

## Impact Factor:

ISRA (India) = 4.971  
ISI (Dubai, UAE) = 0.829  
GIF (Australia) = 0.564  
JIF = 1.500

SIS (USA) = 0.912  
ПИИИ (Russia) = 0.126  
ESJI (KZ) = 8.997  
SJIF (Morocco) = 5.667

ICV (Poland) = 6.630  
PIF (India) = 1.940  
IBI (India) = 4.260  
OAJI (USA) = 0.350

SOI: [1.1/TAS](#) DOI: [10.15863/TAS](#)

### International Scientific Journal Theoretical & Applied Science

p-ISSN: 2308-4944 (print) e-ISSN: 2409-0085 (online)

Year: 2020 Issue: 12 Volume: 92

Published: 24.12.2020 <http://T-Science.org>

QR – Issue



QR – Article



**Khushvakt Saparbayerovich Khayitov**  
unemployed

Doctor of science in law, associate professor  
100003 Tashkent, Islam Karimov street, block 45  
[nasaf70@mail.ru](mailto:nasaf70@mail.ru)

## PUBLIC EXPERTISE OF DRAFT LAWS: THEORETICAL-LEGAL ANALYSIS

**Abstract:** The article focuses on significance of public expertise in drafting laws, which strengthen legal bases of democratic reforms in Republic of Uzbekistan, that is aimed of expertise and its importance. Some suggestions on improvement of the legal mechanism of public expertise have been developed.

**Key words:** public control, public expertise, expert, lawmaking, law, draft laws, legislative techniques, legal expertise, mechanism of carrying out expertise.

**Language:** English

**Citation:** Khayitov, K. S. (2020). Public expertise of draft laws: theoretical-legal analysis. *ISJ Theoretical & Applied Science*, 12 (92), 335-338.

**Soi:** <http://s-o-i.org/1.1/TAS-12-92-64> **Doi:**  <https://dx.doi.org/10.15863/TAS.2020.12.92.64>

**Scopus ASCC:** 3300.

### Introduction

At the present stage of development of our state, its comprehensive reform, the importance of legislative support and public recognition of the ongoing transformations, effective social and legal regulation of social relations is objectively increasing. The creation of a legal social state is impossible without adequate formation of the necessary legal basis for a new management system. The participation of civil society institutions can provide the necessary democratic basis for the reforms being carried out in the legislative process. These elements of a democratic state are governed by the rule of law are partially focused in the social institution of public expertise of the adopted draft laws.

The gradual liberalization of social life in our country creates ample opportunities for active public participation in all spheres. In 2014, a norm on the exercise of public control by citizens was introduced into article 32 of the Constitution of the Republic of Uzbekistan. This norm is a reliable foundation for the development of the legal basis for the implementation of public control.

Under a democratic system in any state, the participation of the general public in the management of the life of the state and society is required. The state

directs its activities at the person and ensuring the observance of their rights. Thus, in any state following the path of a democratic state based on the rule of law, there is a legal relationship based on mutual obligations and rights. Such ties are realized through various democratic forms and methods. In the system of these interrelationships, public control is acquiring great importance, and in recent years its role has been increasing. It should be noted that the participation of public actors in legislative activity cannot be called satisfactory. In addition, its legislative basis is not formed at the level of requirements, which is one of the problems in this direction.

### Materials and Methods.

Having chosen the path of building a democratic rule-of-law state, a strong civil society, Uzbekistan has defined the protection of human rights and interests as the most priority direction of the development of society and the construction of the state, domestic and foreign policy. As a result of the large-scale reforms being implemented in Uzbekistan, profound changes have taken place in the socio-political, economic and spiritual life of the state and society, a unified legal system has been created to protect human rights and freedoms. In particular, the

## Impact Factor:

**ISRA (India) = 4.971**  
**ISI (Dubai, UAE) = 0.829**  
**GIF (Australia) = 0.564**  
**JIF = 1.500**

**SIS (USA) = 0.912**  
**PIIHQ (Russia) = 0.126**  
**ESJI (KZ) = 8.997**  
**SJIF (Morocco) = 5.667**

**ICV (Poland) = 6.630**  
**PIF (India) = 1.940**  
**IBI (India) = 4.260**  
**OAJI (USA) = 0.350**

approval, in accordance with the Decree of the President of the Republic of Uzbekistan dated February 7, 2017, of the Action Strategy for five priority areas of development of the Republic of Uzbekistan in 2017-2021 was a solid foundation for the implementation of priority areas to further increase the effectiveness of ongoing reforms, create conditions for a comprehensive and intensive development, modernization of the country and liberalization of all spheres of life [1].

At the same time, one of the urgent tasks is the implementation of ever new tasks based on a deep analysis of the path traversed by our country and elimination of existing problems. In this direction, the identification and eradication of factors that negatively affect development in various sectors of the economy is a topical importance. Ensuring the fulfillment of this task requires a special approach in lawmaking. In our opinion, the improvement of expert support for lawmaking is manifested as an effective way of solving problems of legislation. For, "Examination of regulatory legal acts is one of the forms of assessing the quality of a regulatory legal act" [2].

It should be noted that in foreign countries there is also a great interest in expert support for legislative activity. This was noted by T.M. Tatishvili, "The world community has long established for itself the importance of conducting an expert analysis of draft laws, which was enshrined in the legislation of various countries in their legal norms" [3].

The head of state Sh. Mirziyoyev, dwelling on the important features of social partnership in lawmaking, expressed the following opinion: "There is no broad participation of the public, our voters in the adoption of laws. Unfortunately, nobody cares about whether the life of people is made easier with the adoption of laws, whether problems are being solved in their lives. In this regard, I consider it necessary to introduce a new system into the decision-making process - a system of discussion with the population" [4].

Undoubtedly, this proposal serves to further improve legislation and establish public control in this process. Scientists V.V.Kozhevnikov and V.A.Kolbina expressed the following opinion about the significance of this examination: "In addition, examination allows: 1) to involve interested public structures in the implementation of the law-making process; 2) prevent the emergence and escalation of social contradictions resulting from defective legal regulation; 3) harmonize the interests of various social groups; 4) ensure the effectiveness of the adopted regulatory legal acts; 5) improve the quality of the law; 6) eliminate violations of the rules of legal technique, etc." [5]

At the same time, awareness of the general public about legislation and participation in with their

proposals serves to implement the following important truth:

Firstly, lawmakers are able to collect a wealth of information related to the implementation of the law and be able to apply it in the writing of laws;

Secondly, citizens familiarize closely themselves with the content of the adopted laws and express their proposals on them. In doing so, they contribute to the creation of laws.

Thirdly, a reliable mechanism of cooperation in the legislative sphere are created between state bodies and public structures;

Fourthly, the social and political activity of citizens' increase.

It would be correct to assess the initiative put forward above as a type of public control in lawmaking. Naturally, this institution is only one of the types of public control, developing along with the creation of legislation in this area.

It should be noted that Uzbekistan adopted a number of legislative acts related to public control. In particular, the laws "On public associations in the Republic of Uzbekistan", "On non-governmental non-profit organizations", "On self-government bodies of citizens", "On guarantees of the activities of non-governmental non-profit organizations", "On environmental control" and "On public control" are of great importance. However, an analysis of these laws shows that although some of them have norms on public control, there are no norms providing for the types of this public expertise of draft laws, methods and forms of its implementation of public control, in general, special norms providing for control mechanisms.

The State Program for 2017, the Strategy of Action in five priority areas of development of the Republic of Uzbekistan in 2017-2021, defined the task of developing a draft law of the Republic of Uzbekistan "On public control" which raised the work in this direction to a new level. The Law "On public control" was adopted on April 12, 2018 after many discussions. It stipulates that the adoption of this project served to increase the efficiency of the tasks entrusted to state bodies, their observance of human rights, freedoms and interests, the establishment of public control over the attitude of the heads of state bodies to the solution on the spot of citizens' appeals, problems raised in them [6].

As follows from the experience of foreign countries, public control plays an important role in strengthening the rule of law in the country and demonstrating the active position of citizens. At the same time, it should be noted that there are different approaches and views to its understanding and implementation mechanism.

According to the lawyer R. Khakimov, "Public control is one of the integral institutions of a strong civil society, and means regular control by the general public of the activities of state power and management

## Impact Factor:

ISRA (India)	= 4.971	SIS (USA)	= 0.912	ICV (Poland)	= 6.630
ISI (Dubai, UAE)	= 0.829	PIHII (Russia)	= 0.126	PIF (India)	= 1.940
GIF (Australia)	= 0.564	ESJI (KZ)	= 8.997	IBI (India)	= 4.260
JIF	= 1.500	SJIF (Morocco)	= 5.667	OAJI (USA)	= 0.350

bodies and their officials in terms of compliance with the law” [7]. In addition, as noted in the Legal Encyclopedia of Uzbekistan, public control is control carried out within the framework of the law by public bodies formed by citizens, their associations and citizens' self-government bodies, other formations of civil society institutions, as well as within state and non-state bodies for activities of state authorities and administration, as well as non-governmental organizations [8].

As follows from these definitions, there are different approaches to understanding the object of this control. On some of its aspects, scholar M. Mamasiddikov expressed the following opinion: “Public control, firstly, is important not only for society, but also for the effective organization of the activities of state authorities and administration. For public control ensures the effective operation of laws, calls for respect for human rights and freedoms and their protection, and ensures the improvement of state structures. Public scrutiny increases the responsibility of officials. Secondly, through public control, the effectiveness of the opinions and judgments of citizens in public life increases. And this, in turn, ensures even more effective implementation of reforms in the country” [9].

At the same time, in accordance with the Constitution of Uzbekistan, citizens have the right to participate in important political processes individually or collectively. Therefore, citizens can participate in legislative activities independently or as a representative of a certain group.

The law “On Public control” provides for the definition of various forms of public control. In our opinion, among these forms, public examination of draft laws is a kind of effective form of participation in the legislative process.

This draft determines that public expertise consists in studying and evaluating draft regulatory documents and other decisions of state bodies for their compliance with the rights and legitimate interests of citizens, legal entities, and the interests of society. At the same time, it is envisaged that a public examination can be carried out by non-governmental non-profit organizations, citizens' self-government bodies and the media in cases stipulated by law.

It cannot be said that all the provisions reflected in this draft have their grounds. As we consider that after a wide discussion it will be improved. For example, the definition of draft regulatory documents and other decisions of state bodies as the subject of public expertise should be assessed positively. However, at the same time, in order to improve the adopted regulatory legal acts, it would be advisable to include them in the subject of expertise from the point of view of developing proposals.

There is one more aspect to be paid attention to. This norm stipulates that public examination can be carried out in cases established by law. Unfortunately,

it is difficult for the law to provide for all cases of public expertise. At the same time, it is possible to define the types of expertise, requirements and procedures for their implementation. In this regard, it is necessary to determine the norm on “the possibility of conducting a public examination in the manner prescribed by law”.

In our opinion, it is advisable to define the procedure for carrying out this examination in a separate regulatory document. For example, it is necessary to develop a Regulation on conducting a public examination of regulatory legal acts and their projects. The examination should be carried out on the basis of the requirements of this provision. At the same time, in the regulation it is necessary to reflect the range of subjects, the procedure and timing of the examination, their registration, procedural requirements for conducting this examination. In addition, this examination must comply with several principles. In particular, the examination should be carried out in accordance with the principles of legality, openness, independence, scientific character, objectivity, responsibility.

It should be noted that proposals for improving the legal basis for this examination were put forward by some foreign scientists. In particular, V. I. Zakharova, who conducted research in this direction, puts forward a proposal on the development of a draft law “On regulatory legal acts and public examination of decisions of state bodies”, to regulate a unified system for conducting public examination of regulatory documents and decisions of state bodies, and notes that this will create ample opportunities for citizens to participate in the legislative process [10].

In our opinion, given that these links relate to the mechanism for enforcing laws related to public control, it is advisable to consider it a by-law.

## Conclusion

The main principle of any transformations and changes is the socio-state principle of managing socio-economic development, which ensures the full inclusion of the necessary resources of power - through the resource of departments and departments, as well as society - through citizens' requests, civic participation, public expertise and control.

Public expertise, first of all, should be prepared by highly qualified specialists with special knowledge, however, the approach outlined should be based on reliable facts, and also consist of specific proposals and recommendations on the draft law. This will allow, first of all, the authors of the draft law to look at this draft with a new look, to improve its text. Thus, the compliance of the proposals and recommendations prepared on the basis of the results of the public examination and the proposals and recommendations contained in them, the possibility of their implementation is an important factor in the effectiveness of the examination.

<b>Impact Factor:</b>	<b>ISRA (India) = 4.971</b>	<b>SIS (USA) = 0.912</b>	<b>ICV (Poland) = 6.630</b>
	<b>ISI (Dubai, UAE) = 0.829</b>	<b>ПИИЦ (Russia) = 0.126</b>	<b>PIF (India) = 1.940</b>
	<b>GIF (Australia) = 0.564</b>	<b>ESJI (KZ) = 8.997</b>	<b>IBI (India) = 4.260</b>
	<b>JIF = 1.500</b>	<b>SJIF (Morocco) = 5.667</b>	<b>OAJI (USA) = 0.350</b>

## References:

- (2017). Decree of the President of the Republic of Uzbekistan "On the strategy of actions for the further development of the Republic of Uzbekistan" // *Collected Legislation of the Republic of Uzbekistan*, 2017, No. 6, art. 70.
- Titov, N.S. (2015). Goals, objectives and functions of the examination of normative legal acts. *Actual problems of economics and law*, Perm, No. 3, p. 217.
- Tatishvili, T.M. (2015). International experience of expert support for lawmaking. *Bulletin of the Moscow University of the Ministry of Internal Affairs of Russia*, M., No. 1, p.58.
- Mirziyoyev, Sh.M. (2017). *The parliament of our country should become a school of true democracy, initiator and main executor of reforms*. People's word, July 13, 2017.
- Kozhevnikov, V.V., & Kolbina, V.A. (2016). Public (social) examination of draft laws in the Russian Federation: problems and prospects. - Omsk. *Omsk University Bulletin. Series "Right"*, No. 4 (49), p.14.
- (2017). Decree of the President of the Republic of Uzbekistan dated February 7, 2017 No. UP-4947 "On the Strategy of Actions for the Further Development of the Republic of Uzbekistan". *Collection of legislative acts of the Republic of Uzbekistan*, 2017, No. 6, article 70.
- Hakimov, R. (2011). Current issues of modernization of the country and improving public control over building a strong civil society. *Civil Society*, № 10, p.5.
- (2010). *Legal Encyclopedia of Uzbekistan*. Otv. ed. N.Toychiev. (p.167). Tashkent: Adolat.
- Mamasiddikov, M. (2014). Public control is a factor in the development of civil society. – Tashkent, *Law and duty*, № 5. [www.huquqburch.uz](http://www.huquqburch.uz)
- Zakharova, V.I. (2005). *Public examination of draft laws: Sociological analysis: Author's abstract*. dis. social sciences. (p.9). Moscow.