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Current Problems Existing in the Practice of Rule-Making Implementation

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ABSTRACT

Today, a number of studies and scientific developments are being carried out on the implementation of the norm of creativity. The goal is to identify systemic problems and solutions in the field of norm creation. Based on this, this scientific article has sufficiently analyzed the existing systemic problems in the field of norm creation from a scientific and legal point of view.

KEYWORDS: *law-making, document, legislative, normative, legal technique, situation.*

We live in a situation where legislators and law-making bodies do not keep up with the rapidly changing realities of life, which extremely complicates the efficient functioning of enterprises. Various categories of citizens regularly have to deal with atypical and extremely controversial situations. Confusion and uncertainty, in other words, gaps in the law of our country, in my opinion, are one of the significant problems of the reform period. Their presence (gaps) contributes to the emergence of not only fraud, but also targeted economic crimes. Therefore, mechanisms for filling gaps in national legislation should be developed by legal science, primarily because the legislative branch is not able to immediately solve the huge growing range of gaps in all legislation[1].

The expression of legal norms in normative legal acts in the process of rulemaking, aimed at regulating certain social relations, in turn, leads to the emergence of conflicts between them. Repetition in regulatory legal acts is not allowed. At the same time, the emergence of conflicts between legal acts that relate to certain social relations is associated with objective and subjective factors. By analyzing the relevant literature and practice, we can identify some ways to eliminate conflicts in legislation:

- adoption of a new regulatory legal act instead of conflicting documents;
- cancellation of one of the conflicting documents;
- transformation and clarification of the current document;
- development of conflict of laws rules and directions;
- establishment of a judicial procedure for the consideration of disputes arising in the event of a conflict;
- judicial interpretation of these rules in order to eliminate contradictions between the rules of law;
- harmonization of legal norms and systematization of legislation;
- appeal in a judicial or administrative manner against the corresponding conflicting document;
- introduction of compromise and reconciliation procedures;
- ensure that the relevant legal entities act within strict constitutional and legal as well as statutory powers;
- coordination and legal examination of previously adopted documents with interested parties;

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- periodic inventory of documents adopted by copyright subjects;
- analyze the effectiveness of regulations;
- developing skills to anticipate conflict situations that may arise as a result of the application of regulations, etc.

It is worth mentioning the opinion of E. Khalilov : "At the moment, some shortcomings are caused by insufficient preparedness of their developers. In particular, the fact that deputies lack a high level of legal information produces negative results. Lawmaking, like any creative activity, requires from the legislative body not only general culture, but also the acquisition of special knowledge and skills related to the development and implementation of legislative acts." The high level of legislation of any country depends, first of all, on the fact that the state is responsible for the law-making process and, in particular, for the law-making body - members of parliament, who are aware of their knowledge of the law and their active participation.

The appearance of gaps is an objective situation with rapidly developing social relations.

Therefore, under these circumstances, existing relationships take on a new form and new relationships emerge. They, in turn, require legal regulation. To prevent gaps in legislation, the creator must constantly monitor social relations and, if necessary, improve the legal framework.

Below is the process for addressing gaps in legislation:

a) the meaning of the current legislation;

b) the social and financial reason for the adoption of the regulatory legal act;

c) relations related to the implementation of the normative act;

d) rule-making activities of government bodies;

e) practice of application of law and legal consciousness.

If a full analysis of the above-mentioned circumstances is completed, it will be possible to get a clear answer to the existence of gaps in the legislation.

Today, one of the most pressing tasks facing our state is the improvement of national legislation in the context of modernization of the country, streamlining and systematization of legislation, as well as legal regulation of unresolved relations .

Since the ongoing reforms are multifaceted and long-term, the creation of perfect laws, ensuring their implementation, improving the legal culture of the population and officials, clearly defining the rights and responsibilities of government bodies are important areas[2].

Today, the existing regulatory framework, which serves as the basis for the legal support of the ongoing reforms in the republic. However, the process of changes taking place in public life does not always correspond to the adopted legislative documents.

Such identification and prevention of gaps in the national legal system makes it possible to fully ensure human rights, increase the legal consciousness and legal culture of society, and also adapt legal norms to the existing reality.

It should be noted that eliminating gaps in the law is realized only through lawmaking. In other cases, i.e. in the application of the analogy of law and the analogy of law, gaps in the law are overcome , and the case finds a legal solution. The use of the analogy of law and the analogy of law is due to the impossibility of adopting regulatory documents in a short period. In this regard, Z. M. Islamov emphasizes that "the analogy is permitted everywhere where there is no special prohibition - and where rulemaking does not connect the onset of legal consequences only with a specific law [3].

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Analogy of law is the solution of a certain case on the basis of a law regulating relations similar to those under consideration.

An analogy of law is the solution of a certain case on the basis of general principles and meaning of law.

The Republic of Uzbekistan also noted the possibility of using an analogy of law or an analogy of law when gaps arise in the legislation. According to Article 5 of the Civil Code, in cases where relations are not directly regulated by law or agreement of the parties, the norm of civil law governing similar relations (analogy of law) is applied.

The application of the analogy of law and the analogy of law requires compliance with several requirements. Professor I.B. Zakirov provides three requirements for the application of the analogy of law and the analogy of law:

firstly, the possibility of resolving a case in the absence of the necessary laws and decrees in this case;

secondly, such an analogy, issued in the form of a court order, is in force only to solve the problem;

thirdly, the court must indicate not only the general grounds and essence of decisions, but also on the basis of what general principles the decision is made [4].

F. A. Grigoriev and A. D. Cherkasov provide four requirements for the application of the analogy of law and the analogy of law:

firstly, to establish that this life situation is of a legal nature and requires a legal solution;

secondly, make sure that the legislation does not contain a specific rule of law designed to regulate such cases;

thirdly, to find in the legislation a rule regulating a similar case (analogy of law), and if not available, proceed from a general principle (analogy of law) [5].

The use of an analogy that limits human rights and establishes legal liability is not allowed.

Throughout the development of our republic, many laws have been adopted [6]. In the practice of modern legal relations, such a trend as the improvement of the legislation of the Republic of Uzbekistan becomes obvious; there is an increase in the volume of rule-making projects in the following areas of work:

1) instructions from higher authorities;

2) implementation of the initiative of government bodies, but in accordance with their powers. These bodies have the right only to develop draft laws, acts of the President and the Cabinet of Ministers [7].

Now there is no need to dispute the correctness of the statement that departmental law-making is necessary, but it should not be vast and disorderly.

There is an opinion in science that the law-making activities of government bodies will gradually be limited and reduced as the rule of law becomes established [8].We cannot say that this opinion is absolutely correct. But we can supplement it with the fact that the legal framework for rule-making by executive authorities must be constantly improved, the work of ministries and departments in developing departmental regulations must be constantly under the control of higher authorities.

There is a trend to reduce departmental rulemaking, and it leads to optimization of rulemaking in Uzbekistan, where working and personnel capabilities for the preparation and development of regulations will be clearly allocated.

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Authorized representative of the Cabinet of Ministers in Oliy The Majlis coordinates the work on close interaction between the structural divisions of the Cabinet of Ministers Office and organizes the interaction of the government with the chambers of Oliy Majlis in legislative activities.

Ministries and departments are developing drafts of the necessary regulations.

Let us note a number of negative trends currently existing in the sphere of departmental regulation, the overcoming of which would contribute to the harmonization of legislation. An important problem of the legislative system is legal instability.

In this regard, government agencies are working to systematize departmental regulations [9].

Also in practice, there is an obvious drawback when filling out monitoring reporting forms. In this regard, it seems advisable to ensure a systematic approach to solving the problem.

Recently, these problems have been considered mainly by economists and political scientists [10].; as for lawyers, not many monographic works have been published on the problems of legal modernization [11].

Modernization of rule-making is based on the basic ideas of the concept of "separation of powers" [12].

The analysis made it possible to identify the following stages in the process of preparing departmental regulatory legal acts:

1) collection, study, analysis of materials regarding the issue of legal regulation of the future normative act;
2) the concept of a normative legal act;
3) outline plan and schedule – their detailed elaboration;
4) the first version of the project and its revision;
5) conducting a comprehensive assessment of the project and its text;
6) approval, approval and presentation of the project for signature by the manager;
7) state registration [14].

At the same time, it is necessary to highlight some errors that exist during the implementation of these stages.

The above will fulfill the requirement established in Article 15 of the Law "On Regulatory Legal Acts". This means that in this regard, it will be very important to involve active representatives of citizens in the development of regulations.

A serious problem at this stage is also the ignoring of constructive proposals made by employees of executive authorities, institutions, organizations, and citizens. The danger here lies in the very essence of executive power, which sometimes pays more attention to departmental interests and tasks, rather than to the problems of ensuring the rights and legitimate interests of citizens. This problem is currently being solved within the framework of the anti-corruption policy of the Republic of Uzbekistan, but this does not mean that it should not be studied from the position of executive authorities in the context of the exercise of their powers.

The following errors are typical for the stage of comprehensive assessment of the project and preparation of the final text of the project:

1) a comprehensive assessment of a draft regulatory legal act is carried out without the use of modern methods for carrying out legal monitoring of draft regulatory legal acts;

2) there are no expert councils in certain executive authorities; the rule-making experience of previous years, as well as the experience of foreign countries, is not taken into account. So, for example, from foreign practice we see that the Ministry of Internal Affairs of the Russian Federation has an Expert Council on Rulemaking.

3) spot monitoring is carried out, but at the same time all regulatory legal acts, acts adopted by the judiciary , and methodological documents related to the regulation of specific social relations are not monitored.

4) there is no analysis of statistical data, sociological surveys, scientific works on the most pressing problems of the development of society and the state;

5) there is no design of regulatory material;

6) a retrospective assessment of the act is not carried out;

7) the results of a comprehensive assessment are not fully reflected in the conclusions on draft legal acts, reports, reports, "dossiers of regulatory legal acts", etc.

For the stage of approval and approval of a draft regulatory legal act, the following disadvantages are possible:

1) the opinion of individual ministries and departments on the intended subject of regulation is not taken into account; the opinion of an authoritative minority often takes precedence;

2) you often have to deal with a situation where the approval and approval sheet is drawn up incorrectly; this can usually be overcome with frequent patches, but the problem does exist.

Practice shows the lack of proper control over rule-making, especially in the sphere of constructing a set of rules of law, according to which rule-making of ministries and departments is based, establishing legal liability for officials such as the head of an executive body for the deliberate adoption of insignificant (illegal) departmental acts.

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