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Research Article

ENVIRONMENTAL EXPERTISE OF DRAFT REGULATORY DOCUMENTS: COMPARATIVE LEGAL ANALYSIS

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ABSTRACT

The importance and relevance of environmental expertise of draft regulatory legal acts in the context of a significant increase in the impact of environmental problems on the life of each state, society and person is revealed. In particular, the legislation and experience of foreign countries were analyzed. In the Republic of Uzbekistan, several proposals have been put forward to improve the organizational and legal mechanisms for conducting environmental expertise of draft regulatory legal acts.

KEYWORDS

Environmental threats, extinction, environmentally safe, knowledgeable from experience, rules of the game.

INTRODUCTION

The world economy has changed dramatically over the past century, and economic growth has been increasing from year to year. This, in turn, ensured the growth of the world's population. If in 1950 there were 2.5 billion people in the world, today this figure is

approaching 8 billion, and by 2050 it is predicted that the world population will reach 10 billion people.

Currently, as a result of high global economic growth and inadequate attitude to nature, the negative impact

of environmental threats on the environment is sharply increasing.

The rapid development of industry and the increasing influence of the human factor on nature have given rise to global environmental problems associated with climate change, degradation of biodiversity, and desertification.

According to the UN, the impact of human activity has led to a complete change in 75% of the Earth's land area, 1 million species of flora and fauna are under the threat of extinction.¹

The aggravation of environmental problems poses a real threat to the life and future of mankind. Therefore, the fact that out of the 17 Sustainable Development Goals adopted by the UN until 2030, 3 are aimed directly at preserving the world's ecosystems, indicates how important the process of nature conservation has become.

Our future in many ways depends on the discovery of ways and means of optimal solution of the relationship between nature and society. It is of urgent importance that every state with the help of national political instruments introduces organizational and legal mechanisms of Environmental Protection.

Currently, almost all countries of the world use environmental impact assessment systems for planned activities. The environmental impact assessment is based on a simple principle: prevention of the negative impact of an activity or a regulatory document on the

environment at the drafting and planning stage, rather than detection and correction at the implementation stage. This makes it possible to take into account, along with economic development, environmental factors at the stage of setting goals, planning and making decisions on the implementation of a particular activity.

Environmental impact assessment is aimed at a comprehensive analysis of the impact of the proposed activity or draft regulatory document on the environment and the use of the results of this analysis to prevent or reduce environmental damage.²

Regulatory legal acts or investment projects developed in accordance with environmental requirements and based on an environmental impact assessment are considered “**environmentally safe**”.

The origin of project environmental impact assessment activities goes back to the legislation of the Great Britain, Germany and the United States on land and mining.³

Currently, the main content of the problem of ensuring environmental safety in developed countries is considered to be issues related to the prevention of man-made disasters and the organization of environmental monitoring. For example, **in Germany**, the Ministry of Environmental Protection conducts the necessary analysis of possible impacts when licensing the main aspects of the proposed activity.⁴

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<https://www.un.org/sustainabledevelopment/ru/biodiversity>

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Vladimirov, V.A. Katastrofi i ekologiya / V.A. Vladimirov, V.I. Izmalkov. – Moskva, 2000. –P. 379.

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Bogolyubov, S.A. Ekologicheskoye pravo: uchebnik. – Moskva, 2004. –P. 430.

4 Ekologicheskaya ekspertiza: uchebnoye posobiye. – Moskva: Akademiya, 2004. –P. 475.



Environmental impact assessment in Germany follows three basic principles. These are: 1) prevention of harm to nature; 2) joint consideration of the interests of man and nature when approving projects; 3) characteristics of damage to natural resources.

As a result of such an assessment, the necessary environmental protection measures are determined in advance. The desire to improve natural conditions, according to the Germans, is, first of all, a contribution to the quality of life, human health, biodiversity conservation and ecosystem sustainability.⁵

The modern system of environmental impact assessment -Environmental Impact Assessment (EIA) has been introduced into practice in most developed countries. For example, in China, 2 types of environmental assessment are carried out: environmental impact assessment of projects (EIA) and strategic environmental assessment (SEA).

Another feature of foreign experience is that public participation in environmental assessment (public participation) is considered as one of the most important forms of realization of citizens' rights to a clean environment.

As a state-legal means of reducing the negative impact on the environment in the CIS countries, along with the environmental impact assessment procedure, environmental expertise is widely used.

In particular, in the Republic of Kazakhstan, an additional article was introduced into the law "On legal acts" concerning the specifics of the preparation and adoption in 2021 of regulatory legal acts affecting

environmental safety, and it was established that draft regulatory legal acts, the implementation of which may have a negative impact on the environment, are subject to mandatory state environmental expertise.⁶

The procedure for conducting state environmental expertise of draft regulatory legal acts is provided for by the Environmental Code of the Republic of Kazakhstan, where the range of objects of state environmental expertise separately includes draft regulatory legal acts developed by authorized bodies.

In accordance with the Law of the Kyrgyz Republic "On Regulatory Legal Acts", draft regulatory legal acts related to environmental safety issues are subject to environmental expertise. According to the legislation of this country, environmental expertise as a type of scientific expertise is tasked with identifying and assessing the negative environmental consequences of a draft regulatory legal act.⁷

In the Republic of Azerbaijan, the Constitutional Law "On Normative Legal Acts" establishes that amendments to a normative legal act no later than six months after its adoption are allowed only on the basis of a normative legal act having the higher legal force or conclusions of legal, linguistic, economic, environmental and criminological expertise.

Consistency is important when improving legislation. Legislative acts should be adopted in accordance with the current state of society and the directions of its further development. In this regard, all draft regulatory legal acts are subject to appropriate expertise, taking into account modern challenges.

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Dyakonov, K.N. Ekologicheskoye proyektirovaniye i ekspertiza: uchebnik. –Moskva, 2005. –P. 383.

⁶ <https://online.zakon.kz>.

⁷ <http://cbd.minjust.gov.kg/act/view/ru-ru/202591>



The lexical meaning of the concept of Expertise is defined in the legal literature as “expertise” (from “Expert” – “experienced”, “knowledgeable from experience”) by a specialist or a group of specialists” research of issues requiring qualified solutions in a particular area”.⁸

Analyzing the place of expertise in lawmaking, it is possible to evaluate expertise as an integral and inseparable part of this process. A lot of research and scientific research has been conducted on this issue, during which specific and general conclusions were drawn related to the fact that the examination serves to improve the quality of the adopted regulatory legal acts.

The expertise of draft legislative acts is one of the components of the law-making process, which is important for ensuring the perfect preparation of legislative acts, the mechanism for regulating social and legal relations and strengthening the legal basis for large-scale reforms in the political, socio-economic, cultural and educational spheres.⁹

Environmental expertise of draft regulatory legal acts is the determination of compliance of the draft regulatory legal act with the relevant standards in the field of environmental protection.

In accordance with the Law of the Republic of Uzbekistan “On Environmental expertise”, environmental expertise refers to the establishment of compliance of planned or ongoing economic and other activities with environmental requirements and the

determination of the feasibility of the object of environmental expertise.¹⁰

In accordance with the current legislation, the projects of normative legal acts are being excluded from the scope of the environmental expertise. However, article 25 of the Law of the Republic of Uzbekistan “On Normative Legal Acts” establishes that a draft regulatory legal act may be subjected to economic, financial, scientific, linguistic, **environmental expertise**, as well as other types of expertise by the decision of the developer or the body authorized to adopt a regulatory legal act.¹¹

Nevertheless, in practice, environmental expertise is limited to the study of compliance of production or other economic activities with environmental requirements that may have a negative impact on the environment. At the same time, the procedure for conducting an environmental review of draft regulatory legal acts has not been developed so far. This, in turn, creates conditions for the occurrence of cases of negative impact on the environment by many legislative acts adopted throughout the country.

Many countries are aware of the need to conduct environmental expertise of draft regulatory legal acts aimed primarily at regulating public relations in a particular area and capable of establishing disproportionate “**rules of the game**” in relation to the environment.

Our national legislation establishes that draft regulatory legal acts can be subjected to environmental expertise. But currently, draft

⁸ Uzbekiston yuridik ensiklopediyasi. – Tashkent: Adolat, 2009. – P. 545-546.

⁹ Fayziyev, Sh.H. Qonun ijodkorligi jarayonini takomillashtirish: milliy va xorijiy tajriba. – T.: Adolat, 2020. – P.160.

¹⁰ <https://lex.uz/docs/32955>.

¹¹ <https://lex.uz/docs/5378966>

regulatory legal acts do not undergo environmental expertise due to the fact that organizational and legal mechanisms of expertise in this area have not been implemented.

The establishment of rules and requirements that establish the procedure for conducting environmental expertise of draft regulatory legal acts in order to protect the environment and ensure environmental safety is a very relevant issue.

In our country, the necessary measures are being taken to protect the environment and reduce environmental threats. In particular, on the initiative of the Head of our state Sh.M. Mirziyoyev, the nationwide project “Green Space” is being implemented. As part of this project, it is planned to plant 200 million saplings of trees and shrubs annually, thereby increasing green spaces in cities from the current 8 to 30 percent.

Time itself dictates the need to introduce all effective legal instruments to mitigate environmental problems of a global, regional and national nature, which today pose a real threat to the sustainable socio-economic development of our country.

In this regard, we consider it necessary to improve the organizational and legal mechanisms for conducting environmental expertise of draft regulatory legal acts in national legislation.

In order to further improve national legislation in this area and ensure the “environmental safety” of legislative acts, **it is proposed:**

Firstly, in the law “On Normative Legal Acts” it is necessary to establish that, along with legal and anti-corruption expertise of the draft regulatory legal act, environmental expertise is mandatory.

Concurrently, this law should clearly state in which cases the environmental expertise of the draft regulatory legal act should be conducted and its purpose must be clearly indicated.

Notably, the purpose of conducting projects of normative legal acts on environmental expertise should be the following:

- * Prevention of negative impact on the environment of draft regulatory legal acts being developed in the Republic of Uzbekistan;
- * improving the quality of regulation of environmental issues through the introduction of an integrated environmental approach in the process of rulemaking.

Secondly, the development and approval of the procedure for conducting environmental expertise of draft regulatory legal acts is relevant.

This procedure should fully cover the entire process related to the environmental expertise of draft regulatory legal acts, in particular, such issues as the concept and principles of environmental expertise of draft regulatory legal acts, stages of the examination, functions, rights and obligations of the body carrying out the expertise, preparation of the expert opinion should be reflected in detail.

Environmental expertise of draft regulatory legal acts involves a systematic and step-by-step process. This process should begin, first of all, with the definition of the subject of regulation of the draft legislative act and cover such stages as the assessment of compliance of the project with national legislation and international standards in the field of environmental protection and environmental safety, the identification of threats to the negative impact on the environment in the project

and the preparation of an expert opinion containing relevant recommendations.

Thirdly, it is very important to systematize the national legislation on environmental protection and bring into the state of a single code many laws and by-laws regulating this area.

By Decree of the President of the Republic of Uzbekistan No. 5863 dated October 30, 2019, the Concept of Environmental Protection of the Republic of Uzbekistan for the period up to 2030 was approved, which determined the priority directions of state policy in the field of environmental protection for the specified period.

The systematization of the regulatory framework was also envisaged as one of the main directions of the implementation of the concept.

Environmental protection is an activity regulated by many legislative acts. During the analysis of the regulatory framework, it became apparent that this activity has a legal basis consisting of **about 200** legislative acts.

Consecutively, it significantly complicates the application of these documents, at the same time it may lead to a decrease in the effectiveness of environmental expertise of draft regulatory legal acts in the future.

Therefore, taking into account the experience of a number of foreign countries, today an urgent task is to systematize the legal foundations of environmental protection by combining them into a single regulatory legal act, that is, the Environmental Code, which, in turn, will contribute to improving the process of environmental expertise of draft regulatory legal acts.

Fourthly, it is necessary to determine the relevant powers of the State Committee of the Republic of Uzbekistan for Ecology and Environmental Protection, which is a specially authorized body in the field of state environmental expertise, to conduct environmental expertise of draft regulatory legal acts and further increase its independence and responsibility in this area.

It is expedient to use for solving such problems as the creation of a special subdivision in the committee for environmental expertise of draft regulatory legal acts, the involvement of experienced national and international experts in this area, control over the implementation of the recommendations of the expert opinion by the developers of draft regulatory legal acts.

Training and retraining of highly qualified experts in conducting environmental expertise of draft legislative acts is under great importance. After all, the following important requirements are imposed on experts conducting environmental expertise:

- ❖ theoretical knowledge in the field of environmental protection, sustainable development and environmental safety;
- ❖ Study of national legislation in the field of environmental protection and sustainable development in the Republic of Uzbekistan and generally recognized principles and norms of international law in this area, international treaties;
- ❖ constantly improve their knowledge and practical skills in the field of law enforcement and ecology by mitigating the environmental crisis, solving environmental problems and familiarizing themselves with national and international experience in environmental protection, etc.

Fifthly, it is necessary to conduct a full review of the current legislative acts for their compliance with modern environmental standards and requirements.

According to the national database of legislation of the Republic of Uzbekistan, today there are more than **50 thousand** existing regulatory legal acts (except for decisions of local government authorities). In order to assess the impact of these documents on the environment and identify environmental threats in them, a Government resolution must approve a 5-year plan and conduct a full review of all regulatory legal acts. In this regard, it is especially important that the Ministry of Justice and the State Committee of the Republic of Uzbekistan on Ecology and Environmental Protection create expert groups on legislative areas, widely involve experienced lawyers and international specialists in this process, and prepare appropriate proposals based on the results of review.

Today, consistent reforms in all spheres are being implemented in our country on the basis of the new development strategy of Uzbekistan. This is a requirement of the time when we must radically change our attitude to the environment, widely introduce effective legal instruments so that future generations can enjoy the fruits of these reforms in a healthy and eco-friendly environment.

It is essential to note that it is important to effectively establish the practice of conducting environmental expertise of draft legislative acts in the lawmaking process, which, firstly, serves as a high-quality preparation of legislative acts, and secondly, ensures environmental protection, rational use of natural resources and environmental safety of the population.

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