



Journal Website:

<http://theamericanjournals.com/index.php/tajpslc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

Legal Monitoring – Is An Important Institution Affecting The Effectiveness Of Laws

Rustambek Sayidov

The Independent Researcher Of TSUL, The Chief Researcher Of Legislation And Parliamentary Research Institute Under Oliy Majlis Of The Republic Of Uzbekistan

ABSTRACT

The role of the institution of legal monitoring in law making, in particular its affect to the effectiveness of laws are analyzed in the article. In addition, the article puts forward several issues in law making and the necessity to apply legal monitoring on them as a solution.

KEYWORDS

Law, monitoring, act of parliament, norm, normative legal act.

INTRODUCTION

Many problems in law making in the process of legal reforms in our country require a scientific study of the effectiveness of laws in this process.

In particular, the quality of legislation depends not only on its form and content, but also on how it is enforced.

In our view, when studying this issue, it is necessary to pay attention to two stages of the effectiveness of law making. The first stage is legal efficiency, which is characterized by the compliance of the practice of law

enforcement with the actions specified in the norm developed by the legislator.

The second stage defines social efficiency. In this case, the legislation is assessed by social goals that are directly outside the scope of legal regulation.

When it comes to the quality of laws, it should be noted that there are problems in this regard. In particular, the reasons for the insufficient quality of laws are explained by the problems of the legislative process. They are directly related to the problems of

drafting and adopting laws. Therefore, measuring efficiency in this regard serves as an important tool in identifying the necessity to improve legal regulation.

Problems in law making can be conditionally divided into as follows:

- The first block of factors affecting the quality of laws is related to legal policy. Laws are passed in a hurry, without taking into account the comprehensiveness of the regulation of legislation;
- The second block of factors for the preparation and adoption of qualitatively “defective” laws is related to the organization of the legislative process. Lack of positive results of the legislative process, for instance lack of quality laws, technical shortcomings in the work of parliamentary committees and commissions, lack of cooperation between the legal services of public administration.
- The third block of factors affecting the quality of laws is related to organizational problems. It is a question of inconsistency in legislative activity. Bills are drafted by many governmental agencies that are not always fully prepared for this activity. Their drafts, often not agreed with other interested bodies, are sometimes submitted to the legislator at the same time. As a result, neither their scientific basis nor any conceptual integrity is ensured;
- The fourth block of factors that negatively affect the quality of laws is directly related to the shortcomings of legal writing, language, style, terminology, classification, codification and systematization problems, which often

occur due to lack of qualified specialists in this sphere.

One of the main ways to address the above mentioned problems and implement activities aimed at ensuring the quality of laws is legal monitoring [1,2].

There is no single point of view in the scientific literature on the definition of the concept of monitoring.

“Monitoring” usually means monitoring the process on a regular basis, collecting information about something, and preparing recommendations for processing and correction. It should be noted that legal monitoring is one of the most effective institutions in legislative process. In this regard, there is an objective need for scientific understanding and theoretical legal research on the specifics of legal monitoring in the context of modern law making.

A legal scholar I.Jujgov believes that in order to fully understand the essence of the concept of monitoring, it is necessary to first consider its objects, identify the elements that make up the monitoring, indicate the purpose of monitoring [3].

Indeed, not only the current legislation and the practice of its application, but also the preparation of legislation and other rulemaking activities of all branches of government are the object of monitoring [4].

However, the above mentioned definitions do not cover the stages of rulemaking or law enforcement when applied separately.

Indeed, legal monitoring includes the stages of legal activity, such as the process of

rulemaking, assessment of the quality of existing normative legal acts and law enforcement [5].

Хусусан, рус ҳуқуқшунос олими Ю.А.Тихомиров ҳуқуқий мониторингни қонун вужудга келиши ва бошқарув фаолиятининг барча босқичларида намоён бўладиган ва ҳаракатланадиган, ахборот-баҳолавчи характердаги динамик ташкилий-ҳуқуқий институт сифатида баҳолайди [6].

As Professor Sh. Fayziev noted, the observation, analysis of the viability of laws and drawing conclusions based on them is an integral part of the monitoring of legislation. Legislative monitoring aims to improve the quality and effectiveness of legislation, to ensure the interconnectedness, comprehensiveness and coherence of legal norms in the legislation [7].

According to another scientist Sh. Ruzinazarov, on the basis of legal monitoring, the observance of legal norms as a means of regulating social relations is carried out, and the level of effectiveness of the legislation, the cases related to the elimination of its shortcomings are identified [8].

Indeed, the use of legal monitoring expands the system of methods of providing information on the basic rights and freedoms of citizens, contributes to the completeness and reliability of information about the shortcomings of the existing legislative system.

Also, in the process of monitoring the effectiveness of law making, the researcher receives comprehensive and accurate scientific information about the impact of regulations, in particular, the violation of

individual rights and freedoms through the norms of the legislation.

In our opinion, in order to achieve the effectiveness of law making activity, legal monitoring should be organized in such a way that the object of monitoring should cover the entire system of normative legal acts.

Legal monitoring should be recognized as a mandatory function of all state structures in forms appropriate to their status and competence [9].

In this regard, it is worth mentioning the work being done in Uzbekistan to improve the institution of legal monitoring.

The legislation adopted in the framework of the Action Strategy for the five priority areas of development of the Republic of Uzbekistan for 2017-2021, aimed at the legal support of the reforms, ensures the successful implementation of reforms. After all, in the content of normative legal acts adopted in recent years, the main ideas and principles of the new legal system are finding their practical expression.

It should also be noted that the reforms carried out in the process of democratization and renewal of society, modernization and reform of the country have led to a certain change in the content and essence of social relations.

Now the time itself demands a complete legal regulation of social relations. This, in turn, leads to an increase in the number and scope of existing regulations. It is in these processes that legal monitoring aimed at ensuring the quality of implementation of the adopted legislation is important.

Indeed, through legal monitoring, it is possible to analyze and evaluate the effectiveness of the application of the legislation, as well as to determine its prospects. Even in the process of rulemaking, legal monitoring serves as a sort of bridge between the stages of development of normative legal acts and the execution of legislation.

Legal monitoring serves to constantly monitor the level of legal regulation of social relations, to develop methods and techniques to bring it to an acceptable state as a result of a critical assessment of the state of the legal system, to implement them in practice.

In other words, through legal monitoring, inconsistencies, contradictions, corruption, duplication and conflict in the legislation are identified and eliminated.

In this purpose, it is worth noting the Resolution of the President of the Republic of Uzbekistan, adopted on November 2, 2019, No PR-4505 “On measures to improve the effectiveness of legislation on the basis of modern mechanisms of legal monitoring”. Because this Resolution introduced a new mechanism of legal monitoring of the executions of normative legal acts.

According to this, a three-stage system of legal monitoring in the form of “public administration – Ministry of Justice – Government” has been established.

That is, public administration bodies through their legal services within their competence carry out legal monitoring of acts that are the subject matter of regulation. The Ministry of Justice of the Republic of Uzbekistan, as a specially authorized body of public administration in the field of legal monitoring,

coordinates this activity. The Cabinet of Ministers of the Republic of Uzbekistan approves the plan of legal monitoring and discusses the report on its results in the Presidium.

The list of normative legal acts to be subject to legal monitoring is determined by the number of appeals for their interpretation and practical application, in particular, the presence of illegal or unreasonable decisions of public administration bodies in this process, and other indicators.

The introduction of this system will ensure the introduction of a unified practice of enforcement of regulations. This prevents the different interpretations of the legislation and plays an important role in its uniform execution.

In order for legal monitoring to achieve its intended results, it is important to first identify its objects, the elements that make up the monitoring. With this in mind, the act clearly defines the objects of legal monitoring. Since legal monitoring covers all stages of law enforcement and legal activity, its targeted execution has a special place in the full implementation of regulations..

In addition, the processes related to legal monitoring are now carried out on a special electronic platform in a single electronic system of development and coordination of draft normative legal acts, which allows the use of monitoring results in law making and law enforcement.

In accordance with today’s requirements, the committees of the Senate of Oliy Majlis have been set up to monitor the execution of laws,

law enforcement practices and the adoption of secondary legislation.

So far, the Senate committees, in cooperation with the Legislation and Parliamentary Research Institute, as well as other relevant agencies and organizations, have monitored more than 20 important laws. Guarantees of access to information, protection of women and children rights, mortgage and charity, e-commerce, investment, transport and currency, environmental security and technical regulation, search operations, international agreements, laws and other normative legal acts governing cultural property legal acts are among them.

The monitoring carried out by the Senate is based on the requirements of the Law “On Parliamentary control” and the Concept for Improving the rulemaking activity, based on the current reforms, the goals and objectives of the Action Strategy.

Summarizing the results of the monitoring, the following main shortcomings can be identified in the legislation:

Most articles of the laws are declarative in nature;

The norms of laws in the sphere overlap, for instance they are not systematized;

Concepts are not clearly articulated, key terms are not disclosed;

The laws contain redundant reference norms and outdated regulatory mechanisms.

Such shortcomings have a negative impact on the implementation of the laws studied. That is, some of their norms do not work, are not

applied directly. This leads to the fact that the sphere is mainly regulated by secondary legislation acts [10].

In short, with the effective use of the opportunities of the institution of legal monitoring, it is possible to regulate the system of acts of legislation, to ensure the compliance of law enforcement practice with the objectives of the adoption of normative legal acts through the widespread use of its results.

REFERENCES

1. Наконечный Я.Е. Мониторинг в правотворчестве :проблемы теории и практики. Дисс... канд. юрид. наук. – М., 2008. – 202 с.
2. Невеселов А.А. Правовой мониторинг и государственная политика. Дисс... канд. юрид. наук. - Ростов-на Дону 2009.
3. Жужгов И.В. Мониторинг правового пространства Российской Федерации. Дисс... канд. юрид. Наук. Ставрополь, 2006. – 220 с.
4. Правовой мониторинг. Научно-практическое пособие. М.: ИД “Юриспруденция”, 2009, С. 15-16.
5. Машкуров ф.А. Ҳуқуқий мониторингни таъминлаш механизмлари. Дисс ... ю.ф.н. – Тошкент: 2012, Б. 26.
6. Тихомиров Ю.А. Организация и проведение правового мониторинга // Право и экономика. 2006, № 10.
7. Файзиев Ш.Ҳ. Қонун ижодкорлиги жараёни таъминлаштириш: миллий ва хорижий таъриба. Монография. – Ўзбекистон

-
- Республикаси Адлия вазирлиги. –
Тошкент: Адолат, 2020.
8. Рўзиназаров Ш. Н. Ҳуқуқий
мониторинг ва хавфсизлик асослари
/ Масъул муҳаррир: Раҳмонқулов
Ҳ.Р. – Тошкент, 2007. – Б. 155-156.
9. Тихомиров Ю.А. Вводить
мониторинг права // Право и
экономика. – 2004. № 3. – С. 4.
10. Тўраев Д. Сенатда қонунлар
самарадорлигини ошириш бўйича
парламент назорати йўлга қўйилди.
“Халқ сўзи” газетаси. 10.03.2021.