

Some Aspects of Improving the Normal Creative Activity of Executive Authorities of the Republic With Special Authorities in the Sphere of Ecology

Akhrorov Adkhamjon Asrorkul ugli,
Senior Lecturer of Tashkent State University of Law,
ORCID: 0000-0002-8193-167X
E-mail: adxam.axrorov@mail.ru

Abstract

This article analyzes the normative activity of the executive authorities of the republic, specially authorized in the sphere of ecology, as one of the most important functions of public administration, and develops sound proposals for improving regulatory legal acts and practices. Based on the opinions of a number of legal scholars and the analysis of normative legal acts, it is proved that the normative activity of the republican executive authorities, specially authorized in the field of ecology, can be divided into two types. The first type of active norm-making is creative activity, in accordance with which the bodies specially authorized to do so directly adopt orders and decisions of a normative nature, the second type of passive norm-making is creative activity, the main content of which covers the activities of republican executive authorities in this area related to the adoption of normative legal acts of the President and the Cabinet of Ministers The Republic of Uzbekistan. In addition, it was analyzed whether the normative activity of the executive authorities of the republic can be carried out by adopting a subordinate normative act and administrative instructions.

Keywords: Normative legal act, environmental assessment, environment, departmental normative legal act, rule-making, executive power, republican executive authorities, legal technology, regulatory impact assessment.

Introduction

The existence of a rule-making body is of great importance in the implementation of management in the area entrusted to it by executive authorities. That is, one of the indispensable features of public administration is the presence of rule-making power. It is known that one of the administrative and legal forms of public

administration is the establishment of legal norms. Rule-making is the result of the rule-making activities of the executive authorities of the republic. The legal literature emphasizes that the establishment of legal norms is usually understood as the creation of norms aimed at clarifying the mechanisms for implementing the powers, rights and responsibilities granted to the executive branch of the republic on the basis of laws [1]. According to statistics, the Lex.uz database currently contains 24,583 documents adopted by the ministry, state committees and departments[15]. These figures show that the rule-making activities of the executive authorities of the republic constitute a significant part of national legislative documents. In this regard, one of the urgent tasks facing the state is to improve the rule-making activities of the executive authorities of the republic that carry out public administration in the field of ecology, to prevent them from introducing norms that allow harm to the environment and unreasonable actions. use of natural resources.

Main part

It should be noted that rule-making is one of the research topics widely studied by legal scholars. Analysis of legal literature and analysis of scientific research by legal scholars show that rule-making is recognized as a set of certain rules and a product of the activities of competent authorities.

In particular, M. Nazhimov notes that "Rulemaking is an integral part of legal technology, a set of requirements, rules, methods and methods that must be followed in the process of adoption, registration, publication of normative legal acts and making changes and additions to them, cancellation of outdated ones" [2, 9-b.].

Contrary to this opinion, S. Sultanova emphasizes that rulemaking is the activity of authorized state bodies to adopt, amend and repeal legal norms [3, 13-b.].

A. Khuzhanazarov was engaged in the study of norma's creativity. He considered it advisable to give a broader definition of this concept. He noted that " rulemaking consists in the formation of preliminary proposals that form the basis for the development of a draft regulatory legal act, planning activities for project development, organizing project preparation, project development, state registration of the project as a result of legal and other types of expertise, discussion of the project, coordination of the project with interested bodies, participation in the consideration of the project, this activity which includes processes such as review, acceptance and submission of the project for approval" [4, 11-b.].

In our opinion, this definition, although it does not allow us to define the range of subjects engaged in rulemaking, but reflects its stages. This opinion was expressed with regard to the development of general regulatory legal acts, among which the activity of adopting departmental regulatory legal acts stands out.

In his research work, A. Khuzhanazarov emphasizes that it is appropriate to divide rulemaking activities into two types: lawmaking and the creation of regulatory documents from the point of view of the process of development, amendment and repeal of laws and regulatory documents [5].

A number of our domestic legal scholars have analyzed the rule-making process and its features. Including, I. Tulteev [6], Kh. Khayitov [7], R. Khakimov [8], A.

Khashimkhonov [9] have studied this issue to some extent in their research work. Within the framework of this article, the main attention is paid to the analysis of issues related to the adoption of departmental regulatory legal documents, since it is devoted to the activities of the executive authorities of the republic with special powers in the field of ecology.

It should be noted that the procedures for the development and adoption of departmental regulatory legal documents are of particular importance when creating legal documents. Therefore, the adoption of departmental regulatory documents during rulemaking has a number of features. In this regard, the analysis of the theoretical foundations of this activity is of great importance.

E. Khodzhiev and T. Khodzhiev stated that “government bodies carry out administrative law-making (law enforcement) activities simultaneously with the application of the law. The legal creativity of government bodies is manifested in the fact that they develop and approve rules of conduct that are binding on other subjects of law (objects of management) within the limits of their powers, and control their implementation”[10].

Complementing this opinion, D. Artikov in his research work stated that “the creation of administrative law by public administration bodies is manifested in the establishment of law within the framework of relevant relations, it is necessary to emphasize two different characteristics of such documents, firstly, departmental, which is manifested in the adoption of such documents only by competent authorities, i.e. if it has the character of legality, secondly, these documents will have the status of normative legal documents” [11].

An analysis of the opinions presented by these scientists shows that departmental regulatory documents are adopted by the executive authorities of the republic and their implementation is mandatory for everyone. In addition to the opinion of D. Artikov, the following three signs of normative creativity of the executive authorities of the republic that have special competence in the field of ecology can be identified: firstly, it is carried out only by the executive branch of the republic; secondly, activities aimed at adopting, amending and canceling documents of a general nature; thirdly, this is carried out in the field of ecology.

It is important to pay attention to the fact that technical regulations, regulatory documents on standardization, sanitary, veterinary, veterinary-sanitary, phytosanitary rules and norms, urban planning norms and rules, environmental norms and rules, as well as technical, even if other documents in the field of regulation (technically normative documents in the field of regulation) are also accepted; they are not considered departmental normative legal documents. Therefore, according to the law, it is allowed to include legal norms in documents that are not departmental regulatory documents (technical regulatory documents in the field of regulation, letters, phonograms, explanations on private issues, documents of an individual nature, etc.) will not be posted.

It should be noted that in accordance with the Decree of the President of the Republic of Uzbekistan dated January 25, 2023 No. PF-14 “On priority organizational

measures for the effective establishment of the activities of republican executive bodies” dated December 9, 2003 No. PF “on improving the system of government bodies of the Republic” -Decree No. 3358 lost force and instead of the concept of “government body” the concept of “republican executive body” was introduced.

Zh. Nematov, who studied some aspects of the rule-making activities of the executive authorities of the republic, in his scientific works defined it as follows: “Administrative legislation (creativity) – development, approval (adoption) of normative normative (legal) acts and administrative instructions regulating the activities of administrative bodies, clarifying and supplementing legal documents, implemented in accordance with the constitution, legal documents and general principles. administrative law, it is said about repeal (amendment)” [12, 352-b.].

Based on this definition, Y. Nematov divided departmental regulatory documents into two types: a regulatory legal act and an administrative instruction [13].

Commenting on this issue, N. Starilov stated that “executive authorities have the function of rule-making (creating administrative norms)” [14, 148-b.].

Specially authorized republican executive bodies exercising public administration in the field of ecology are also actively engaged in rule-making activities in order to determine mechanisms for implementing the tasks and functions assigned to them.

In accordance with Article 6 of the Law of the Republic of Uzbekistan “On Regulatory Legal Documents”, it is established that orders and decisions of ministries and departments are a type of regulatory legal document. Also in the “Rules for the preparation and adoption of departmental regulatory legal documents”, approved by order of the Minister of Justice No. 53 of February 28, 2014, establish legal norms as mandatory state instructions adopted by the ministry, state committee and departments in the prescribed manner, it is established that official, departmental a normative legal document aimed at changing or canceling is a departmental normative legal document.

Departmental regulatory documents are of an industry nature and are adopted by the competent government body in order to regulate public relations in the area entrusted to it.

In particular, the Ministry of Ecology, Environmental Protection and Climate Change of the Republic of Uzbekistan, one of the main bodies with special powers in the field of ecology, in accordance with the law on creating standards, has the following powers:

- Submission to the Cabinet of Ministers of the Republic of Uzbekistan or the Administration of the President of the Republic of Uzbekistan of draft regulatory legal documents, as well as other documents related to the implementation of the tasks and functions assigned to it in the established manner;

- Adoption of normative legal documents that must be implemented by ministries and departments, local government bodies, organizations, officials and citizens, and, where necessary, issue joint decisions and other documents together with other ministries and departments[16].

The Ministry of Agriculture, which is one of the executive authorities of the republic with special powers in this area, has the following powers:

- adoption of regulatory documents mandatory for state and economic management bodies, local government bodies, other organizations and their officials, as well as citizens within the limits of their powers;
- submission to the Cabinet of Ministers of draft normative legal documents and other documents related to the implementation of tasks and functions assigned to the ministry[17].

The Ministry of Water Resources, which has been granted special powers in the field of use and protection of water resources, which are one of the environmental objects, has the following powers:

- Adoption of departmental regulatory documents on issues within the scope of the ministry, and, if necessary, make appropriate decisions together with other ministries and departments;
- ensuring the preparation of draft decrees, resolutions and orders of the President, resolutions, orders of the Cabinet of Ministers, joint decisions with other ministries and departments, as well as guidelines and regulations on related issues[18].

In addition, these bodies ensure full and comprehensive consideration of proposals and draft regulatory legal documents received by them, and coordinate them within the time limits established by the resolutions on the Administration of the President of the Republic of Uzbekistan and the regulations on the Cabinet of Ministers.

An analysis of these norms shows that the rule-making activities of specially authorized government bodies in the field of ecology can be understood in a narrow and broad sense. In a narrow sense, rule-making activity refers to the preparation and adoption by these bodies of normative legal documents, and in a broad sense, in addition to the adoption of normative legal documents, it also refers to the preparation of draft normative legal documents. adopted by the President and the Cabinet of Ministers in the field of management.

In our research work, we will try to analyze the activity of rule-making in the narrow sense of the executive authorities of the republic, which have special powers in the field of ecology. Because the preparation by these bodies of presidential decrees and resolutions, as well as draft government regulations, cannot be regarded as their rule-making activity in the full sense.

The rule-making activities of these bodies are regulated on the basis of the “Rules for the preparation and adoption of departmental normative legal documents.” In accordance with the legislation, the executive authorities of the republic adopt departmental regulatory legal documents in the form of orders and resolutions.

It should be noted that the norms prohibited from inclusion in departmental regulatory legal documents adopted by specially authorized bodies exercising public administration in a certain area are clearly defined, and in accordance with paragraph 21 of the above provisions, the following legal norms are prohibited: from inclusion in departmental regulatory legal documents:

- creates conditions for corruption and other offenses in the system of public authorities and management;
- allows direct or indirect discrimination based on gender;
- regulation of issues and corporate relations under the jurisdiction of economic management bodies;
- which determines liability for individuals and legal entities, additional fees and charges, excessive administrative and other restrictions that lead to unreasonable expenses, and also have a permissive nature.

The content of this norm indicates that departmental regulatory documents may include norms other than those indicated above. In our opinion, it is advisable to supplement this norm in order to prevent the inclusion of norms that can cause harm to environmental objects in departmental legal documents regulating the field of environmental protection and rational use of natural resources.

In our opinion, it is important to improve the rule-making activities of the executive authorities of the republic, which have special powers in the field, in order to eliminate existing environmental problems. In this regard, it is proposed to add the following paragraph to paragraph 21 of the above Regulations:

“which has a negative impact on the environment beyond established standards and leads to the destruction of natural resources”.

Also, paragraph 94 of these rules defines the grounds for refusal of state registration of a departmental regulatory legal document. In continuation of the above proposal, it is proposed to supplement this paragraph with the following paragraph a²):

“a²) in the presence of standards that have a negative impact on the environment beyond the established standards and lead to the destruction of natural resources”.

That is, if the draft departmental regulatory document that is planned to be adopted contains norms that have a negative impact on the environment beyond the established standards and lead to the destruction of natural resources, its registration will be denied.

Because our current legislation contains regulations that negatively affect the environment and allow the destruction of natural resources. The implementation of these standards serves to prevent the adoption of departmental regulatory legal documents that create the possibility of unreasonable use of natural resources and negative impacts on the environment.

It is worth noting that the Law of the Republic of Uzbekistan dated February 29, 2024 No. 916 “On introducing amendments and additions to some legislative documents of the Republic of Uzbekistan”, Article 79 of the Code of Administrative Responsibility of the Republic of Uzbekistan prohibits felling, damage to valuable species of trees and shrubs or on official persons are responsible for the development of project documentation leading to destruction. However, there is no law prohibiting such consequences.

Another problem in the process of rule-making activities of specially authorized republican executive bodies in the field of ecology is associated with the mandatory

state environmental examination of departmental regulatory legal documents by the Ministry of Ecology, Environmental Protection and Climate Change of the Republic of Uzbekistan.

In accordance with paragraph 70 of the “Rules for the preparation and adoption of departmental regulatory legal documents”, draft departmental regulatory legal documents regulating economic and other activities that may have an impact on the environment, including natural resource management and environmental protection Ministry of Ecology Department of Environmental Protection and Change climate of the Republic of Uzbekistan has established a mandatory state environmental assessment. In addition, the Decree of the President of the Republic of Uzbekistan dated March 15, 2021 “On measures to further improve the regulatory impact assessment system” No. in accordance with the provision “On the transfer procedure” determined that the Draft regulatory document and regulatory impact assessment (TSTB) will be studied Ministry of Ecology, Environmental Protection and Climate Change in terms of its impact on the environment.

Despite the existence of these standards, there are no indicators (indicators) for assessing the impact of regulatory legal documents on the environment. If there are indicators for assessing the impact of projects on business activity and the competitive environment, the “Methodology for assessing the regulatory impact of draft regulatory documents”, approved by order of the Minister of Justice of the Republic of Uzbekistan No. 7 dated March 31, 2021, does not provide indicators for assessing their impact on the environment.

The absence of this indicator gives rise to different approaches to assessing the impact of regulatory legal documents on the environment. Therefore, **it is advisable to approve environmental impact assessment indicators by regulatory legal documents.**

The precise determination of indicators for assessing the impact of draft regulatory legal documents on the environment serves to ensure a unified approach to the examination of draft regulatory legal documents by competent authorities.

Conclusion

Based on the above analysis, we can conclude that there are three features of the rule-making activities of specially authorized republican executive bodies in the field of ecology: firstly, it is carried out only by the executive branch of the republic; secondly, activities aimed at adopting, amending and canceling documents of a general nature; thirdly, this is carried out in the field of ecology.

The “Rules for the preparation and adoption of departmental regulatory legal documents” prohibit the introduction of norms that have a negative impact on the environment beyond the established level and lead to the destruction of natural resources, as well as a clear definition of indicators for assessing the impact of regulatory legal documents on the environment serve the effectiveness of public administration in the field protection of natural resources, provide an opportunity to protect against possible negative impacts on the environment.

References:

1. Muratayev S., Musayev B., Artikov D. Ma'muriy huquq va protsess. Darslik. – T.: Yuridik adabiyotlar publish. 2022. – 361-b; K. Gaziyeu. A. Axrorov. Ma'muriy huquq. O'quv qo'llanma. – T.: TDYU nashriyoti, 2023. – 304-b./ Muratayev S., Musayev B., Artikov D. Administrative law and procedure. Textbook. - T.: Legal literature published. 2022. – p. 361; K. Gaziyeu. A. Akhrorov. Administrative law. Study guide. - T.: TDYU publishing house, 2023. - p. 304.
2. Нажимов М.К. Норма иждорлиги. Дарслик. – Тошкент: ТДЮУ, 2018. 9-б./ Najimov M.K. Norma's creativity. Textbook. - Tashkent: TDUU, 2018. p. 9.
3. Султанова С.А. Норма иждорлигида “Ақли тартибга солиш” моделини қўллашнинг назарий-ҳуқуқий масалалари. Ю.ф.ф.д. диссертацияси автореферати. – Тошкент, 2021. 13-б. / Sultanova S.A. Theoretical and legal issues of applying the "Smart regulation" model in the creation of norms. Yu.f.f.d. thesis abstract. - Tashkent, 2021. p. 13.
4. Хужаназаров А.А. Адлия органларининг норма иждорлиги фаолиятини такомиллаштириш. Ю.ф.ф.д. диссертацияси автореферати. – Тошкент. 2021. 11-бет./ Khujanazarov A.A. Improvement of rule-making activities of judicial bodies. PhD. thesis abstract. - Tashkent. 2021. Page 11.
5. Хужаназаров А.А. Адлия органларининг норма иждорлиги фаолиятини такомиллаштириш. Ю.ф.ф.д. диссертацияси автореферати. – Тошкент. 2021. 11-бет./ Khujanazarov A.A. Improvement of rule-making activities of judicial bodies. PhD. thesis abstract. - Tashkent. 2021. Page 11.
6. Тультеев И.Т. Правотворческое прогнозирование: теория, методология, практика: Автореф. дисс. ... докт. юрид. наук. – Ташкент: ТГЮИ, 2009./ Tulteev I.T. Lawmaking forecasting: theory, methodology, practice: Author's abstract. diss. ... doc. legal Sci. – Tashkent: TSIL, 2009.
7. Хайитов Х.С. Қонун иждорлигида экспертиза ўтказишнинг ташкилий-ҳуқуқий асосларини такомиллаштириш: Ю.ф.д. дисс. автореф. – Тошкент, 2018./ Khaitov H.S. Improving the organizational and legal basis of expertise in law-making: Yu.f.d. diss. autoref. - Tashkent, 2018.
8. Хакимов Р.Р. Давлат ҳокимияти тизимида парламент: назария ва амалиёт муаммолари: Ю.ф.н. дисс. – Тошкент: ТДЮИ, 2009./ Khakimov R.R. Parliament in the system of state power: problems of theory and practice: Yu.f.n. diss. - Tashkent: TSIL, 2009.
9. Хашимхонов А.М. Ўзбекистон Республикаси Вазирлар Маҳкамасининг ҳуқуқ иждорлик фаолияти: назария ва амалиёт масалалари: Ю.ф.н. дисс. автореф. – Ташкент, 2008./ Hashimkhanov A.M. Law-making activity of the Cabinet of Ministers of the Republic of Uzbekistan: theory and practical issues: Candidate of law. diss. autoref. - Tashkent, 2008.
10. Хожиев Э., Хожиев Т. Маъмурий ҳуқуқ. Дарслик – Т.: Фан ва технологиялар, 2006. – 28-б. / Khojiev E., Khojiev T. Administrative law. Textbook - T.: Science and technology, 2006. - p. 28.

- 11.Артиков Д.Р. Идоравий норматив-ҳуқуқий ҳужжатни ҳақиқий эмас деб топиш тўғрисидаги ишларни судда кўришнинг маъмурий-ҳуқуқий жиҳатлари. Ю.ф.ф.д. диссертацияси. – Тошкент, 2020. 13-б./ Artikov D.R. Administrative and legal aspects of court hearing cases on invalidating a departmental regulatory legal document. PhD. dissertation. - Tashkent, 2020. p. 13.
- 12.Nematov J.N. Ma'muriy huquq (I qism). O'quv qo'llanma. – T.: TDYU nashriyoti, 2023. – 352-b./ Nematov J.N. Administrative Law (Part I). Study guide. - T.: TSUL publishing house, 2023. - p. 352.
- 13.Nematov J.N. Ma'muriy huquq (I qism). O'quv qo'llanma. – T.: TDYU nashriyoti, 2023. – 352-b./ Nematov J.N. Administrative Law (Part I). Study guide. - T.: TSUL publishing house, 2023. - p. 352.
- 14.Старилов Ю.Н. Административная юстиция: проблемы теории. Монография. – Воронеж. 2013. – С. 148./ Starilov Yu.N. Administrative justice: problems of theory. Monograph. - Voronezh. 2013. – P. 148.
- 15.<https://lex.uz/uz/statistic>
- 16.Qonunchilik ma'lumotlari milliy bazasi, 05.11.2022-y., 09/22/646/0995-son.
- 17.Qonunchilik ma'lumotlari milliy bazasi, 04.08.2023-y., 09/23/330/0559-son.
- 18.Qonunchilik ma'lumotlari milliy bazasi, 19.02.2024-y., 09/24/79/0136-son.