

Mechanisms of departmental normative-legal regulation of social relations in central Asia: comparative-legal analysis

Fayziyev Olim Raimkulovich,
Independent Researcher,
Tashkent State University of Law,
Uzbekistan, Tashkent, Shaikhontohur district, 18-58,
Tel.: +99890 909-58-58,
E-mail: olim_fayziyev@mail.ru



<http://dx.doi.org/10.26739/2573-5616-2017-7-7-5>

Abstract: In this article, we carry out comparative-legal analysis of departmental legal regulation of social relations in Uzbekistan, Kazakhstan, Kyrgyzstan, Turkmenistan and Tajikistan, in particular, the issues of the legal status of the departmental normative-legal act, adopting bodies, coordination of the draft with the relevant authorities, public discussion and state registration.

Keywords: public relations, legality, departmental normative-legal act, legal expertise, state registration, administrative responsibility.

Reforms of public administration and development of civil society are carried out in Uzbekistan as well as other Central Asian countries. It should be noted that fair democratic society can be constructed only on the basis of unity and proportionality of interests of the individuals, society and states[1]. In turn, the legality has to be the basic relationship between them [2]. The legality, along with implicit compliance with laws by subjects of the public relations, means also their legislative settlement.

International experience shows that the public relations are governed by laws, by regulations, judicial precedent, customary norms and other

documents of this sort. In particular, their departmental normative-legal regulation is considered one of the forms of normative-legal regulation of public relations. So, ministries, state committees and other central public authorities within their lawful powers can adopt normative legal acts directed to regulation of certain public relations. At the same time, for law enforcement of the accepted document there are set various restrictions and procedures. In this regard, in the present article the comparative analysis of departmental normative-legal regulation of the public relations in the states of Central Asia is carried out.

Questions of departmental normative-legal regulation in Uzbekistan[3], Kyrgyzstan[4], Tajikistan[5], Turkmenistan[6] are regulated by the Law "On Normative Legal Acts", and in Kazakhstan - Law "On Legal Acts" [7].

Among the listed states, definition to the concept "departmental normative legal act" is given only in the legislation of the Republic of Uzbekistan.

In Central Asia, ministries (Uzbekistan, Kazakhstan, Tajikistan, Turkmenistan), state committees (Uzbekistan, Tajikistan), departments (Uzbekistan), central public authorities (Kazakhstan, Turkmenistan), departmental central public authorities (Kazakhstan), Central Election Commission (Kazakhstan, Kyrgyzstan), Accounting committee (Kazakhstan), National bank (Kazakhstan, Kyrgyzstan) and other public authorities (Tajikistan) have the right to adopt departmental normative legal acts.

In the given states the legislation defines the bodies with the right of adoption of departmental normative legal acts, however, their circle (quantity) is not concretized. For example, there is no definition about which bodies are "departments" (Uzbekistan), "the central public authorities" (Kazakhstan, Turkmenistan), "departmental central public authorities" (Kazakhstan), "other public authorities" (Tajikistan).

Experience of Uzbekistan demonstrates that ministries, state committees and departments have the right to adopt departmental normative legal acts. At the same time, uncertainty of a circle of "departments" should be noted as the main problem. According to paragraph 2 of Rules of preparation and adoption of departmental normative legal acts[8], departments are republican state bodies or governing bodies with special competence which are not the ministries or the state committees, equipped with executive and (or) administrative functions and having the right of adoption of departmental normative legal acts (the agencies, the commissions, the

centers, managements, etc.). In our opinion, it is necessary to detail this norm and to specifically define the list of the subjects having the right of adoption of departmental normative legal acts. Problems of this sort, as it was already mentioned above, also occur in the legislation of Kazakhstan, Tajikistan and Turkmenistan.

In Kyrgyzstan, they created a peculiar practice of definition of the list of the subjects adopting departmental normative legal acts. According to Article 19 of the Law "On Normative Legal Acts of the Republic Kyrgyzstan" dated July 1, 1996 No. 34 [9], ministries, state committees and administrative departments have the right to adopt normative legal acts. However, in the new Law "On normative legal acts of the Republic Kyrgyzstan" dated July 20, 2009, this power of ministries, state committees and administrative departments was excluded and the right of adoption of normative legal acts remained only with National bank and Central Elective Commission on elections and referenda. Meanwhile, the normative legal acts adopted by ministries, state committees and administrative departments, which underwent the state registration in the Ministry of Justice on the basis to article 36 of the Law, were valid till December 31, 2010.

Based on the experience of Kyrgyzstan and other states of Central Asia and taking into account that central public authorities carry out state policy in the respective sphere and are direct performers of the normative legal acts, and also for expeditious elimination of problems, shortcomings, gaps and discrepancies, arising in law-enforcement practice, ensuring improvement of normative legal acts in coordination with dynamic development of the public relations, it is expedient to keep powers of ministries, state committees and departments on adoption of normative legal acts. At the same time, it is important to create effective mechanisms of law enforcement of the adopted departmental normative legal acts.

It is known that in world practice, drafts of normative legal acts are accepted in coordination with the interested bodies. The analysis of the legislation of the states of Central Asia confirms existence of peculiar features of coordination of departmental normative legal acts with the interested public authorities.

In this matter, practice of Kazakhstan deserves special attention. According to the Law of the Republic of Kazakhstan "On legal acts", normative legal acts infringing on the interests of private businesses are subject to coordination with associations of private businesses and National

chamber of businessmen of the Republic of Kazakhstan (article 19), concerning the rights and freedoms of citizens - Public councils (article 20).

It is considered to implement in the legislation of Uzbekistan the positive practice of Kazakhstan in the sphere of coordination with Public councils of drafts of the departmental normative legal acts concerning the rights and freedoms of citizens. In particular, creation of public advisory boards at the public authorities including controlling and law-enforcement, with inclusion of representatives of businesses and their associations is provided in the Program of complex measures for ensuring the accelerated development of an entrepreneurial activity, every possible protection of a private ownership and high-quality improvement of business climate in the Republic of Uzbekistan approved by the Presidential decree No. 4848 of the Republic of Uzbekistan of October 5, 2016 [10]. It is possible to enshrine provisions concerning coordination of questions of activity of subjects of business and the rights and freedoms of citizens with Public councils when developing departmental normative legal acts.

It should be noted that positive practice in the sphere of discussion on the Internet of drafts of the departmental normative legal acts concerning activity of subjects of business is created in the states of Central Asia. According to the current legislation, the project is posted for the discussion on the official website of the public authority which developed it (Kazakhstan, Kyrgyzstan) not less than 30 days in advance, or 15 days before - on the government portal which is specially created for this purpose (Uzbekistan).

At the same time, the practice of Uzbekistan in this sphere deserves special attention. The resolution No. 328 of the Cabinet of Ministers of the Republic of Uzbekistan dated December 2, 2014, approved the Provision on an order of assessment of influence of the developed projects and the adopted normative legal acts on an entrepreneurial activity through the Single portal of interactive state services of the Republic of Uzbekistan, which definitely establishes procedures concerning public discussion, placement on the portal of documents of the corresponding content. So, according to this Provision, discussion and assessment of influence on an entrepreneurial activity the developed drafts of normative legal acts providing the introduction of new restrictions, allowing procedures, licenses, additional requirements (conditions) for obtaining documents of allowing character (licenses), requirements (conditions) involving expenses - establishment of requirements to the minimum size of authorized capital,

- influence on the rights and legitimate interests of 30 and more percent of subjects of business in the respective sphere, - reduction (lessening) of the granted rights or establishment of additional duties of subjects of business, - establishment of new measures of responsibility of subjects of an entrepreneurial activity, - establishment of privileges on taxes and other obligatory payments, other privileges, guarantees and preferences for subjects of business and also providing business of the new rights to subjects are subject.

The specified order, put into operation on January 1, 2015, has proven its efficiency in Uzbekistan today.

It should be noted that in all five republics, departmental normative legal acts are subject to the state registration in the Ministry of Justice (The ministry of fairness in Turkmenistan). At the same time, two mechanisms of the state registration of such acts are used: 1) the state registration incorporating legal examination (Uzbekistan, Kazakhstan, Tajikistan, Turkmenistan); 2) the state registration by means of including into the state register (Kyrgyzstan).

In the first case, the adopted departmental normative legal act does not come into force before its state registration. In the second case, departmental normative legal act comes into force from the moment of its acceptance, after that it is submitted in the Ministry of Justice for including into the state register.

It should be noted that entry into force of acts without the state registration from public officials of the ministries and departments in practice can lead to such negative consequences as:

- restriction of operation of higher normative legal acts;
- mistrust of citizens to the reforms which are carried out in the country;
- emergence of bureaucratic barriers;
- creation of conditions for corruption in activity of public authorities and commission of other offenses;
- action of allowing procedures for businessmen, not provided in acts;
- assignment of additional duties on the businessmen contradicting the legislation, and others.

For this reason, for the sake of legality and quality of the adopted departmental normative legal act, we consider the most effective use of the first mechanism of the state registration described above.

At the same time, one more positive practice existing in Uzbekistan should be noted.

According to article 27 of the Law of the Republic of Uzbekistan "On normative legal acts", ministries, state committees and departments within ten days from the date of adoption of normative legal acts present them to the Ministry of Justice of the Republic of Uzbekistan for state registration. The normative legal acts of the ministries, state committees and departments which did not undergo the state registration cannot form the basis for legal regulation of the corresponding public relations and do not involve legal consequences.

The new edition of this Law, accepted in 2012, included the norm providing administrative responsibility of public officials of the ministries, state committees and departments for enforcement of the normative legal acts which did not undergo the state registration.

The law of the Republic of Uzbekistan dated May 14, 2014 made changes and additions to the Code of the Republic of Uzbekistan on administrative responsibility and new article 1983 was included, according to which administrative responsibility for enforcement of normative legal acts of the ministries which did not undergo the state registration is established [11].

The similar provision is also enshrined in article 457 of the Code of the Republic of Kazakhstan on administrative offenses [12], which establishes wider measures in comparison with the practice of Uzbekistan. In particular, administrative responsibility for non-presentation by the public official on the state registration of the regulatory legal act which is subject to such registration (1), application by the public official of the regulatory legal act which became invalid is provided in accordance with the established procedure (2), nullified by court (3), officially unpublished in accordance with the established procedure (4), not put into operation (5) or which is suspended by authorized body (6) and also not undergone the state registration in judicial authorities (7).

In the Code of the Republic of Tajikistan on administrative offenses, the responsibility for violation of an order of the state account, registration and systematization of regulations (article 502), application of the regulations (article 503), violation of an established order of publication of regulations (article 505) which did not take legal effect is also established [13].

If in Uzbekistan and Kazakhstan subjects of administrative responsibility in this area are natural persons, in Tajikistan - legal as well.

In Turkmenistan [14] and Kyrgyzstan [15] the administrative responsibility for violation of rules of the state registration of departmental normative legal acts is not provided.

It should be noted that in strengthening of rule of law in the state, strengthening of guarantees of the rights and legitimate interests of citizens prevention of cases of application and enforcement of acts is important without the state registration, subject to it and also become invalid, cancelled in accordance with the established procedure, suspended, officially not announced or not come into force. From this point of view, taking into account experience of Kazakhstan and Tajikistan it is considered necessary to improve provisions of article 1983 of the Code of the Republic of Uzbekistan on administrative responsibility.

In the conclusion, it should be noted that the analysis of the legislation of foreign countries in the sphere of regulation of the corresponding public relations promotes deeper understanding features of national legal system, opening of new sides of development. For this reason, by means of carrying out the comparative and legal analysis of mechanisms of regulation of the public relations departmental normative legal acts in the states of Central Asia, it is possible to introduce effective mechanisms of improvement of the national legal system, development and adoption of departmental normative legal acts, conducting their legal examination and state registration.

References:

1. Tadzikhonov U. Democratic reforms in the legal system of the Republic of Uzbekistan. - Tashkent: Academy of the Ministry of Internal Affairs of Uzbekistan, 2005. - p. 76.
2. Saidov A., Tozhikhonov U. Theory of the state and law. The theory of law. V.2. - Tashkent: Academy of the Ministry of Internal Affairs of Uzbekistan, 2001. - p. 364.
3. The law of the Republic of Uzbekistan dated December 24, 2012 No. ZRU-342 "On normative legal acts". // Collection of the legislation of the Republic of Uzbekistan, 2012, No. 52, Art. 583.
4. Law of the Kyrgyz Republic dated July 20, 2009 No. 241 "On regulations of the Kyrgyz Republic". // Erkintoo newspaper of August 7, 2009 No. 68-69.
5. Law of the Republic of Tajikistan dated March 26, 2009 No. 506 "On regulations". / / Akhbori Majlisi Oliy of the Republic of Tajikistan, 2009, No. 3, Art. 99.
6. Law of Turkmenistan of December 7, 2009 No. 31-III "About regulations". // Sheets of Majlis of Turkmenistan, 2005, No. 3, 4, Art. 30.
7. Law of the Republic of Kazakhstan of April 6, 2016 No. 480-V-ZRK "About legal acts".//www.online.zakon.kz
8. The order of the Minister of Justice of the Republic of Uzbekistan of February 28, 2014 No. the 53-mkh "About the approval of Rules of preparation and adoption of departmental normative legal acts" (No. 2565 of February 28, 2014). // Collection of the legislation of the Republic of Uzbekistan, 2014, No. 10, Art. 110.

9. Law of the Kyrgyz Republic of July 1, 1996 No. 34 "On regulations of the Kyrgyz Republic". // www. cbd.minjust.gov.kg/act/view/ru-ru/641

10. Presidential decree of the Republic of Uzbekistan of October 5, 2016 No. UP-4848 "On additional measures for ensuring the accelerated development of an entrepreneurial activity, every possible protection of a private ownership and high-quality improvement of business climate". // Collection of the legislation of the Republic of Uzbekistan, 2016, No. 40, Art. 467.

11. Law of the Republic of Uzbekistan of May 14, 2014 No. ZRU-372 "on amendments and additions to some acts and recognition of some acts as invalid". // Collection of the legislation of the Republic of Uzbekistan, 2014, No. 20, Art. 222.

12. The code of the Republic of Kazakhstan About administrative offenses. // www.online.zakon.kz

13. The code of the Republic of Tajikistan About administrative offenses. // Akhbori Majlisi Oliy of the Republic of Tajikistan, 2008, No. 12, part 1, Art. 898, 990.

14. The code of Turkmenistan On administrative offenses. // www.turkmenistan.gov.tm/?id=4878

15. The code of the Kyrgyz Republic About administrative responsibility. // www.online.adviser.kg/Document/?doc_id=30232566&mode=all

Literature / the used sources:

1. Law of the Kyrgyz Republic of July 1, 1996 No. 34 "On regulations of the Kyrgyz Republic". // www. cbd.minjust.gov.kg/act/view/ru-ru/641

2. Law of the Kyrgyz Republic of July 20, 2009 No. 241 "On regulations of the Kyrgyz Republic". // Erkintoo newspaper of August 7, 2009 No. 68-69.

3. Law of the Republic of Kazakhstan of April 6, 2016 No. 480-V-ZRK "On legal acts". // www.online.zakon.kz

4. Law of the Republic of Tajikistan of March 26, 2009 No. 506 "On regulations". // Akhbori Majlisi Oliy of the Republic of Tajikistan, 2009, No. 3, Art. 99.

5. Law of the Republic of Uzbekistan of May 14, 2014 No. ZRU-372 "On amendments and additions to some acts and recognition of some acts as invalid". // Collection of the legislation of the Republic of Uzbekistan, 2014, No. 20, Art. 222.

6. The law of the Republic of Uzbekistan of December 24, 2012 No. ZRU-342 "On normative legal acts". // Collection of the legislation of the Republic of Uzbekistan, 2012, No. 52, Art. 583.

7. Law of Turkmenistan of December 7, 2009 No. 31-III "On regulations". // Sheets of Majlis of Turkmenistan, 2005, No. 3, 4, Art. 30.

8. The code of the Kyrgyz Republic About administrative responsibility. // www.online.adviser.kg/Document/?doc_id=30232566&mode=all

9. The code of the Republic of Kazakhstan About administrative offenses. // www.online.zakon.kz

10. The code of the Republic of Tajikistan About administrative offenses. // Akhbori Majlisi Oliy of the Republic of Tajikistan, 2008, No. 12, part 1, Art. 898, 990.

11. The code of Turkmenistan About administrative offenses. // www.turkmenistan.gov.tm/?id=4878

12. Presidential decree of the Republic of Uzbekistan of October 5, 2016 No. UP-4848 "On additional measures for ensuring the accelerated development of an entrepreneurial activity, every possible protection of a private ownership and high-quality improvement of business climate".//Collection of the legislation of the Republic of Uzbekistan, 2016, No. 40, Art. 467.

13. The resolution of the government of the Republic of Kazakhstan of October 6, 2016 No. 569 "On the approval of Rules of development, coordination of drafts of subordinate regulations".//www.online.zakon.kz

14. Resolution of the government of the Republic of Kazakhstan of October 6, 2016 No. 568

15. The order of the Minister of Justice of the Republic of Uzbekistan of February 28, 2014 No. the 53-mkh "on the approval of Rules of preparation and adoption of departmental normative legal acts" (No. 2565 of February 28, 2014).//Collection of the legislation of the Republic of Uzbekistan, 2014, No. 10, Art. 110.

16. Saidov A., Tozhikhonov U. Theory of the state and law. The theory of law. T.2. - Tashkent: Academy of the Ministry of Internal Affairs of Uzbekistan, 2001. - p. 364.

17. Tadzhikhanov U. Democratic reforms in the legal system of the Republic of Uzbekistan. - Tashkent: Academy of the Ministry of Internal Affairs of Uzbekistan, 2005. - p. 76.