

Priority of Law – the Main Criterion in Building the Rule of Law

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Abstract:

In recent years, scientific research and conceptual studies in the field of rulemaking have been carried out. These research works, in turn, serve to improve law enforcement practice and legislation. These studies aimed at improving rule-making, in turn, are becoming increasingly important in the creation of stable legislation. The article systematically analyzes the statistical indicators of the legal documents adopted so far on practical examples. Also, this article puts forward and legally substantiates the author's proposal aimed at improving the legislation on the development of laws of direct action.

Keywords: law, norm, rule, state, norm, creativity, legal, influence.

The most important and stable normative legal document regulating social relations is considered to be the Law and is adopted on the basis of the Constitution of the Republic of Uzbekistan and for its implementation.

The first law in the history of our country "On the State Language of the Republic of Uzbekistan" was adopted on October 21, 1989. This Law established the legal basis for the Uzbek language to be used as the state language throughout the territory (territory) of the Republic of Uzbekistan [1].

To date, a total of 80,459 legislative documents have been adopted, of which 3,715 are laws [2].

It should be noted that in recent years, the practice of adopting laws that have a direct effect on the regulation of social relations in the activity of norm creation has been widely established.

The President of the Republic of Uzbekistan, Shavkat Mirziyoyev, in his speech at the ceremonial ceremony dedicated to the 24th anniversary of the adoption of the Constitution of the Republic of Uzbekistan, emphasized that "it is necessary to develop draft laws in a thorough and direct way to regulate social relations, especially to drastically reduce departmental documents" [3].

For the first time in legislative practice, the legal mechanism regarding the "direct effect" of legislative acts was determined by the constitutional norm.

In particular, in the second part of Article 15 of the Constitution of the Republic of Uzbekistan in the new version, it is determined that the Constitution has supreme legal force in the entire territory of the country, is directly applicable and forms the basis of a single legal space [4].

It is appropriate to consider the scientific analysis of the concept of "Law" within the framework of "Laws with direct effect".

Various scientific concepts have been put forward by legal scholars regarding the understanding of the category "Law" as a source of law in the direction of jurisprudence.

Foreign scientist M. Long emphasizes that the main content of the law is the rights and freedoms of a person and a citizen, and the main task of the state is to protect and implement them. Therefore, the actions of state authorities in the process of regulating legislation should not replace the law itself as a source of law [5, B.10].

According to A. Petkov, the law regulates all spheres of social relations in society, in particular: the organization and operation of the state apparatus, the foundations of the social system, the rights and freedoms of citizens of the state, relations between legal subjects, etc. [6, B.55].

In his research, R. Lutsky analyzed the relevant features of the "Law" and noted the following features, i.e.: a) it is a set of differentiated legal norms, because the state apparatus has a multi-disciplinary structure of bodies empowered to create laws and other functions performed by them has a huge scope; b) is a hierarchical structure, because this system is built on the basis of the legal force of various acts; c) detailed information about the subject of regulation, subjects of implementation and implementation of the right, indicators in the sources [7, B.27].

According to A.B. Vengerov, as an example of "directly affecting laws", "direct action of the law" can be considered as an independent social form of the implementation of the law, which includes all rights [8].

In addition, some aspects of this topic are thoroughly researched in the scientific works of our national scientists A.Kh.

Nevertheless, it can be noted that the topic of "directly affecting laws" has not been comprehensively studied at the level of a monographic research work.

Also, in this scientific article, the analysis, generalization, comparative-legal, logical, historical, statistical, sociological, systematic, formal-legal study methods of scientific knowledge were used in the research.

The analysis of scientific research in the field of norm creativity shows that not enough research has been carried out within the framework of the topic of "Directly affecting laws".

Nevertheless, some scholars and experts in the field have partially touched on the topic of "Directly Affecting Laws" in their research and sources.

On December 24, 2018, in the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, at the meeting of the commission headed by the Speaker of the Legislative Chamber N. Ismailov on the implementation of the concept of improvement of the creation of norms, "In today's era of large-scale and intense reforms, it is important to create each law carefully and directly. It has been noted that serious attention will be paid to the quality of the bills submitted to the lower house, and to what extent they are prepared as directly applicable documents.

It has been emphasized that it is an important task today to eliminate the current problems in the field of law-making - the large number of departmental by-laws and other factors that cause different interpretations and complications in the application of law" [9].

Instead of information:

During the discussion of the 2019 Draft Law "On Education" discussed in the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, 238 amendments and additions were made to the norms. 123 norms were removed from the project as a result of the reduction of departmental regulatory legal documents as much as possible, revision of general legal documents that are inactive and do not affect the application of law. They were replaced by 54 new directly applicable norms. In particular, since the article related to the language of education has become vague, the deputies proposed to remove it from the draft law. This, of course, serves to ensure that the document is free of reference norms and works directly in practice [10].

Today, in the practice of law enforcement in our country, there are increasing cases of social relations being regulated mainly on the basis of legal documents.

Measures are being taken to systematically regulate these situations, especially the most important and stable social relations, mainly through laws.

Based on this, the first direction, paragraph 7 of the Concept of Improving the Activity of Norm Creation, approved by the Decree of the President of the Republic of Uzbekistan No. PF-5505 of August 8, 2018, defines "the introduction of effective mechanisms for the adoption of directly applicable laws" [11].

By the Joint Resolution of the Council of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan and the Council of the Senate of the Oliy Majlis of the Republic of Uzbekistan dated March 26, 2019 No. 2419-III/KQ-523-III on revision of legal documents that should be systematized and unified in directly applicable laws At the expense of legislative documents that need to be approved, systematized and unified, more than 60 directly applicable laws are planned to be introduced to the Parliament [12].

Relying mainly on by-laws rather than laws not only complicates the practice of law enforcement, but also creates favorable conditions for corruption and allows various state bodies to interpret them as they wish. Draft laws and other documents prepared by ministries and agencies are often dominated by narrow departmental interests, and there is no clear mechanism for their implementation, no in-depth analysis of a specific situation.

According to the concept of improvement of norm-making activities, it is envisaged to gradually abandon the practice of adopting office normative documents. Instead, it requires the adoption of laws that have direct effect without additional explanations.

For information:

So far, a total of 80,459 legislative acts have been adopted, including 3,715 laws, 13,938 presidential acts, 29,122 government decisions, 22,643 departmental regulatory legal acts, and 11,041 decisions of local government bodies.

Analysis shows that only 4.6 percent of the normative legal documents adopted so far are laws [2].

At the same time, despite the fact that effective work is being carried out on the adoption of directly applicable laws, the weight of legal documents is not decreasing. Taking into account that the weight of the national legal framework has increased due to the legal documents, especially the departmental normative legal documents, it shows that there is a need to create a methodology for the preparation of directly applicable laws.

In conclusion, on the basis of the above, it is proposed to develop the methodology of "Preparation of directly applicable laws", which provides for the following:

- After the adoption of the law, in order to ensure its implementation, conflicting legal documents and guidelines that support the interests of certain management areas should not appear and there should be no need for them. For this reason, it is appropriate to express the enforcement mechanisms of the law in the law itself, not in the legal documents through related norms;
- Development of legal mechanisms that provide for the determination of the rights and legal interests of citizens and business entities in courts and state agencies directly in legislative norms and to ensure that they can rely on the relevant legal norms and not several legal documents;
- Defining the mechanism of working laws with departmental documents, i.e. specific legal procedures for waiving the method of implementing the law;

After the adoption of the law through this methodology, in order to ensure its implementation, conflicting legal documents that support the interests of certain areas of management do not appear, the enforcement mechanisms of the law are expressed in the law itself, not in the legal documents through the norms, as well as in several laws of citizens and business entities. It is important to ensure that they can rely on specific norms and not sub-documents.

Based on the principle of "human dignity", it is important to adopt directly applicable laws in order to fully ensure the rights and legal interests of citizens in the spheres of society and the state, and to prevent the created legislation from serving the interests of a "narrow circle".

Quotes/Snoski/References:

1. Law of the Republic of Uzbekistan "On State Language" // URL: <https://lex.uz/docs/109394>;
2. Information of the National Legislative Information Base of the Republic of Uzbekistan dated 26.03.23 // URL: <https://www.lex.uz>;
3. Speech of the President of the Republic of Uzbekistan Shavkat Mirziyoyev at the ceremony dedicated to the 24th anniversary of the adoption of the Constitution of the Republic of Uzbekistan. // <https://www.gazeta.uz/uz/2016/12/07/speech>;
4. Бурханова, Ш. (2023). НОРМАТИВ-ҲУҚУҚИЙ ҲУЖЖАТЛАР ЛОЙИҲАЛАРИНИ ЖАМОАТЧИЛИК ЭКСПЕРТИЗАСИНИ ТАШКИЛ ҚИЛИШДА АХБОРОТ ТЕХНОЛОГИЯЛАРИНИ ҚЎЛЛАШ МАСАЛАЛАРИ. Академические исследования в современной науке, 2(21), 86-89.
5. Burkhanova, S. . . (2022). THE PROCEDURE FOR ORGANIZING PUBLIC EXPERTISE OF DRAFT REGULATORY LEGAL ACTS AND SOME ISSUES OF IMPROVING ITS LEGAL MECHANISMS. *Евразийский журнал права, финансов и прикладных наук*, 2(12), 178–187. извлечено от <https://in-academy.uz/index.php/EJLFAS/article/view/6276>
6. Petkov Aleksandr Sergeevich Law in the system of sources (forms) of law: legal characteristics // Ogaryov-Online. 2015. No. 16 (57) // URL: <https://cyberleninka. Ru/article/n/zakon-v-sisteme-istochnikov-form-prava-pravovaya-harakteristika> (access date: 03/26/2023).
7. Lutskyi R.P. Hierarchy of legal sources (normative acts) as a reflection of the existence of positive law // Journal of the Kyiv University of Law. – 2012. – No. 2. – P. 18–21;
8. https://elementary_law.academic.ru;
9. Тўғридан-тўғри амал изыканный ганомлар - разыхотлар самарадорлиги гаровы // URL: <https://meningfikrim.uz/uz/news/view/257>;

10. What is the reason that the discussion of the draft Law on "Taalim" is still ongoing? // URL: <https://kun.uz/17839283>;
11. PF-5505-san Decree of the President of the Republic of Uzbekistan dated August 8, 2018 "About the approval of the concept of the regulation of creativity activity" // URL: <https://lex.uz/docs/3858817>;
12. The Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, and the Senate of the Oliy Majlis of the Republic of Uzbekistan, dated March 26, 2019, "On measures to strengthen and increase the efficiency of the legislative chambers of the Oliy Majlis of the Republic of Uzbekistan in the direction of rule-making and parliamentary control" 2419-III/KK-523 - III-son koshma of the decision // URL: <https://lex.uz/ru/docs/4612033>);