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THE IMPACT OF PUBLIC COUNCILS ON THE PROCESS OF RULEMAKING

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Abstract. The article analyzes the role of public councils in the rulemaking process. Additionally, the composition and functions of the Public Council have been studied. In this process, the extent to which they are affected is shown. The composition and functions of the Public Council and their role in the Council have been studied and provided with practical examples. The role of public councils in increasing the effectiveness of lawmaking and the importance of taking the suggestions made by them into account have been studied. The scientific works of national and foreign scientists have been studied and quoted. In addition, the article is written based on practical experience, and the activities of the relevant ministries, committees and public councils under the agency are identified. The survey data on the presence of public councils are given. Based on the research results, proposals and recommendations for the improvement of legislation are developed.

Keywords: public Council, public chamber, rulemaking, public control, transparency, public administration bodies, normative legal acts, civil society, public discussion.

JAMOATCHILIK KENGASHLARINING NORMA IJODKORLIGI JARAYONIGA TA'SIRI

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Annotatsiya. Maqolada norma ijodkorligi jarayonida jamoatchilik kengashlarining tutgan roli tahlil etilgan. Ushbu jarayonda ularning qanchalik ta'sir etishi ko'rsatib o'tilgan. Jamoatchilik kengashining tarkibi, vazifalari va ularning kengashda tutgan o'rni o'rganilgan va amaliy misollar keltirilgan. Bugungi kunda jamoatchilik kengashlarining norma ijodkorligi jarayonida samaradorlikni oshirishda tutgan o'rni, ular tomonidan berilgan takliflarning inobatga olinishi qay darajada ahamiyatga ega ekanligi tadqiq etilgan. Milliy va xorijiy olimlarning ilmiy ishlari o'rganib chiqilgan hamda ulardan iqtiboslar keltirilgan. Shuningdek, maqolada amaliy tajribadan kelib chiqib, tegishli vazirlik, qo'mita, idora huzuridagi jamoatchilik kengashlarining faoliyati aniqlangan. Ularning tarkibida jamoatchilik kengashlari bor yoki yo'qligi tadqiqot natijasida ko'rsatib berilgan. O'rganishlar asosida qonunchilikni rivojlantirish bo'yicha taklif va tavsiyalar ishlab chiqilgan.

Kalit so'zlar: jamoatchilik kengashi, jamoatchilik palatasi, norma ijodkorligi, jamoatchilik nazorati, ochiqlik, davlat boshqaruvi organlari, normativ-huquqiy hujjatlar, fuqarolik jamiyati, jamoatchilik muhokamasi.

ВЛИЯНИЕ ОБЩЕСТВЕННЫХ СОВЕТОВ НА ПРОЦЕСС НОРМОТВОРЧЕСТВА

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Аннотация. В статье проанализирована роль общественных советов в нормотворческом процессе, дополнительно изучены состав и функции общественного совета. При этом показана степень их воздействия на процесс. Изучены состав и функции общественного совета, их роль в нормотворчестве и приведены практические примеры. В наши дни значительна роль общественных советов в повышении эффективности нормотворчества, а также существует важность учета вносимых ими предложений. Изучены и процитированы научные труды отечественных и зарубежных ученых. Кроме того, в статье на основе практического опыта выявлены аспекты деятельности соответствующих министерств, комитетов, общественных советов при агентствах. Приведены данные опроса о наличии общественных советов. На основе исследования выработаны предложения и рекомендации по развитию законодательства.

Ключевые слова: общественный совет, общественная палата, нормотворчество, общественный контроль, прозрачность, органы государственного управления, нормативные правовые акты, гражданское общество, общественное обсуждение.

Introduction

When it comes to public councils in rulemaking, it is advisable to analyze the role of public control initially. The main driving force of public control is public councils, one of the goals of which is to increase the effectiveness of the system of the practical application of the principle of "social agreement" in the rulemaking by involving them in the development of draft laws. In this regard, it is necessary to consider the theoretical and legal interpretation of the concept of "public councils", the organizational and legal basis, and the main tasks.

Public councils are a permanent structure of the advisory council, which works on a public basis, exercising public control over the development of draft normative legal acts. In addition, state, sectoral and regional development programs take into account the public interest and public opinion and ensure the implementation of legislation in the sphere of protection of the rights and legitimate interests of citizens, legal entities, public interest, tasks assigned to the state body, an advisory council that

carries out public control over the activities of the state body and its officials on the implementation of functions, the provision of public services, the implementation of agreements, contracts, projects and programs implemented in the framework of social partnership.

Literature review

To ensure effectiveness in rulemaking, these days it is more important than ever to establish public councils under governmental agencies and increase their role, and as an integral part of the rulemaking system by the executive branch is the object of research.

As the President of the Republic of Uzbekistan Sh. Mirziyoyev noted in his Address to the Oliy Majlis in 2018, "it is necessary to introduce effective mechanisms for public control in public administration. In this regard, I propose to establish public councils under all governmental agencies. Public councils should act as a bridge to ensure the transparency of governmental agencies, connecting them directly with the population" [1, p. 36]. All of these are important steps toward enhancing the role of community councils.

In this regard, I.R. Bekov called for the establishment of public councils under the factions of the Legislative Chamber of the Oliy Majlis [2, p. 296], and A.E. Yuldashev considering the participation of civil society institutions in the formation of public councils under the ministries of Uzbekistan and foreign countries [3], and A. Dadasheva ensuring that the role of public control is important in order to increase the effectiveness of the public council [4].

Although the above scholars have expressed their position on the development of public councils, we believe that public councils should be established not only under the Oliy Majlis or ministries, but under all state bodies. A. Dadasheva emphasized the role of public control, in our opinion, it is necessary to develop clear mechanisms to increase the role of public councils.

As for the approaches of foreign scholars in this regard, E.G. Dyakova stated that the most important issues to increase the effectiveness of public councils are their representation, balance and independence from the state bodies in which they are formed [5, p. 99.], G.O. Spabekov noted that in the modern world, public councils should exist in almost every state governed by the rule of law [6], O.O. Vinnitsky stressed that the effective functioning of public councils with the executive branch should increase the level of interaction between the executive branch and civil society [7].

In our view, the activities of public councils should be studied in terms of two areas (one link in the consultation mechanism in the rulemaking process and the features of public control over decisions). The establishment of a public council in Uzbekistan is one of the modern democratic mechanisms, which does not interfere with the nomination of suitable candidates, taking into account the practice of foreign countries [3]. In the words of President Mirziyoyev, "civil society forms the state power, gives it

the rights and powers necessary to regulate social relations, ensure social cohesion in the country, establish public control over the government, and creates mechanisms against abuse of power" [1, p. 36].

Recently, the principle of communication with the population has been promoted in the actions of the government. An important step in this direction was the introduction of the institution of the public council. It voluntarily serves as a permanent advisory body to governmental agencies. Their activity was, first of all, regulated by the Resolution of the President of the Republic of Uzbekistan, adopted on July 4, 2018. This act approved the Sample regulation on the public council under governmental agencies.

Despite the fact that the first public councils under public administration were officially established in 2012, the legal basis for their activities was determined by the President of the Republic of Uzbekistan on July 4, 2018, No. PP-3837.

As a result of the above-mentioned analysis of the legal basis and critical observation of the practice, it can be concluded that these days, the role of public councils is not significant enough. Although they participate in the adoption of the rulemaking process, they do not have a role in the change of opinion on the relevant cases. For example, the Law on Transparency of Public Bodies does not contain any article on bringing the activities of public councils to the attention of the general public as "open information". There are cases when proposals are ignored to ensure openness and transparency. In our opinion, in order to ensure transparency and increase the effectiveness of rulemaking, this law should include special articles regulating the coverage of the activities of the Public Council through the relevant "information portals".

Also, the role of public councils in exercising public control these days is not

strong enough. The resolution of July 4, 2018 “On the establishment of public councils under governmental agencies” contains almost nothing about the role of public councils. That is, there is no provision for the chairman of the council to protest. If the public council and its members object to the laws being passed, no information is given on what action to take. In my opinion, it is expedient to develop separate norms to take into account the suggestions and objections submitted by the public council, as well as to consider the issue of responsibility and, if their opinion is not taken into account, and to make changes in this case.

As an example, the local government is forming a norm for making changes in the sphere of education, but the adopted draft law is not relevant, in which case the public council may increase the issue of conclusion or suspension of project work.

By the way, if we pay attention to the articles of the Code of Administrative Responsibility, there is no responsibility for desecration of the control of the Public Council in ensuring public and transparency policy. We believe that the issue of responsibility should be considered if the views of the representatives of the public council on ensuring openness and transparency are not taken into account.

A number of foreign scholars have expressed their views on the issue of public councils and public control. In particular, according to G.O. Spabekov, public councils should be created in various forms and ranges of public life in order to achieve the political goals of state life [6]. I.V. Orlov studies the functions and activities of public councils as subjects of public control [8], as well as information on the rulemaking of public control and the activities of its subjects in the Russian Federation, we can see through the ideas cited by T.D. Sokolova [9].

O.O. Vinnitsky emphasizes that the public sector, which is involved in the formation

and implementation of public policy, there is no exception [7]. The author develops and introduces factors of efficiency of work of public councils in executive bodies, in particular, general standards and forms of cooperation between public and state bodies; development of national mechanisms for the activities of public councils in executive bodies; systematization and generalization of decisions of public councils in executive bodies; systematic analysis of the activities of public councils and their results for public discussion; gives its opinion on issues such as the introduction of standards for public receptions.

Public councils should use their powers to monitor the activities of governmental agencies, public control, the development of normative legal acts, and public opinion. Councils respond effectively to constructive inquiries of citizens and are the most important link between the state and society, as problems in the state apparatus stem from the lack of public opinion among local authorities.

A number of scholars, such as Suzie Mat Nurusin, Rugayah Hashim, Shamsinar Rahman, Nursyahida Zulkifli, Ahmad Shah Pakeer Mohamed, Saidatul Akma Hamik, believe that public participation in rulemaking demonstrates governance transparency and is crucial for successful national development plans [10]. Mohammad Ikshan Nasir and Masran Sarushono believe that the public has the right to know and participate in rulemaking, in particular decisions that may affect the communities in which they live and work [11]. Citizen participation in the pursuit of sustainability is seen as one way to achieve this goal.

Materials and methodology

The object of this study is to research the theoretical and practical problems of inflation in the rulemaking of the Republic of Uzbekistan. The main goal of the study is to develop definitions regarding the research

as well as decide whether determine the role of public counsel in legislation that how to affect this situation.

In order to achieve these goals, the author has applied methods of scientific research, such as statistical analysis, chronological, sociological analysis, synthesis, and comparative methods.

Research findings

While supporting the well-founded approaches of the above scholars, it is worth noting that the establishment of “feedback” between the activities of public councils and the public leads to a practical expression of the “theory of social contract”.

A number of scholars point to the following three factors for making sustainable societies:

1) active participation of local citizens [12];

2) the ability of citizens to analyze their problems and give their solutions to them [13];

3) support for collective initiatives, all of which allow them to change themselves [14].

The British scholar Britton describes public participation as a process of direct rulemaking by the public [15]. T. Nabatchi recognized that public participation is an activity that includes many ways to unite people to solve problems of public importance [16].

The Public Council exercises public control over the activities of the state body and its officials to take into account the public interest and public opinion in the adopted normative legal acts and decisions, participates in the development and implementation of government and other programs, and monitors and analyzes work in this area.

Based on the above comments and regular observation of the practice, the following table (as of 13.10.2021) provides an analysis of the state of public councils under some ministries, committees, and agencies (table).

Table

Information about the Ministry, the committee, the Public Councils under these departments

№	Relevant ministry, committee, office	Official website	About the presence or absence of the Public Council
1	Presidential Administration	https://president.uz/uz	+
2	Ministry of Foreign Affairs	www.mfa.uz	+
3	Ministry of Justice	https://www.minjust.uz	+
4	Ministry of Defense	https://mudofaa.uz	+
5	Ministry of the Internal Affairs	https://iiv.uz	+
6	Ministry of Finance	https://www.mf.uz	–
7	Ministry of Health	https://ssv.uz	+
8	Ministry of Higher and Secondary Specialized Education	https://edu.uz	+
9	Ministry of Public Education	https://www.uzedu.uz	+
10	Ministry of Emergency Situations	www.fvv.uz	+
11	Ministry for Development of Information Technologies and Communications	https://mitc.uz/uz	+
12	Ministry of Economic Development and Poverty Reduction	https://mineconomy.uz	+
13	Ministry of Investment and Foreign Trade	https://mift.uz	–
14	Ministry of Employment and Labor Relations	https://mehnat.uz	+
15	Ministry of Agriculture	https://agro.uz	–

16	Ministry of Water Resources	https://water.gov.uz/uz	+
17	Ministry of Preschool Education	https://mdo.uz/	+
18	Ministry of Culture	http://www.madaniyat.uz/uz/	-
19	Ministry of Sports	https://minsport.uz/	-
20	Ministry of Innovative Development	https://mininnovation.uz/oz/council	+
21	Ministry of Construction	https://mc.uz/	+
22	Ministry of Transport	https://mintrans.uz/	+
23	Ministry of Energy	https://minenergy.uz/uz	+
24	Ministry for the Support of mahalla and the older generation	https://moqqv.uz/oz	-
25	State Statistics Committee	https://www.stat.uz	+
26	State Tax Committee	https://soliq.uz	-
27	State Customs Committee	https://www.customs.uz/oz	-
28	State Committee for Ecology and Environmental Protection of the Republic of Uzbekistan	https://www.uznature.uz/uz	+
29	Committee on Geology and Mineral Resources	https://www.uzgeolcom.uz/uz	+
30	State Committee for Land Resources, Geodesy, Cartography and State Cadastre of the Republic	www.ygk.uz	-
31	State Committee of the Republic of Uzbekistan for Tourism Development	www.uzbektourism.uz	-
32	State Committee of the Republic of Uzbekistan for Investments	www.invest.gov.uz	-
33	State Committee on Forestry of the Republic of Uzbekistan	www.urmon.uz	-
34	State Veterinary Committee of the Republic of Uzbekistan	www.vetgov.uz	+
35	State Committee for Industrial Safety of the Republic of Uzbekistan	www.scis.uz	-
36	State Committee for Defense Industry of the Republic of Uzbekistan	www.oboronprom.uz	-
37	State Statistics Committee	https://www.stat.uz	+
38	Uzarchive Agency under the Cabinet of Ministers of the Republic of Uzbekistan	www.archive.uz	+
39	Uzbek Agency for Technical Regulation	www.standart.uz	-
40	Intellectual Property Agency of the Republic of Uzbekistan	www.ima.uz	+
41	Uzbekkino National Agency	www.uzbekkino.uz	-
42	Capital Market Development Agency of the Republic of Uzbekistan	www.cmda.gov.uz	+
43	State Assets Management Agency of the Republic of Uzbekistan	www.davaktiv.uz	-
44	Export Promotion Agency under the Ministry of Investment and Foreign Trade of the Republic of Uzbekistan	www.epab.uz	-
45	Committee on Religious Affairs under the Cabinet of Ministers of the Republic of Uzbekistan	www.religions.uz	+
46	Antimonopoly Committee of the Republic of Uzbekistan	www.antimon.gov.uz	+
47	Committee on State Reserves Management under the Cabinet of Ministers of the Republic of Uzbekistan	www.udz.uz	-

As a result of the observations, it was concluded that there are a total of 24 ministries, 4 of which do not have a public council, as well as 7 out of 12 state committees and 4 out of 7 agencies, that do not have a public council.

The results of the study showed by A.E. Yuldashev in 2020 that public councils have 61 bills, 75 draft presidential decrees and resolutions, 139 draft government resolutions, 1930 orders of heads of ministries and departments, 1930 orders of regional heads, 18 participated in the discussion of the decisions of local councils [3]. 838 resolutions of people's deputies and governors, 145 proposals for their improvement.

From the above figures, it can be seen that the activity of local community councils is increasing. The Public Council under the Bukhara Region Khokimiyat alone held public hearings in Shafirkan, Kagan Province, and Bukhara, involving more than 300 people. As a result, recommendations were developed and submitted to the regional administration and the local Council of People's Deputies. They were given suggestions and recommendations on the situation [17].

The Public Council under the Tashkent city administration has developed a draft normative legal act on the proactive formation of the budget [18-19]. This document significantly simplifies and systematizes the process of initiative budgeting in the districts of the capital.

Conclusions

In conclusion, first of all, the public council is an advisory council that makes its proposals and recommendations on the adopted normative legal document. That is, it is understood to include them, taking into account the views of citizens as well.

Second, public councils are a permanent advisory body that operates on a public basis, exercising public control over the adopted normative legal acts. It is also a council that monitors the activities of governmental

agencies and officials to ensure compliance with the law in the sphere of protection of the rights and legitimate interests of citizens, legal entities, public interests, the implementation of tasks and functions assigned to the state body and affecting social and public interests.

Based on the above, it is advisable to make a number of changes and additions to the legislation as a proposal.

First of all, we think that paragraph 3 of the Resolution of the President of the Republic of Uzbekistan "On the establishment of Public Councils under state bodies" needs to be replaced.

Secondly, it is necessary to establish a mechanism in the Law of the Republic of Uzbekistan "On transparency of public administration" that clearly regulates the activities of the Public Council.

Thirdly, the Code of Administrative Liability should include requirements establishing administrative responsibility for cases where the rejection or disregard of the proposals of the public council leads to harm to the interests of the individual, society, and the state. We also consider it necessary to develop a procedure for compensation for damages.

Fourth, in order to ensure the scientific foundation of the activities of the factions in the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, we consider it practical to establish Public Councils with specialists with sufficient knowledge, skills, and experience. Therefore, we consider it necessary to amend Article 13.3 of the Law "On the Rules of Procedure of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan". Also, the Public Council under the factions should specialize in assisting in the norm-making activities of the faction. The near and long-term position of the faction can provide a basis for the approbation of the party electorate by the Council to provide a scientifically based opinion on the bill and provide expert analysis.

REFERENCES

1. Mirziyoev Sh.M. Proclamation of the President of the Republic of Uzbekistan to the Oliy Majlis. Tashkent, 2018, p. 36.
2. Bekov I. The fraction of a political party is an important subject of the legislative process. *Society and innovations*, 2021, spec. iss., no. 6, p. 296. ISSN 2181-1415.
3. Yuldashev A. The prospects for the formation of public councils under the ministries in Uzbekistan. *The American Journal of Political Science Law and Criminology*, 2021, vol. 5, no. 952, pp. 46-53. ISSN 2693-0803. Available at: <https://usajournalshub.com/index.php/tajpslc/search/>.
4. Dadasheva A. Specific methods of public control in the Republic of Uzbekistan and its legal basis. *Society and Governance*, 2020, no. 3 (89), pp. 35-39.
5. Dyakova E.G. "Honest balance" or independence: problematization of the discourse of deliberative and consultative bodies in the domestic and American administrative traditions. *Bulletin of Tomsk State University*, 2019, no. 438, p. 99. Available at: <https://cyberleninka.ru/article/n/chestnaya-sbalansirovannost-ili-samostoyatelnost-problematizatsiya-diskursa-soveschatelno-konsultativnyh-organov-v-otechestvennoy-i/> (accessed 15.06.2021).
6. Spabekov G.O. The role of the public council in local government. 2020, October. Available at: https://www.researchgate.net/publication/347991618_The_role_of_the_public_council_in_local_government/.
7. Vinnytskiy O.O. The efficiency of activities of public council in the authorities of the executive authority. *Actual Problems of Native Jurisprudence*, 2019, August.
8. Orlova I.V. General control in the sphere of state management. Russia XXI: Economics. Politics. Culture. Eds. L.E. Ilicheva, V.S. Komarovskiy. Moscow, 2015.
9. Sokolova T.D. The idea of civil control in in European political and legal thought. *Bulletin of RUDN University*, Series: Sociology, 2015, no. 1, pp. 141-149.
10. Public participation process at local government administration: a case of study. Seremban Municipal Council, Malaysia. *Procedia - Social and Behavioral Sciences*, 2015, no. 211, pp. 505-512.
11. Mohamed I.N.M., Saruwono M. Barriers of user's involvement in the design process of public parks as perceived by landscape architects. *Procedia - Social and Behavioral Sciences*, 2012, no. 35, pp. 253-259.
12. Abbott J. Sharing the city: community participation in urban development. London, Earthscan, 1996.
13. Carley M., Jenkins P., Smith H. Urban development and civil society: the role of communities in sustainable cities. London, Earthscan, 2001.
14. Baum H. How should we evaluate community initiatives? *Journal of the American Planning Association*, 2001, no. 67 (2), pp. 147-158.
15. Britton M. An evaluation of public involvement in reclamation decision making at three metal mines in British Columbia. *Master's thesis*. Vancouver, The University of British Columbia, 1998.
16. Nabatchi T. Direct public engagement in local government. *The American Review of Public Administration*, 2014, February 12, pp. 1-21.
17. The Bukhara khokimiyat. Official website. Public Council. Available at: <https://www.buxoro.uz/>.
18. The Ministry of Innovation Development of the Republic of Uzbekistan Official website. Available at: <https://mininnovation.uz/oz/council/>.
19. The Tashkent city khokimiyat. Official website. Available at: <https://gorod.uz/uz/about-advice/about-staff/>.

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