

ON SOME ISSUES OF IMPROVING THE LEGAL FOUNDATIONS OF DEPARTMENTAL LAWMAKING

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Abstract:

This article discusses important aspects of improving the legal framework of departmental lawmaking. The authors explore the current challenges and problems associated with the process of legal regulation within organizations and departments, and propose a number of solutions to improve this practice. The focus is on the efficiency, transparency and consistency of departmental regulations.

Keywords: Departmental lawmaking; Improvement of legal frameworks; Effectiveness of normative acts; Transparency in the law-making process; Consistency of departmental standards.

Introduction

The adoption of a new version of the Constitution of the Republic of Uzbekistan has put on the agenda the task of updating the national system of law and improving the quality of legislation. The present stage of improving law-making activities can be characterized by a shift in emphasis to streamlining the regulatory array, improving rule-making, including departmental rule-making. It is known that the law-making activity of departments is one of the means of management of the relevant department¹ and at the same time a form of activity of this body. Creation of departmental normative legal acts (hereinafter referred to as RLA) acts as a necessary process in the mechanism of legal regulation. Departmental rule-making is a certain form of state activity aimed at creating, changing, supplementing and abolishing the norms of law by an authorized body public administration (the ministry and a department of equal status). At the same time, departmental lawmaking is the activity not only of state bodies, but also of officials.

The Law of the Republic of Uzbekistan "On Regulatory Legal Acts",² adopted in a new edition, significantly improved the legal framework for law-making activities, fixing the provisions defining the principles and boundaries of departmental rule-making. The law defines the departmental rule-making process as the activity of exercising the powers to develop and adopt the relevant regulatory acts for the purpose of legal regulation of public relations in a certain area (Article 14). Although he regulates law-making procedures in detail, but some issues of departmental rule-making are ignored in the law.

This law regulates the rule-making process itself, the result of which is the RLA, which is included in the existing system of legislation. An analysis of the quantitative composition of legal acts posted in the Information Retrieval System of the National Database of Legislation of the Republic of Uzbekistan reveals an interesting trend. The number of departmental legal acts as of

¹ The term "department" is usually understood as ministries and state committees, agencies and other state bodies equated to them in status.

² See: Law of the Republic of Uzbekistan dated 20.04.2021 No. ZRU-682 "On Regulatory Legal Acts" / National Database of Legislation, 20.04.2021, No. 03/21/682/0354, 03.03.2022, No. 03/22/756/0180; 04.08.2022, No. 03/22/787/0708; 27.10.2022, No. 03/22/797/0967, 27.10.2022, No. 03/22/796/0966; 09.08.2023, No. 03/23/860/0571.



October 7, 2023 is 8031, which is more than the number of adopted laws (1277), but less the number of acts of the Cabinet of Ministers (10,349). The law-making process is regulated in quite detail, and this is justified and natural. The law-making activities of the Government are also regulated in detail in the relevant legislative acts. However, only a few legal acts adopted 10-20 years ago are devoted to law-making activities. As we can see, departmental legal acts, which make up the overwhelming share of their total number, are not regulated in sufficient detail. Based on this, we believe it is necessary to specify the procedures for departmental rule-making, and most importantly, to clearly and unambiguously define their subject and limits.

The agencies adopt regulatory acts on the basis of and in pursuance of the Constitution and laws, resolutions of the chambers of the Oliy Majlis, decrees and resolutions of the President of the country, as well as resolutions of the Cabinet of Ministers. Agencies may adopt departmental legal acts if they are authorized to adopt the relevant act or legal regulation of specific public relations. In the event of issues that require legal regulation, the agencies are obliged to adopt the relevant departmental PPA. The Ministry of Justice may make representations to the departments on the need to adopt the relevant departmental legal acts. In our opinion, the law does not clearly define the powers of departments in the field of law-making, while these entities can issue regulatory legal acts on a wide range of issues.

In our opinion, it is expedient to supplement the above-mentioned law with the norms that determine the grounds for the adoption of departmental legal acts. It is also expedient to tighten the responsibility for compliance with the rules of rule-making technique. The Ministry of Justice's examination of draft legal acts for compliance with the law-making technique increases the responsibility of the heads of departments for compliance with the rules of law-making technique. This is due to the fact that there may not be enough lawyers in the offices who are able to conduct a high-quality legal due diligence of the project. It is also necessary to introduce a norm that clearly indicates the scope of adoption of legal acts by departments. For example, paragraph 3 of the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 19.05.2000 No. 197 expressly prohibits the adoption by ministries, state committees and other departments of acts that complicate the procedure for the creation, registration and operation of business entities, providing for unreasonable requests for additional certificates and documents³.

Today, there is a Unified Electronic System for the Development and Approval of Draft Regulatory Legal Acts, which ensures the development, coordination, adoption of draft departmental regulatory legal acts, as well as legal expertise and state registration of adopted acts⁴. As part of the "regulatory guillotine" initiated by the Ministry of Justice, almost 1900 obsolete and irrelevant legal acts adopted in 1990-2020 were recognized⁵ as invalid. This made it possible to improve the quality and efficiency of departmental rule-making to a certain extent. It is also

³ See: Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated October 9, 1997 No. 469 "On Measures to Ensure the Legality of Regulatory Acts of Ministries, State Committees and Departments" / <https://lex.uz/ru/docs/310314#310318>, accessed 5.10.2023.

⁴ See: Order of the Minister of Justice of the Republic of Uzbekistan dated February 28, 2014 No. 53-MX (reg. No. 2565) "On Approval of the Rules for the Preparation and Adoption of Departmental Regulatory Legal Acts" / Collected Legislation of the Republic of Uzbekistan, 2014, No. 10, Art. 110, No. 21, Art. 253, No. 52(I), Art. 654; 2016, No. 19, Article 221; National Database of Legislation, 15.01.2018, No. 10/18/2565-5/0565, 06.07.2018, No. 10/18/2565-6/1469; 20.02.2019, No. 10/19/2565-7/2653, 20.04.2019, No. 10/19/2565-8/2976; 29.04.2020, No. 10/20/2565-9/0539, 29.06.2020, No. 10/20/2565-10/1010; 24.06.2021, No. 10/21/2565-11/0594; 28.06.2022, No. 10/22/2565-12/0580.

⁵ See: <https://www.gazeta.uz/ru/2021/02/23/documents/>, accessed 5.10.2023.



necessary to strengthen law-making discipline at the level of republican executive bodies in other ways.

The legislation has established certain requirements for departmental rule-making. Thus, the term for the adoption of a departmental regulatory act should not exceed one month, unless another term is established. It is not allowed to include legal norms in documents that are not departmental legal acts (for example, in the field of technical regulation, letters, telephone messages, explanations, individual acts, etc.). Acts that are not generally binding, but contain legal norms, are subject to repeal and are not applied.

Certain restrictions have been established prohibiting the inclusion of legal norms in departmental regulatory acts: a) regulating issues within the powers of economic management bodies and corporate relations; b) establishing liability measures, additional payments and fees for individuals and legal entities, excessive administrative and other restrictions that lead to unreasonable costs for them, as well as having a permissive nature.

In addition, Resolution No. 469 of the Cabinet of Ministers of 9 October 1997 "On Measures to Ensure the Legality of Normative Acts of Ministries, State Committees and Departments"⁶ established the following requirements:

- (a) Regulatory acts of agencies affecting the rights, freedoms and legitimate interests of citizens, which are binding on organizations outside the system of the agency or are of an interdepartmental nature (i.e., generally binding) are subject to state registration with the Ministry of Justice;
- b) ABOs that have not passed state registration do not entail legal consequences and cannot serve as a basis for the regulation of social relations, the application of any sanctions for non-compliance with the instructions contained therein.

The Concept of Improving Rule-Making Activities defined the task of limiting the rule-making powers of ⁷ departments by clearly defining the list of jurisdictions of each of them, the regulation of which is associated with the adoption of regulatory legal acts, providing for the gradual narrowing and exclusion of powers to adopt departmental regulatory legal acts. At the same time, the limitation of the rule-making powers of the agencies should not become an end in itself, the main thing here is to clarify the rule-making competence of the in order to prevent departmental arbitrariness. It is important to ensure compliance with the principle of sufficiency of grounds when making law-making decisions, according to which regulatory intervention of the agency is allowed only if other measures (administrative procedures, management decisions, judicial review) cannot solve the relevant problem and its need is properly justified.

To ensure the legitimacy of departmental lawmaking, it is necessary to introduce an effective system for its evaluation. It is necessary to constantly monitor the legality, validity and quality of departmental legal acts, the results of their implementation (achievement of goals, benefits and costs. For this purpose, a system for assessing the regulatory impact of legal acts is used, which provides for a comprehensive analysis of the problems of legal regulation, ways to solve them, forecasting and assessment of possible consequences of the introduction of new legal acts. Also, the institution of appealing against legal acts plays an important role in this case. The importance

⁶ See: <https://lex.uz/ru/docs/582822>, accessed 5.10.2023.

⁷ See: Decree of the President of the Republic of Uzbekistan dated 08.08.2018 No. UP-5505 "On Approval of the Concept of Improving Rule-Making Activities" / National Database of Legislation, 09.08.2018, No. 06/18/5505/1639; National Database of Legislation, 09.11.2019, No. 06/19/5870/4010, 30.04.2021, No. 06/21/6218/0398.



of administrative courts, as well as the Constitutional Court, in this process is irreplaceable. Thus, departmental rule-making is one of the organic and necessary instruments of legal regulation aimed at regulating public relations in the sphere within the competence of the department. It is of a limited nature by law. Low quality, lack of elaboration of the subject and process of preparation of departmental legal acts give rise to defects in law enforcement practice, which negatively affects the development of the country's legal system.

