

Legal Expertise of Draft Legislative Documents: Theoretical and Legal Analysis

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Abstract

In this article, a theoretical and legal analysis of the types of legal expertise of draft legislative documents is carried out. Also, the author's definitions of types of legal expertise and proposals for legislation are developed in the article.

Key words: law, expertise, legislative, document, system, normative.

Today, the creation of a high-quality and effective rule-making system and ensuring the correct implementation of legislative documents in practice serve to increase the effectiveness of the reforms implemented in our country.

As in all fields, the principle of blood unity is fully ensured in the creation of norms. This can be done through the legal examination of drafts of normative legal documents. That is, the analysis and research of the developed legislative document and all its parts in accordance with the current regulatory legal documents and legal-technical requirements constitute the main content of the legal expertise.

It should be noted that until today in our country only a small number of scientists (B.Dz.Abdullaev, H.S.Khayitov and O.Fayziev) have conducted research on the topic of "legal expertise of draft normative legal documents", it is necessary to conduct more extensive research and scientific research on this topic. -requires practical analysis.

Studies show that there is no consensus among scientists on the concept of "legal expertise of draft legal documents". For example, according to H. Khaitov, "legal expertise plays an important role in forming the legal content of the law. First of all, he should pay serious attention to the compatibility of regulatory legal documents with the Constitution and laws, international law norms, the creation of enforcement mechanisms and increasing their influence in regulating social relations, taking into account the factors of not causing violations, reducing the relevant norms as much as possible and preventing repetitions. obtaining, as well as achieving full compliance with the requirements of the legislative technique, special attention should be paid to forecasting how it will affect social relations after its adoption before developing draft laws" [1].

According to O. Fayziev, the legal expertise is the compliance of the departmental regulatory legal document with international agreements, the Constitution and laws of the Republic of Uzbekistan, other legal documents with higher legal force, the goals and objectives of the reforms

being carried out in the country, the rules of legislative technique, as well as the application of related norms. activities that carry out verification of reasonableness and expediency [2].

B.Dz.Abdullaev, who conducted the first research on this topic, gave almost identical definitions to the concepts of "legal expertise" and "legal expertise of a draft law", according to which legal entities and individuals are required to review the Constitution and the law according to the adopted legal document or its draft. documents, as well as the activity of giving a conclusion in terms of compliance with the established legal technical rules. The legal examination of the draft law is a special examination conducted to assess the compliance of the draft law with the Constitution of the Republic of Uzbekistan, current legislation and international agreements, and to determine the quality of the draft law in terms of the rules of the applied legal technique [3].

In most of these approaches, it can be understood that the content of the legal expertise is the assessment of the project's compliance with the Constitution, applicable laws and international agreements.

It can be seen from the following that a number of scientific researches have been carried out by foreign researchers regarding the Institute of Legal Expertise.

In particular, according to K.R. Mursalimov, "it can be concluded that conducting a legal examination should depend on the law enforcement activities of the state, such as control. Within the framework of the implementation of this type of legal activity, the problem of eliminating errors in the effectiveness of normative legal documents and the creation of norms is particularly relevant. The need to eliminate these errors requires the existence of effective means to eliminate the shortcomings of legal regulation. One of these tools is legal expertise" [4].

According to I.A. Zakirov, legal expertise is a research conducted by a specialist based on the application of special knowledge, with or without the assignment or decision of authorized persons, but based on the instructions specified in the normative legal document [5].

R.I. Kamal stated that the difference of "legal" expertise from other types of it is, first of all, in their application within the framework of legal activity, and the basis of the appointment of "legal" expertise is the need for not only scientific, but also legal expertise. Consequently, legal expertise has the following main features: as a legal institution, expertise exists only in the field of legal regulation in resolving conflicting legal situations; the purpose of legal expertise is to identify facts and circumstances of legal importance; legal expertise has a procedural-legal nature; expert opinion is the basis for making a clear decision in the field of legal activity [6].

Also, K.R. Mursalimov showed the following procedures for legal expertise developed by jurisprudence and successfully implemented in the practice of law-making bodies:

First, in the process of legal expertise, special attention is paid to the analysis of the subject of legal regulation, starting with the choice of the name of the potential or current regulatory legal document and the assessment of its compliance with its content;

Secondly, the analysis of "competency affiliation" of the sphere of social relations regulated by law. This procedure is aimed at checking compliance with the principle of jurisdiction and delimitation of powers, in particular, jurisdictional boundaries between different levels of government - federal, regional, municipal; demarcation of powers between different authorities - legislative, executive, court, other bodies and organizations.

Thirdly, the legal analysis of the compliance of the regulatory legal document with the legal documents.

Fourth, legal and technical analysis of compliance with the formal details and logical structure of the regulatory legal document[7].

O. Fayziev stated that, in our opinion, the legal examination of normative legal documents and their drafts adopted by the ministries, state committees and agencies should meet the following requirements: awareness of the examination and its results of interested persons; selection of professional, highly qualified, knowledgeable and independent experts (experts) with extensive life experience; to comply with quality indicators and criteria, to avoid formalities in conducting expertise; carrying out expertise taking into account a systematic approach; the scientific basis and legality of the conclusion of the experts (experts) and the fact that it reflects the results of the advanced experience of foreign countries and the issues and problems raised in the appeals received from legal entities and individuals in the relevant field; personal responsibility of experts (experts) for expert opinion [8].

In our opinion, **the legal examination of draft normative legal documents** is *an activity aimed at studying the compliance of the draft normative legal document with legislation and legal-technical provisions*.

We will consider the mechanism of legal examination of drafts of normative documents based on the branch legislation as follows.

It is known that according to Article 26 of the Law of the Republic of Uzbekistan "On Regulatory and Legal Documents", in the process of legal expertise, the legal service of the project developer or the body adopting the normative document, as well as the Constitution and laws, and other bodies with higher legal power than it compliance with normative legal documents, rules of legal and technical formalization, as well as the validity and expediency of the application of reference norms in the project are checked.

After agreement with the interested agencies and other types of expertise, the legal expertise of the projects is conducted by the justice authorities in order to clarify the following:

- determining whether there are rules and norms that create conditions for committing corruption, other offenses, as well as introducing excessive administrative and other restrictions for individuals and legal entities;
- the possibility of codifying the legislation, reflecting the necessary norms in one regulatory legal document and canceling other norms regulating relevant relations.

Also, departmental regulatory documents (orders and decisions of ministries, state committees and agencies) are also subject to legal expertise from the Ministry of Justice.

At the same time, the development, agreement, acceptance of departmental regulatory documents and their legal examination are carried out through a single electronic system.

It should be noted that it is not allowed to include legal norms in documents that are not departmental regulatory legal documents (normative documents in the field of technical regulation, letters, telephone messages, explanations on private issues, individual documents, etc.).

In the Ministry of Justice, the following departmental normative legal documents are subjected to legal examination and state registration:

- a) relating to civil, political, socio-economic and other rights, freedoms, legal interests and

obligations of citizens of the Republic of Uzbekistan, foreign citizens and stateless persons, guarantees of their implementation, mechanisms of implementation of the specified rights, freedoms and obligations;

b) interdepartmental type (general mandatory type);

v) departmental regulatory legal documents that have binding force for organizations that are not part of the system of the ministry or office (jointly adopted by two or more offices) that adopted the departmental regulatory legal document. If the organizations are fully subordinated to ministries or agencies, they are considered to be part of the system of these bodies. Subordination can be direct (vertically to all higher levels of this system) or indirect (directly to a higher authority). Organizations, if they are subordinated to the ministry or office in relation to some special relationship (for example, accounting rules, funding, methodological management issues, etc.) are not counted.

Also, the normative decisions of the local representative and executive bodies are subjected to legal expertise through the "E-decision" electronic system of the judicial bodies. The legal service of the local government body submits the draft decision to the judicial body for legal, gender-legal and anti-corruption examination.

According to the decision of the President of the Republic of Uzbekistan No. PQ-3666 dated April 13, 2018, the presence of a positive conclusion of the territorial justice bodies at the end of the legal examination is a mandatory condition for the adoption of regulatory legal documents by the local state authorities.

Decisions of local state authorities in the following content are not subjected to legal examination by judicial bodies:

a) personal (appointment to a position, transfer to another position or dismissal from a position, approval of the composition of commissions and other collegial bodies, etc.);

b) urgent-order type (one-time assignments);

v) documents aimed at organizing the implementation of the predetermined procedure and not containing new legal norms, including the entire content of which is to inform about the documents of other bodies and officials;

g) documents on convening sessions, meetings, conferences;

d) documents on submission of projects for review and approval;

e) documents that have the character of recommendation;

or) documents on official commenting on regulatory legal documents;

j) other non-binding documents.

In addition, by the Decree of the President of the Republic of Uzbekistan No. PF-5997 dated May 19, 2020, the procedure for the legal examination of technical regulatory documents by the Ministry of Justice was introduced.

In our opinion, since the object of analysis covers issues related to *legality and the rule of law, the origin of offenses and other crimes, the rights and legal interests of individuals*, it is necessary to understand **anti-corruption, gender-legal and criminological** expertise of normative legal documents and projects as **types of legal expertise**. according to

1. Anti-corruption examination.

Uzbekistan ranked 126th in the 2022 Corruption Perceptions Index of Transparency

International. This is 14 places higher than in 2021 (140th place)[9].

It should be noted that today in our country, the fight against corruption is one of the priorities of the state policy, and in this regard fundamental reforms have been implemented in almost all spheres of society and state life.

In order to effectively implement these measures, all regulatory and legal documents to be adopted by state bodies are undergoing an anti-corruption examination.

The content of this type of expertise is defined as "determining the factors that create the possibility of committing corruption offenses, that cause corruption; a general assessment of the consequences of adopting a project that creates the possibility of committing corruption-related offenses; predicting the probability of the occurrence of corruption-related risks in the process of applying regulatory legal documents; processes aimed at developing recommendations and taking measures aimed at eliminating the identified factors that caused corruption.

The Laws of the Republic of Uzbekistan "On Regulatory-Legal Documents" and "On Combating Corruption" and the Order of the Minister of Justice of the Republic of Uzbekistan dated February 24, 2021 No. 2 "On the Procedure for Conducting Anti-Corruption Examination of Regulatory-Legal Documents and Their Drafts" the statute is the legal basis of the anti-corruption examination.

It should be noted that although there are scientific views on "anti-corruption expertise of normative-legal documents and their drafts" in the direction of research on the creation of norms, a unified approach has not been developed.

In particular, T.I. Kenjaev, who conducted research on this topic, emphasized that the anti-corruption expertise of legal projects is one of the types of criminological expertise, and defined the concept of "anti-corruption expertise" as "identification of corruption-inducing factors in normative-legal documents and their drafts and aimed at eliminating the identified corruption-inducing factors defined as a complex of measures"[10].

According to legal scholars Sh.G. Asadov and G.S. Ismailova, "various factors affect the reduction of the level of corruption. One of them is the presence of corrupt norms in the adopted legal documents and the prevention of the implementation of such norms" [11].

Analyzing the activity of civil society institutions in the prevention of corruption, M. Muhammadiyeva showed that anti-corruption examination of drafts of normative legal documents is considered by the public[12].

In our opinion, **anti-corruption examination of regulatory legal documents and their drafts** is an activity of evaluating legislative documents and their drafts in order to identify the factors that cause corruption and develop recommendations for their elimination .

among the " **factors** " that cause corruption, it is possible to include *the norms and rules that create the possibility of committing corruption-related offenses, and that cause corruption* .

T.I.Kenjaev justified the important role and great importance of the anti-corruption expertise, which is part of the preventive activities that form the general protection of the current and newly created legislation as a legal system, focused on the following:

– manifestation of manifestations of corruption, including identification and early elimination of norms that lead to the commission of corruption offenses;

- identifying "gaps (white spots)" that can be used by unscrupulous subjects of the law for their malicious purposes;
- introduction of other tools that help to quickly and effectively identify the components of corruption in the process of norm creation[13].

According to M. Muhammadiyeva, it is necessary to regularly carry out anti-corruption expertise such as internal anti-corruption scientific expertise (insourcing), external anti-corruption scientific expertise (authoring) and anti-corruption crowdsourcing expertise through a platform that unites an unlimited group of people on the Internet, and to improve the anti-corruption system as additional measures, the currently prepared draft Law "On Anti-corruption Expertise of Regulatory-Legal Documents and Their Drafts" should be implemented by defining the procedure for carrying out scientific expertise of draft normative-legal documents against corruption[14].

At the same time, T. Kenjaev said that "during the research conducted in the field of anti-corruption expertise mechanisms, we, like almost all scientists who have thoroughly analyzed this topic, generally divided anti-corruption expertise into two categories, that is, state (official) and independent (unofficial, public) came to the conclusion about division into expertise" [15].

In our opinion, corruption factors in legislative documents and drafts are related to "the stability of norms and legal compliance; related to rights and obligations; related to administrative procedures; factors related to control" can be calculated.

On the basis of the current legislation, the procedure for anti-corruption examination of normative legal documents and their drafts can be expressed as follows.

In particular, anti-corruption examination of legislative documents and their drafts is carried out by the developer and judicial authorities. This examination is carried out by the developer by filling out a checklist in the appropriate form.

If the developer detects a corruption factor in the project, one of the following actions will be taken:

taking measures to eliminate the identified corruption factor;

" corruption factor " column of the checklist , indicate the legal norm containing the corruption factor, justify that it is not possible to state this norm in a different way, and curb the corruption risks that may arise due to the presence of this corruption factor statement of measures.

The result of the anti-corruption examination of the judicial body is separately reflected in the conclusion prepared based on the results of the legal examination. If corrupt factors are identified in the project, recommendations and measures aimed at eliminating them will be indicated in the summary.

2. Gender-legal expertise.

In recent years, equal rights and opportunities have been provided for women and men in almost all fields in our country, and it can be noted that organizational and legal frameworks have been created to protect women from oppression and violence.

It should be noted that for the first time in the history of Uzbekistan, the number of women in the parliament has reached a level consistent with the recommendations set by the UN, the number of women in the parliament has reached 32% and has risen to the 37th place among 190 parliaments in the world.

The issue of ensuring gender equality in our country has risen to the level of state policy, a number of legal documents in this area, including 2 laws, aimed at ensuring equal rights and opportunities for women and men in the social, economic and political spheres in accordance with the national goals of sustainable development until 2030 in the Republic of Uzbekistan a strategy for achieving gender equality was developed [16].

The main tool that ensures gender equality in the national legal system is the gender-legal examination of normative legal documents. After all, a strong legal framework is an effective mechanism for legally ensuring the equality of women and men.

In the related research works, it was noted that "the issue of ensuring women's rights and freedoms on the basis of legislation has occurred in accordance with various factors, including legal culture, law-making experience, the level of formation of civil society, and the permissibility of strengthening the mechanisms for ensuring gender equality in the adopted laws". [17].

Today, gender-legal examination of legislative documents and drafts is carried out in accordance with the Law of the Republic of Uzbekistan "On Guarantees of Equal Rights and Opportunities for Women and Men" and the Cabinet of Ministers' Regulation "On the Approval of the Procedure for Conducting Gender-Legal Examination of Regulatory-Legal Documents and Their Drafts " " is regulated by the decision.

As a special regulatory legal document, the regulation "On the procedure for gender-legal examination of normative legal documents and their drafts" approved by the decision of the Cabinet of Ministers dated March 30, 2020 No. 192 is important. On the basis of this document, it is possible to analyze the gender-legal expertise of normative legal documents and their drafts as follows.

In order to eliminate possible imbalances in determining the rights, obligations, opportunities and responsibilities of individuals, regardless of gender, the normative regulation regulating all spheres of society's life and activity, including politics, economy, law, ideology and culture, education and science. -legal documents and their drafts are subjected to gender-legal expertise.

Also, gender-legal expertise of normative legal documents and their drafts:

- to determine that the normative legal document or its draft, which enables direct and indirect discrimination based on gender, does not comply with the principles of ensuring equal rights and opportunities for women and men;
- a general assessment of the consequences of the adoption of a draft normative legal document that enables direct or indirect discrimination on the basis of gender;
- to identify risks that may arise in the process of applying normative legal documents and have a discriminatory nature;
- is aimed at developing recommendations aimed at eliminating the norms that directly or indirectly discriminate on the basis of gender.

Although a number of scientific researches have been conducted on this topic, a unified approach to the concept of "gender-legal expertise" has not been formed.

In particular, according to B.Abdullaev, "gender expertise of draft laws should be considered as a necessary and mandatory condition of law-making"[18].

Legal scientist H.Hayitov in his research work refers to the concept of gender expertise of draft laws - "in the content of draft laws of experts who have mature knowledge and experience in a

specific field of human rights and social activity, in the context of evaluating the inequality between the rights and social opportunities of men and women and eliminating various gender discriminations , the result of which is formalized in the form of a conclusion" [19].

According to P.V. Solovev, gender-legal expertise is the evaluation of a regulatory legal document or its draft by a specially authorized state body or other entity according to the principle of gender equality, the principles of ensuring equal rights and opportunities of men and women[20].

O.A. Korotkova stated that "it is necessary to understand that there is a thin line between differences and the right to discriminate in the process of conducting gender expertise of legislation, which the gender approach does not allow to cross. A gender approach in the field of law-making is not possible without reflecting the rights of differences between men and women, which cover their biological characteristics. These differences, of course, must be taken into account by the legislator in the process of law-making, but they cannot create certain advantages for women and men. In order to strictly distinguish and maintain the balance of constitutional rights and legal interests, a thorough analysis of each bill or law regulating this type of social relations is required, which is the most important task of gender expertise" [21].

In our opinion, the following can be mentioned regarding some aspects of the definition given to the concept of "gender-legal expertise" in the legislation.

In particular, Article 3 of the Law of the Republic of Uzbekistan "On Guarantees of Equal Rights and Opportunities for Women and Men" dated September 2, 2019 states that "gender-legal expertise - normative legal documents and their drafts for equal rights and opportunities for women and men" analysis of compliance with the principles of guarantee provision" is given a legal description.

Focusing on this concept, the concept of "opportunities" is used. However, the concept of opportunity is broad and is a general concept that encompasses several issues. That is, it is not clearly stated what exactly can be understood within this concept.

For example, in the explanatory dictionaries of the Uzbek language, the concept of "opportunity" (*from the Arabic – opportunity*) is interpreted as the necessary or favorable conditions or the power available to bring about [22]. It can also be understood that opportunity depends on both descriptions.

However, according to paragraph 5 of the Uniform Methodology of legal-technical formalization of drafts of normative-legal documents, as well as information-analytical materials attached to them, it is not allowed to use "words and phrases with multiple meanings, metaphorical comparisons, adjectives, sarcasm" in the project.

In our opinion, **gender-legal expertise** should be understood as "*analysis of legislative documents and drafts from the point of view of ensuring equal rights and freedoms and legal interests for women and men*."

Based on this, the definition given to the concept of "**gender-legal expertise**" given in the first part of Article 3 of the Law of the Republic of Uzbekistan "On guarantees of equal rights and opportunities for women and men" dated September 2, 2019:

It should be edited in the form of "*analysis of regulatory legal documents and their drafts in*

terms of compliance with the principles of guaranteeing equal rights and freedoms and legal interests for women and men ."

3. Criminological expertise.

"Criminology (*lat. crimen - crime - Greek. lokos - teaching; ing. criminology*) is a science that studies crime, the person of the criminal, the causes of crime and the conditions that cause it, methods and means of its prevention. If we consider only crime in this concept, crime is a social and criminal-legal phenomenon in society, and it is the sum of all crimes committed in a certain country during a certain period of time. The causes of crime and the conditions that create it are the system of events that create negative events and processes in the economic, demographic, psychological, political, organizational and administrative spheres and create conditions for their existence" [23].

The goal of criminology is to develop scientific and practical proposals and recommendations aimed at increasing the effectiveness of the fight against crime. In this, the role of the legislation being developed is incomparable, and it can be seen as a means of fighting crime.

In some of the research works, the criminological examination of the drafts of regulatory legal documents is cited as a synonym of the anti-corruption examination, while in some, it is researched as an independent examination.

In particular, O.A. Borodina stated that criminological expertise reveals the content of the draft legal document, that is, determines the norms related to the emergence of criminogenic consequences (emergence of criminogenic risks) in various spheres of social relations [24].

B. Abdullaev stated that "criminological examination of draft laws should be considered as a necessary and mandatory condition of law-making"[25].

As stated by V.V.Tenitilova, the subject of criminological expertise should be not only law creation and its products in the form of normative documents, but also economic, social, political institutions and their activities, the effectiveness of the most important economic and management decisions, social reality in its various forms[26].

D.A. Shestakov in his research work mentioned the following issues that should be covered by criminological expertise, in particular: "the legal norm is not "dead"; that the norm is not criminogenic, i.e. does not create an opportunity to commit a crime; that the norm does not contradict international criminal law" [27].

Also, in the definition proposed by S.V. Borodin and V.V. Luneev, the goals of criminological expertise are indicated: "criminological expertise of projects or existing laws and other regulatory documents, to determine their compliance with the social needs of society in the field of combating crime, their adoption or application it is carried out in order to determine possible consequences of a criminogenic or anti-criminogenic nature" [28].

According to G. B. Kysykova, during the criminological examination, the expert uses the approximate-systematic method of the scientific-legal examination to determine the existence of circumstances that help or prevent the commission of a crime in the draft law [29].

In our opinion, it is appropriate to define the concept of **criminological examination of normative legal documents and their drafts as analysis from the point of view of determining the existence of norms related to the conditions and other situations that will cause crime in the future .**

Based on this definition, in our opinion, it is appropriate to include a new norm on

"criminological expertise" in the Law of the Republic of Uzbekistan "On Regulatory-Legal Documents" of April 20, 2021 (this will be explained in detail in paragraph 3.2).

Also, at the same time, it is necessary to develop organizational and legal frameworks regarding the range of entities conducting criminological expertise of normative legal documents and their projects, the issues covered by this expertise, and the content of measures to be implemented as a result of the expertise.

In conclusion, it should be noted that the role of legal expertise is incomparable in the creation of effective and high-quality legislation, in serving the interests of society and the state, through which legality and the rule of law are ensured in the creation of norms and the legislative system.

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