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CURRENT ASPECTS OF DEVELOPMENT AND APPROVAL OR THE REGULATORY LEGAL ACTS IN THE REPUBLIC OF KAZAKHSTAN

Junussova Malika Toleuzhanovna

*1st year doctoral student of the Eurasian National
University named after L.N. Gumilyov,
Astana, Kazakhstan,
dzhunussova_mt@enu.kz
Scientific adviser - Doctor of Law, Professor
Abdrasulov Yermek Bayakhmetovich*

The main tool for the implementation of state policy, which makes it possible to implement an effective and targeted legal impact on public relations, is rule-making activity.

During the years of independence, the rule-making activity in the Republic of Kazakhstan has developed rapidly, the legislative framework has undergone significant evolution, and today one of the topical issues is to improve the quality of regulatory legal acts.

Rule-making activity - scientific and organizational activity for the preparation, adoption, amendment, addition, interpretation, suspension of action, recognition as invalid or repeal of normative legal acts (1). State bodies, local representative and executive bodies that develop normative legal acts in accordance with their competence established by the Constitution of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan "On Legal Acts" and other normative legal acts are directly involved in rule-making activities.

In accordance with the current legislation, a legal act is understood as a written official document of the established form, containing a rule of law, adopted at a republican referendum or authorized bodies, or a decision of the form established by law, containing an individual authoritative legal instruction, which is divided into regulatory legal acts and non-normative legal acts.

In this article, special attention will be paid to topical issues of the process of development, approval and state registration of the following regulatory legal acts and their derivatives (regulations, technical regulations, rules, instructions):

- 1) normative legal orders of the ministers of the Republic of Kazakhstan and other heads of central state bodies;
- 2) normative legal orders of heads of departments of central state bodies.

Legislative regulation of functions for the development, adoption and approval of regulatory legal acts by state bodies is provided. In accordance with paragraph 3 of Article 34 of the Law "On Legal Acts", the adoption of a regulatory legal act by an authorized body is allowed only in cases where the competence of the body to adopt this act is directly provided for by the legislation of the

Republic of Kazakhstan (3). This norm is the main and mandatory for the adoption of a regulatory legal act. Non-compliance of a normative legal act with the specified norm, entails its statement for loss. A similar provision was also provided for in the Law of the Republic of Kazakhstan “On Normative Legal Acts” dated March 24, 1998 No. 213 (2), which has become invalid.

From the moment the Republic of Kazakhstan gained its independence, the authorized bodies began active work on the development and adoption of regulatory legal acts, however, there were also adopted those that were adopted in the absence of the competence of the body to adopt the act. As an example, we can cite the Regulations on military medical examination in the internal affairs bodies of the Republic of Kazakhstan and the Rules for medical examination in the internal affairs bodies of the Republic of Kazakhstan for peacetime and wartime, approved by order of the Minister of Internal Affairs of the Republic of Kazakhstan dated December 24, 1998 No. 470. The preamble was it is indicated that the regulatory legal act is adopted in order to optimally staff the internal affairs bodies and internal troops of the Ministry of Internal Affairs of the Republic of Kazakhstan, improve medical support and medical and social assistance to personnel in accordance with the legislation of the Republic of Kazakhstan (4). As you can see, there is no reference to a specific norm of the legislative act, this act became invalid by order of the Minister of Internal Affairs of the Republic of Kazakhstan only on July 27, 2010 No. 325.

To date, such regulatory legal acts are identified through the conduct of legal monitoring by state bodies of regulatory legal acts adopted by them and (or) the developers of which they were, or related to their competence (5).

In addition, the lack of competence in a legislative act or the functions to adopt a regulatory legal act in its position by a state body does not make it possible to force the events that have arisen at the legal level, since the elimination of these gaps takes a certain amount of time.

A positive shift in this direction occurred in 2022, when the President of the Republic of Kazakhstan K. Tokayev promulgated Decree No. 872 dated April 13, 2022 “On measures to de-bureaucratize the activities of the state apparatus”. In accordance with paragraph 2 of the Decree, the Government of the Republic of Kazakhstan was instructed to ensure that state bodies are given the right to adopt regulatory legal acts in order to implement the assigned tasks without excessive (excessive) specification at the legislative level of competencies, functions and powers, as well as the introduction of a special procedure for the adoption of regulatory legal acts , including without their state registration, for prompt response to urgent challenges, force majeure and crisis situations (6).

Based on the current legislation of the Republic of Kazakhstan, the state bodies that have developed a normative legal act send drafts before its adoption for approval to the interested state bodies and organizations by virtue of their competence, based on the subject matter of the issues considered in it, through electronic or paper document management.

At the same time, the issues of vesting the first deputies or supervising deputies of the first heads of state bodies with the right to approve draft regulatory legal acts are still not regulated. A draft normative legal act may be coordinated in several stages based on the availability of comments and suggestions to the draft submitted for consideration. Practice shows that during the so-called initial approval of a draft regulatory legal act, the supervising deputy chief executives coordinate the projects. However, in the Rules for the development, approval and state registration of regulatory legal acts, approved by the Decree of the Government of the Republic of Kazakhstan dated October 6, 2016 No. 568 (hereinafter referred to as the Rules), a specific norm is not spelled out, that is, a posteriori, it proceeds from the law enforcement practice of rule-making activities.

Similarly, the situation is developing with the re-approval of the draft regulatory legal act in connection with the appointment of a new first head of the state body. In the current Rules, there is no norm regulating this aspect. Accordingly, when appointing the first head of a state body, the developing body ipso facto renegotiates the draft regulatory legal act in connection with the appointment. Perhaps based on the fact that the position of the new leadership of the state body may change in relation to the issues considered in the draft submitted for approval. This practice does

not have a very positive effect on the rule-making process as a whole. That is, there is a need for re-approval, which significantly slows down the process of adopting a draft regulatory legal act.

As a solution to the problem, it would be possible to legally fix the ban on re-approval of the draft regulatory legal act precisely for the above circumstances, this decision will allow excluding the bureaucratic component from the process of agreeing on the draft regulatory legal act and will allow efficient allocation of resources of the body that develops the draft regulatory legal act.

The Republic of Kazakhstan, in accordance with its Basic Law, asserts itself as a democratic, secular, legal and social state. Accordingly, rule-making activity is one of the most important areas of work of state bodies aimed at implementing legal ideas and building a state of law.

At the present stage of development of our independent state, active work is being carried out towards the development and adoption of regulatory legal acts that meet all the requirements established by the current legislation, which requires the necessary level of competence from the subjects of lawmaking and regulated legislation. The aspects considered in this article and the proposed innovations are an impetus in the development of improving legislation in the field of rule-making.

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