consideration of the received proposals are specified as mandatory.

In addition, in the resolution of the Cabinet of Ministers "On measures to further improve the activities of the Government of the Republic of Uzbekistan on draft laws" on October 17, 2016 No. 345, state and economic management bodies, local executive authorities the model regulation of activity on draft laws was approved.

The paragraphs 40-47 of this regulation describe the procedure for the public and expert discussion of draft laws. It is established through this act that organizations included in the system of the Cabinet of Ministers must be included in public and (or) expert discussions until the draft law is agreed with the interested bodies and organizations.

According to it, the public discussion of the draft law will be organized in the following forms:

- to conduct seminars and roundtable discussions;
- to place the texts of draft laws and analytical materials on the Unified Interactive State Services Portal of the Republic of Uzbekistan, the official website of the body;
- to organize in other ways with the participation of citizens, interested state bodies, as well as self-government bodies of citizens and other institutions of civil society, representatives of scientific, non-governmental non-benefit and other

organizations, scientists and specialists, experts.

According to the regulations, it is the liability of the head of the body to ensure the organization of public and expert discussion of draft laws.

According to paragraph 43 of this regulation, the participants of the public and expert discussion of the draft law shall be familiarized with its text in advance by the developer.

In addition, according to this regulation, proposals and objections expressed by the public and experts during the discussion shall be considered by the main executive or working group (commission).

In accordance with the amended resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 677 of October 30, 2020, paragraph 44 stipulates that the draft law must be posted by the developer on the portal of the Unified Interactive State Services of the Republic of Uzbekistan in the prescribed manner for public discussion. Until then, it was not considered mandatory to place it on the Unified Interactive State Services Portal for public discussion.

The results of the public discussion of draft laws posted on the portal of the Unified interactive state services of the Republic of Uzbekistan are submitted to the Ministry of Justice of the Republic of Uzbekistan (for legal expertise) and the Cabinet of Ministers of the Republic of Uzbekistan (for review), where, as a rule, it is **mandatory to display the results** of the consideration of received offers.

In addition to this, another important procedure of public expertise is consolidated in the legislation, according to which the information about the expert discussion of the draft law and its results



should be reflected in the explanatory letter.

Analysis of research results

In addition to the above act, mandatory procedure for submitting other normative legal acts to the Unified Interactive State Services portal for public discussion Preparation of draft normative legal acts to be submitted to the Cabinet of Ministers of the Republic of Uzbekistan by state and economic management bodies, local state authorities, in the methodological instructions on the procedure for legal and technical formalization and legal expertise (state registration number 2352, April 9, 2012) is reflected.

The preparation of drafts of normative legal acts, which provide for amendments and additions to other legal acts, showing a sample (table) at the end of consideration of proposals of citizens (comments) is determined by separate legislation.

In the sphere of the development of modern Internet technologies and

intelligent normative mechanisms, taking into account the fact that a large part of the population of young people is active in social networks through mobile phones, creating mobile applications for the www.regulation.gov.uz portal and to introduce the “like” procedure for determining the priority of important issues related to the life of the society is considered. In this case, it is necessary to simultaneously apply advanced technologies of journalistic and legal experience in working with the public.

As of June 1, 2021, the number of suggestions made by users to the normative legal acts discussed on the www.regulation.gov.uz portal and the representatives of the sphere, the active layers of people that participated in the public expertise and which state organizations made proposals regarding the normative legal act can be seen in the following picture according to the state of consideration.

Picture No. 1



Professor M. Akhmedshayeva conducted a public survey on the website regulation.uz in order to study the opinion of the public in forecasting and planning draft laws: “In

your opinion what amendments and additions should be made to legal acts?”, “What laws should be passed in your



opinion today?" suggests conducting social polls on such questions.

The purpose of this is to "help the legislator to get a practical goal in forecasting the law-making process, increase the viability of the laws to be adopted, and increase the participation of the population in the law-making process, and thus serve to increase their social activity" [7].

In full support of these opinions, today the open platform concept – "open-platform" has been introduced on the www.regulation.gov.uz portal, in which questionnaires on the NLA draft that were discussed, this questionnaire although it is determined that the results of the drafts will be attributed to the author of the draft, it is necessary to note that the creators of normative legal acts did not use this institution at all.

In our opinion, within the framework of the open platform concept, the portal is not only used by the initiators, but it is necessary to create an opportunity to conduct surveys by non-governmental non-profit organizations and other institutions of civil society.

As a continuation of the above analysis, it is necessary to note that the main obstacle in the implementation of public expertise is the lack of regulation of the status of authorized entities conducting it.

It is stated that in the national legislation non-governmental non-benefit organizations, self-government bodies of citizens and mass media may conduct public expertise in cases provided for by legislation.

However, there is no legal mechanism for this in the special laws regulating the activities of these entities.

In our opinion, it is necessary to include in these special laws, as separate chapters,

specific legal provisions on the procedure for public expertise of normative legal acts by them, the rights and obligations of the participants, and the formalization of its results.

The analysis of national legislation shows the existence of three categories of subjects of public expertise.

First, initiator. Non-governmental non-benefit organizations, self-government bodies of citizens and mass media are envisaged as subjects of public expertise.

However, the national legislation does not state the possibility or necessity of conducting such an expertise by other subjects, state authorities and administrative bodies that do not belong to this category.

In our opinion, the Authorized Person for Human Rights (Ombudsman) of the Oliy Majlis of the Republic of Uzbekistan, the Deputy of Authorized Person for Human Rights (Ombudsman) of the Oliy Majlis of the Republic of Uzbekistan - Child Rights Representative, National Center of the Republic of Uzbekistan for Human Rights, Representative of the President of the Republic of Uzbekistan for the protection of the rights and legal interests of business entities, the public council under the State body established by the resolution of the President of the Republic of Uzbekistan on July 4, 2018 No. DP-3837 and other subjects with public legal powers, it is necessary to give this right.

In addition, it is proposed that to include in the legislation the norm on the necessity of public expertise by the Public Chamber of all normative legal acts that limit the rights of entrepreneurs or limit excessive bureaucracy, tax obligations and the rights and interests of other individuals and legal entities.



The **second subject** can be the organizer. It is entity that organizes the procedure for organizing public expertise, organizational and technical issues related to its conduct, and generalization of its results.

In our opinion, it is necessary to develop the activities, rights and obligations of this entity with the relevant internal act of the Public Chamber.

The third subjects, it is necessary to specify specialists with the necessary knowledge and experience in the relevant sphere, who will be involved by the organizer of the public expertise.

The main task of specialists is to prepare a qualitative expert opinion based on their qualifications and experience or make suggestions for its improvement. However, these issues and the requirements for the conclusion were not reflected in the national legislation.

In the Article 12 of the Law of the Republic of Uzbekistan "On Public Control", it is proposed to include the requirements regarding the conclusion of experts involved, their objective, reliable and reasonable.

In addition, in our opinion, it is proposed that to include citizens and legal entities in the scope of subjects of public expertise in this law. For this reason, it is necessary to show that the opinions of our expert citizens in various spheres are taken into account by the initiators in the discussions held on the www.regulation.gov.uz portal. Therefore, it is proposed to establish a separate department for conducting public expertise and develop a procedure for conducting it on the basis of this portal.

The issues of expanding the range of subjects conducting public expertise have also been identified as proposals in the studies of some experts. According to M. S. Khachatryan, an initiative was put forward by them to carry out the normative legal acts related to the rights and interests of citizens, and it was shown that the necessary organizational work should be done [8].

Conclusion

Based on the above, a number of conclusions can be put forward:

Firstly, public expertise and discussion is the first stage of decision-making. Its main task is to achieve the expression of the will of the people in the normative legal acts that are planned to be adopted;

Secondly, it is concluded that turning public expertise into an effective mechanism of democracy and involving civil society in state management is directly related to the effective solution of the following tasks:

- to create legal guarantees of transparency and openness of public expertise activities, creating of equal conditions for participation of all interested parties as experts;
- to demand the development of legal mechanisms for identifying, combining and taking into account public opinion at the national level;
- to train personnel conducting public expertise, as well as creation of the mentality of protecting "position of active citizenship" among young people;
- to create legal mechanisms to encourage experts' active participation in public expertise.



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