

THE CABINET OF MINISTERS AS A SUBJECT OF THE LAW-MAKING PROCESS: PROBLEMS AND SOLUTIONS IN LEGISLATION

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Abstract

This article talks about the powers of the Cabinet of Ministers in the field of lawmaking and its role in legislation, analyzes the definitions of legislative activity, explains the powers of the Cabinet of Ministers, its connection with other legislative processes. Manufacturing of objects and its features. It is substantiated that the law-making activity of the central collegial executive body occupies a special place in the national legal system, based on the position and legal status of this entity in the system of state bodies. In addition, the author's definitions of such concepts as legislative activity and legislative activity of the Cabinet of Ministers are given, various aspects of resolutions and orders of the Cabinet of Ministers of the Republic of Uzbekistan are shown. It is concluded that although the resolutions of the Cabinet of Ministers are not aimed at establishing, amending or repealing a new legal norm, they determine the official regulation of one or another type of social relations by the state. In addition to the above, based on an analysis of the norms of the Law of the Republic of Uzbekistan "On Regulatory Legal Acts", "On the Cabinet of Ministers of the Republic of Uzbekistan", proposals have been put forward to introduce relevant norms into Articles 36 and 37 of the Law "On the Cabinet of Ministers of the Republic of Uzbekistan" and into the "Regulations of the Cabinet Ministers of the Republic of Uzbekistan".

Keywords Law-making, law-making activity, law-making activity of the Cabinet of Ministers, order, protocol, Resolution of the Cabinet of Ministers, government decisions, government activities.

INTRODUCTION

Law-making is an important form of public administration in society as a social phenomenon of administrative nature. Like any social process, this process is a conscious, goal-directed activity, carried out through appropriate norms and practices. President Sh.M. Mirziyoev stated that "our country's strategic goal is to become one of the 50 leading countries in the world in terms of ratings and indices (creativity of norms, effectiveness of government activity) in the field of human rights and freedoms" [1].

Evaluating the activity of law creation as a social and legal process, it cannot be limited to the activity of creating law. It covers broader processes such as determining the need for legal regulation of social relations in the life of society, preparing a regulatory legal document, adopting it based on the purpose and need of regulation.

The activity of law creation can be explained as an important form of implementation of state power. Legal scholars have given different definitions and descriptions of the activity of law creation.

Legal creativity is a form of activity aimed at creating state legal norms and their improvement, change and cancellation[2]. According to the definition of legal scientist, professor H.T. Odilqoriyev, law creation is a special activity of authorized state agencies and officials (in the case of the referendum, the entire nation) aimed at establishing, changing, improving and canceling legal norms[3]. The second of these definitions fully covers the activity of law creation compared to the first, because the law is created through the direct participation of the people in the referendum to solve the most important issues in the life of the society. The Russian researcher T. Tsgoev in his scientific work emphasizes that the term "establishment of law" fits the creation of law in the form of a normative legal document, and emphasizes that it more accurately expresses the meaning of this specific activity. The term "legal creativity" is traditionally somewhat outdated[4].

As can be seen from the general nature of the definitions given above, the law-making activity is an official type of activity that determines the way of life of society and the state and is carried out by authorized entities. It is as a result of this activity that legal norms, which are a set of rules regulating social relations, are created.

Legal creativity is a creative activity of the state that is related to power. State agencies regularly perform the function of legal regulation of social relations based on the needs of society's development. This requires that the process of law creation continues regularly.

Legal creativity is the main and initial link of the mechanism of legal regulation. This activity begins when new social relations are created in the life of society or when there is a need to reorganize existing relations, and when it is known that these relations serve the development of society.

Based on the above, we can describe the activity of law creation as follows. The activity of law creation is an official activity aimed at the regulatory and legal regulation of social relations based on the needs of society and the state, aimed at changing and canceling existing legal norms and creating new legal norms based on the will of the state.

The law-making activity of the central collegial body of the executive power is considered to have a special place in the national legal system based on the position and legal status of this subject in the system of state bodies.

Some expert scientists evaluate the executive power as a branch of power with the nature of legality, since the activity aimed at ensuring the implementation of legal documents is primary in the activity of the government. In contrast to the legislative power, which has a primary, supreme character, the executive power has a secondary, sub-legal character[5], Law-making activity of the Cabinet of Ministers is its second-level activity. The activities of the first level are aimed at ensuring security, management, and regulation[6], believes lawyer E.Kasparov. In our opinion, these opinions do not lower the position of executive authorities in law-making activities. The reason is that law is the form of implementation of all powers of the government at the first level. Because, as Yu. Sokolova pointed out, the function of regulatory and legal regulation is carried out by the executive power through the activity of law creation, and the activity aimed at adopting regulatory legal documents carried out by the body of the executive power in the course of the implementation of state administrative activities fulfills the function of regulatory and legal regulation. is an integral function of the executive power that ensures the increase[7]. That is, it is emphasized that all activities of the government aimed at management and regulation are provided directly through the product of its creation of law. In addition, the government, in addition to its executive function, directly intervenes in the law-making process aimed at regulating the life of the country. This situation shows that the activities of the executive authorities are extremely diverse. All documents issued by the government may not be normative documents, therefore, these types of documents are not part of the normative legal system. Only legal documents issued by the government in the form of decisions are included in the regulatory legal system. These decisions included in the normative-legal system become mandatory and must be implemented in the entire territory of the country.

In his research, the Russian researcher R. Aslanyan deals with the special object of management of the executive branch of state power, which can be conditionally called "mutational" (changing), which requires an immediate response to a rapidly changing situation. It believes that the powers of the bodies of this branch of power are explained by the right to issue instructions for lower-level bodies - statutory regulatory documents and individual acts "on the basis of and in accordance with the laws"[8]. A. Avtonomov believes that such documents have a legal nature and usually regulate the execution of laws[9].

As of the end of October 2022, the number of decisions and orders adopted by the Cabinet of Ministers of the Republic of Uzbekistan is 30,149, of which 16,920 are in effect. The fact that the number of laws and decisions adopted by the Oliy Majlis is 14,919, of which the actual number is 13,611, shows that the need for legal regulation in all spheres of social life is mainly provided by the government's law-making activities.

The Cabinet of Ministers carries out law-making activities within the limits set by the legislative authority, based on its powers. If the law does not regulate the attitude related to management, and this attitude requires regulation, then of course this function is performed by the government itself. If a law-creating body regulates a relationship in terms of normative and legal, another body, or rather, the government, based on its state-legal authority, adopts legal acts that have legal significance in terms of clarifying this relationship in order to ensure the implementation of the normative act, and only after that it can ensure their execution. This shows that the activity is literally a management and regulatory activity.

Regarding law-making, i.e., the activity of creating rights, when looking at the content, although a special authorized body - Oliy Majlis is established, the activity of the Cabinet of Ministers and its lower levels emerges as an organizational tool in the practical implementation of the legislative sphere of state power. Their place and role is extremely important in the life of the state and society, which is related to the continuous growth, increase and complexity of processes such as regulation and

enforcement.

Based on the legal basis of government activity and the importance of the function of regulatory and legal provision within its powers, the law-making activity of the Cabinet of Ministers can be defined as follows: is an official activity aimed at the creation of the right, which is carried out in accordance with the Constitution and legal documents in order to implement the enforcement function and their application.

Article 35 of the Law "On the Cabinet of Ministers of the Republic of Uzbekistan" stipulates its adoption of decisions and orders. Also, his documents in the form of normative legal documents issued on decisions, urgent and other current issues, i.e. documents of individual importance, should be in the form of orders in articles 36, 37.

The fact that a document is normative is known by its universality and the introduction of a new norm into the legal system. If we pay attention to the opinions of experts regarding what kind of document an individual document is, the famous Russian scientist A.V. Mitskevich says that normative legal documents reflect the law-making activities of the state and its bodies, and non-normative documents are not related to law-making activities and do not determine legal rules. states that it is a form of activity of state bodies[10]. According to V.I. Popova, acts of an individual nature, unlike normative acts, do not express a legal norm in themselves, but regulate a specific relationship. They are intended for a specific range of subjects (administrative body, official, citizen) and are used once[11], according to expert A.V. Vasilenko, legal relations, that is, they are intended to be executed for the implementation of actions representing separate legal activities. they believe that individual legal documents should be adopted[12].

- Based on this definition and legal analysis, the differences between the decisions and orders of the Cabinet of Ministers of the Republic of Uzbekistan can be shown as follows:

- the decision is formalized as a normative document of universal importance and

communicated to the population through official sources;

- since the order is an individual document, it is considered binding only for the subjects of its implementation and is not required to be published in official sources;
- the universality of the decision requires its constant application to social relations;
- the order, due to its individual nature, is used once, that is, within the framework of the regulatory object, and then it may lose its significance;
- due to the fact that the decision has regulatory and legal significance, it is adopted by passing through several stages (development of the project of the decision by the ministry or committee, interdepartmental agreement of the project, passing of legal expertise);
- because the order is individual, it is accepted quickly without any steps.

Although the decrees of the Cabinet of Ministers are not aimed at establishing, changing or canceling a new legal rule, they determine the official regulation of a type of social relations by the state. That is, they express the will of the state, and the obligation to fulfill it is expressed in the law. At the same time, they are also considered as legal documents.

The following can be stated as the intended purpose of the Cabinet of Ministers' activity of adopting regulatory legal documents:

firstly, the development of state policies and their implementation in relations within the sphere of management and execution;

secondly, to define organizational and legal means for the implementation of state programs;

thirdly, to express the mechanisms of law enforcement;

fourthly, to ensure the activity of branch bodies of the executive power subordinated to the government from a normative and legal point of view.

The legal basis of the law-making activity of the

Government of the Republic of Uzbekistan is defined in the Law of the Republic of Uzbekistan "On Regulatory Legal Documents" and the special Law "On the Cabinet of Ministers of the Republic of Uzbekistan". According to these laws, the document issued in the form of decisions of the Cabinet of Ministers is defined as a regulatory legal document.

Now let's think about some controversial issues in this direction. In particular, in Article 31 of the special law defining the activities of the government, it is established that decisions on the issues considered at the meeting of the Cabinet of Ministers shall be adopted by a majority vote of the members of the Government of the Republic of Uzbekistan, and that the decisions taken at the meeting of the Cabinet of Ministers shall be formalized in the form of minutes. Also, paragraphs 105 and 106 of the Regulations of the Cabinet of Ministers of the Republic of Uzbekistan, adopted on March 22, 2019, stipulate that decisions on issues considered at the meeting of the Cabinet of Ministers shall be made by majority vote of the government members, in addition, the decisions made at the meeting of the Cabinet of Ministers shall be formalized in the form of minutes[14].

In practice, we see the decision of the Cabinet in the form of a report neither in the national database of legal documents nor in the collection of government decisions. In addition, there is not a single norm in the special law "On Normative-Legal Documents" that defines the entire procedure for legal documents on the issuance of legally binding legal documents in the form of a report.

It is known that the report is a document kept in connection with a meeting held in a state administration body, organization or enterprise, in which the issues considered at this meeting are fully reflected, and the work to be carried out is determined in the final part of the report, i.e., the decision. Therefore, a report is kept on the issue discussed at the meeting of the government, in which the tasks to be performed in the future, the bodies responsible for performing these tasks, as well as tasks aimed at changing, establishing or canceling a certain order in the social relations of certain spheres of state and community life, as

arrangements may be made. The members who are authorized to vote on the decisions taken by the government participate in the meeting of the government, and the decision is formed based on the result of their majority votes. It is a fact that all this is recorded in the minutes of the meetings of the Cabinet of Ministers.

Nevertheless, all the organizational and technical aspects of this report or reports of someone on the issue under consideration in the Cabinet of Ministers do not have the mark of regulation and legality, but the decision taken by the unanimous vote of the members of the government in the cases mentioned in the decision part of the report of the meeting is equal to the obligation to impose on someone the right can provide. That is, only the decision part of the report can have a normative mark. Many organizational and other issues on the agenda do not represent legal regulations.

According to Article 35 of the Law "On Regulatory-Legal Documents", the official publication of the decisions and orders of the Cabinet of Ministers, which must be implemented by all bodies, enterprises, institutions, organizations, officials and citizens in the entire territory of the Republic of Uzbekistan, within the framework of the constitutional norms and in accordance with the laws. If we look at the text of the government's decisions in the "Collection of Government Decisions of the Republic of Uzbekistan", "Legislative Collection of the Republic of Uzbekistan", "Xalq So'zi" and "Narodnoe Slovo" newspapers, which are the source, in the "National Database of Legislative Information of the Republic of Uzbekistan", there is something related to the meeting minutes of the government in them. We will see the form and text of the document of the Cabinet of Ministers, which is not a rule, but meets the normal legal requirements and the norms of the Law on Regulatory Legal Documents. In addition, the requirements for the text and structure of the project in the "Uniform methodology for the legal-technical formalization of the drafts of regulatory-legal documents, as well as the information-analytical materials attached to them", approved by the Law on Regulatory-Legal Documents, do not specify the requirements for the decisions of the government in the form of a report. Moreover, in

our opinion, the introduction of government decisions in the form of minutes into the category of normative legal documents, which are developed and adopted following the existing traditional rule, that is, the rules of legal language and legislative technique, may create a somewhat vague and abstract situation.

It is worth noting that minutes must be kept at the meetings of the Cabinet of Ministers, and these minutes must remain a minutes in their own name, and government documents regarding the issues discussed at these meetings must be adopted in the form of decisions in a normative form and with all the requisites. Therefore, Article 31, Part 2 of the Law on Government and Clause 1, Clause 106 of the Cabinet of Ministers Regulation, "Decisions made at the meeting of the Cabinet of Ministers shall be formalized in the form of minutes", the rule "Minutes shall be kept at the meeting of the Cabinet of Ministers, and the documents adopted in connection with the discussed issues shall be the decision formalized in the form", it is appropriate to change it and reflect it in the form.

In our opinion, one of the issues that will cause discussion in the legislation is the rule that specifies that the minutes of the meeting chaired by the president will be submitted to the administration of the president for signature. From this rule, it is understood that the decisions of the government, which we have discussed above, are formalized and adopted in the form of minutes of the meeting, so it is understood that the president can accept the decision of the government, which is the central body of the executive power. However, in Article 35, Part 2 of the Law on the Cabinet of Ministers, it is established that the decisions and orders of the Cabinet of Ministers are signed by the Prime Minister.

Russian researcher A.V. Nechkin commented on the same situation in his scientific work, and in many CIS countries the head of state can preside over government meetings (Russian Federation, Kazakhstan, Armenia, Republic of Belarus, Uzbekistan). In this case, it is necessary to distinguish between the powers of the head of the Government and the chairperson of the Government meeting. The decisive vote is an

individual right belonging to the head of the Government, and in controversial situations (permissive vote) the decisive vote belongs to the chairperson of the meeting. Therefore, he believes that the head of state should have only an advisory vote by presiding over the Government meeting, and it should be a decisive vote in controversial situations[13]. We also fully support this idea.

Certain influence mechanisms of the President of the Republic of Uzbekistan, as the head of the state, in cases of making decisions contrary to the constitution, laws and provisions of his own normative legal documents, are expressed in the legal documents. For example, as defined in Article 35, Part 4 of the Law on Government Activities, the President of the Republic of Uzbekistan has the right to cancel the decisions and orders of the Cabinet of Ministers and orders of the Prime Minister based on the provisions of Article 109 of the Constitution of the Republic of Uzbekistan. Therefore, under any circumstances, the signing of the decisions of the Cabinet by the Prime Minister does not limit the constitutional rights of the President in relation to the government. We believe that it is correct that the President of the Republic of Uzbekistan chairs the meetings of the Cabinet of Ministers as defined in Article 28 of the special law. This situation also exists in the practice of foreign countries[15]. However, according to the legislation of these countries, although the President presides over the Government meetings, there is no rule that the decision taken at this meeting should be signed by the head of state. Of course, the presence of the head of state as chairman of the Government meeting is due to the importance of the discussed issues. Also, the Government pays first attention to the issue discussed at the meeting chaired by the head of state, and it is natural that relevant instructions are expressed in the text of the decision adopted by the president on each case, although it is signed by the Prime Minister. This situation is also legal according to the constitutional basis mentioned above. For this reason, we believe that it is necessary to issue the rule in paragraph 3 of Article 106 of the Regulation of the Cabinet of Ministers of the Republic of Uzbekistan that "the minutes of the meeting chaired by the President of the Republic of

Uzbekistan shall be submitted to the Administration of the President of the Republic of Uzbekistan for signature".

Also, in another case, that is, in Article 36, Part 2 of the Law "On the Cabinet of Ministers of the Republic of Uzbekistan", the decisions of the Cabinet of Ministers are based on the Constitution and laws of the Republic of Uzbekistan, decisions of the Chambers of the Oliy Majlis of the Republic of Uzbekistan, decrees, decisions and orders of the President of the Republic of Uzbekistan and their implementation. In our opinion, the content of the rule that is accepted for the purpose of implementation of the main powers assigned to it does not reflect the authority of the Government to make its own decisions. Therefore, Article 36, Part 2 of the Law "On the Cabinet of Ministers of the Republic of Uzbekistan" includes "Ensuring the implementation of the decisions of the Cabinet of Ministers, the Constitution and laws of the Republic of Uzbekistan, the decisions of the Chambers of the Oliy Majlis of the Republic of Uzbekistan, the decrees, decisions and orders of the President of the Republic of Uzbekistan, as well as their duties and it is proposed to be changed in the style of

Also, the powers of the Prime Minister of the Law "On the Cabinet of Ministers of the Republic of Uzbekistan" are listed.

Article 21, Part 1, Clause 7 states that the Prime Minister makes decisions on issues of state and economic management that are not required to be considered at the meeting of the Cabinet of Ministers. Does the text of the law stipulate that the Prime Minister should find a solution to the issue related to state and economic management and solve the issue in a general sense, or does it mean that the decision to be accepted as a legal document regarding this issue? In our opinion, this text of the law is somewhat unclear.

If the Prime Minister makes a decision on these issues as a legal document, the third part of this article and Clause 7 of the Regulation of the Cabinet of Ministers stipulate that the Prime Minister issues orders on issues within his competence. Therefore, as the document issued by the Prime Minister not on behalf of the government, but in his own name as the head of the government, as the

holder of the post of Prime Minister, it is necessary to clarify the text of the above legal norm and make it "Resolve the issues of state and economic management of the Prime Minister that are not required to be considered at the meeting of the Cabinet of Ministers" it is appropriate to express it in the style of.

In addition, the wide scope of the government's activities and the size of the issues indicate that it can make decisions on issues related to state secrets. The legislation does not provide for the content of these documents to be brought to the attention of the general public. In general, it is the authority of the government to determine specific procedures for dealing with state secrets. Because, in accordance with the Law of the Republic of Uzbekistan "On Keeping State Secrets"[16], the list of objects that are subject to special regulations, particularly important and subject to specific regulations, as well as the authority to establish the procedure for finding and declassifying information, declassifying and declassifying information, determining and determining the level of confidentiality of information Assigned to the Cabinet of Ministers of the Republic.

However, the power of the Cabinet of Ministers to make decisions involving matters of state importance that do not require public announcement is not legally established in the special law regulating government activities. In fact, it is natural to ask what form the legal document issued by the government on the issue of state secrets will be, i.e. in the form of a normative-legal decision or in the form of an order expressing urgent and other current issues. In our opinion, a document containing information related to state secrets, military or service secrets is not required to be made public, it should be adopted in the form of an order. The reason is that, according to paragraph 69 of the Regulation of the Cabinet of Ministers, normative legal decisions of the Cabinet of Ministers must be published in official sources where normative legal documents are published. It is not necessary to publish documents of the Cabinet of Ministers on non-normative and legal matters, as well as on urgent and other current issues[17].

Therefore, the following Article 37 of the Law "On the Cabinet of Ministers of the Republic of Uzbekistan", i.e. "Documents of the Cabinet of Ministers of the Republic of Uzbekistan, which contain information protected by law and constitute a state secret, are adopted in the form of an order and published in official sources and mass media. it is not required to do", it is recommended to fill in the 3rd part of the content.

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