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ANTI-CORRUPTION, GENDER-LEGAL AND CRIMINOLOGICAL EXAMINATION OF DRAFT LEGISLATIVE DOCUMENTS

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Abstract: In this thesis, the issues of anti-corruption, gender-legal and criminological expertise of normative legal documents are analyzed in detail based on the current legislation and theoretical views of scientists.

Keywords : law, expertise, gender, corruption, criminology, state.

In our opinion, since the object of analysis covers issues related to legality and the rule of law, the origin of offenses and other crimes, the rights and legal interests of individuals, it is necessary to understand anti-corruption, gender-legal and criminological expertise of normative legal documents and projects as types of legal expertise. according to

1. Anti-corruption examination.

It should be noted that today in our country, the fight against corruption is one of the priorities of the state policy, and in this regard fundamental reforms have been implemented in almost all spheres of society and state life.

In order to effectively implement these measures, all regulatory and legal documents to be adopted by state bodies are undergoing an anti-corruption examination.

The content of this type of expertise is defined as "determining the factors that create the possibility of committing corruption offenses, that cause corruption; a general assessment of the consequences of adopting a project that creates the possibility of committing corruption-related offenses; predicting the probability of the occurrence of corruption-related risks in the process of applying regulatory legal documents; processes aimed at developing recommendations and taking measures aimed at eliminating the identified factors that caused corruption.

The Laws of the Republic of Uzbekistan "On Regulatory-Legal Documents" and "On Combating Corruption" and the Order of the Minister of Justice of the Republic of Uzbekistan dated February 24, 2021 No. 2 "On the Procedure for Conducting Anti-Corruption Examination of Regulatory-Legal Documents and Their Drafts" the statute is the legal basis of the anti-corruption examination.

It should be noted that although there are scientific views on "anti-corruption expertise of normative-legal documents and their drafts" in the direction of research on the creation of norms, a unified approach has not been developed.

In particular, T.I. Kenjaev, who conducted research on this topic, emphasized that the anti-corruption expertise of legal projects is one of the types of criminological expertise, and defined the concept of "anti-corruption expertise" as "identification of corruption-inducing factors in normative-legal documents and their drafts and aimed at eliminating the identified corruption-inducing factors defined as a complex of measures" [1].

According to legal scholars Sh.G. Asadov and G.S. Ismailova, "various factors affect the reduction of the level of corruption. One of them is the presence of corruption norms in the adopted legal documents and prevention of implementation of such norms" [2].

Analyzing the activity of civil society institutions in the prevention of corruption, M.Muhammadiyeva showed that anti-corruption examination of draft normative legal

documents is considered by the public [3].

In our opinion, anti-corruption examination of regulatory legal documents and their drafts is an activity of evaluating legislative documents and their drafts in order to identify the factors that cause corruption and develop recommendations for their elimination.

among the " factors " that cause corruption, it is possible to include the norms and rules that create the possibility of committing corruption-related offenses, and that cause corruption .

T.I.Kenjaev justified the important role and great importance of the anti-corruption expertise, which is part of the preventive activities that form the general protection of the current and newly created legislation as a legal system, focused on the following:

- manifestation of manifestations of corruption, including identification and early elimination of norms that lead to the commission of corruption offenses;
- identifying "gaps (white spots)" that can be used by unscrupulous subjects of the law for their malicious purposes;
- introduction of other tools that help to quickly and effectively identify the components of corruption in the process of norm creation[4].

According to M. Muhammadijeva, it is necessary to regularly carry out anti-corruption expertise such as internal anti-corruption scientific expertise (insourcing), external anti-corruption scientific expertise (authoring) and anti-corruption crowdsourcing expertise through a platform that unites an unlimited group of people on the Internet, and to improve the anti-corruption system as additional measures, it is necessary to implement the procedure for the scientific examination of drafts of normative legal documents against corruption in the draft Law "On anti-corruption examination of normative-legal documents and their drafts" which is currently being prepared[5].

At the same time, T. Kenjaev said that "during the research conducted in the field of anti-corruption expertise mechanisms, we, like almost all scientists who have thoroughly analyzed this topic, generally divided anti-corruption expertise into two categories, that is, state (official) and independent (unofficial, public) came to the conclusion [6] about division into expertise.

In our opinion, corruption factors in legislative documents and drafts are related to "the stability of norms and legal compliance; related to rights and obligations; related to administrative procedures; factors related to control" can be calculated.

On the basis of the current legislation, the procedure for anti-corruption examination of normative legal documents and their drafts can be expressed as follows.

In particular, anti-corruption examination of legislative documents and their drafts is carried out by the developer and judicial authorities. This examination is carried out by the developer by filling out a checklist in the appropriate form.

If the developer detects a corruption factor in the project, one of the following actions will be taken:

- taking measures to eliminate the identified corruption factor;
- corruption factor " column of the checklist , indicate the legal norm containing the corruption factor, justify that it is not possible to state this norm in a different way, and curb the corruption risks that may arise due to the presence of this corruption factor statement of measures.

The result of the anti-corruption examination of the judicial body is separately reflected in the conclusion prepared based on the results of the legal examination. If corrupt factors are identified in the project, recommendations and measures aimed at eliminating them will be indicated in the summary.

During the research, it was found that there are practical problems in the field of

anti-corruption expertise. In particular, although the Law "On Normative-Legal Documents" stipulates that draft normative-legal documents must undergo legal and anti-corruption expertise, it was known that ministries and agencies did not pay enough attention to anti-corruption expertise of draft normative-legal documents. In particular, in 2022, 391 (15 percent) of the total projects submitted to the Ministry of Justice for examination did not have a checklist for identifying corruption factors.

2. Gender-legal expertise.

In recent years, equal rights and opportunities have been provided for women and men in almost all fields in our country, and it can be noted that organizational and legal frameworks have been created to protect women from oppression and violence.

It should be noted that for the first time in the history of Uzbekistan, the number of women in the parliament has reached a level consistent with the recommendations set by the UN, the number of women in the parliament has reached 32% and has risen to the 37th place among 190 parliaments in the world.

The issue of ensuring gender equality in our country has risen to the level of state policy, a number of legal documents in this area, including 2 laws, aimed at ensuring equal rights and opportunities for women and men in the social, economic and political spheres in accordance with the national goals of sustainable development until 2030 in the Republic of

Uzbekistan a strategy for achieving gender equality was developed [7].

The main tool that ensures gender equality in the national legal system is the gender-legal examination of normative legal documents. After all, a strong legal framework is an effective mechanism for legally ensuring the equality of women and men.

In the related research works, it was noted that "the issue of ensuring women's rights and freedoms on the basis of legislation has occurred in accordance with various factors, including legal culture, law-making experience, the level of formation of civil society, and the permissibility of strengthening the mechanisms for ensuring gender equality in the adopted laws". 8].

Today, gender-legal examination of legislative documents and drafts is carried out in accordance with the Law of the Republic of Uzbekistan "On Guarantees of Equal Rights and Opportunities for Women and Men" and the Cabinet of Ministers' Regulation "On the Approval of the Procedure for Conducting Gender-Legal Examination of Regulatory-Legal Documents and Their Drafts" " is regulated by the decision.

As a special regulatory legal document, the regulation "On the procedure for gender-legal examination of normative legal documents and their drafts" approved by the decision of the Cabinet of Ministers dated March 30, 2020 No. 192 is important. On the basis of this document, it is possible to analyze the gender-legal expertise of normative legal documents and their drafts as follows.

In order to eliminate possible imbalances in determining the rights, obligations, opportunities and responsibilities of individuals, regardless of gender, the normative regulation regulating all spheres of society's life and activity, including politics, economy, law, ideology and culture, education and science. -legal documents and their drafts are subjected to gender-legal expertise.

Also, gender-legal expertise of normative legal documents and their drafts:

- to determine that the normative legal document or its draft, which enables direct and indirect discrimination based on gender, does not comply with the principles of ensuring equal rights and opportunities for women and men;
- a general assessment of the consequences of the adoption of a draft normative legal document that enables direct or indirect discrimination on the basis of gender;
- to identify risks that may arise in the process of applying normative legal documents

and have a discriminatory nature;

- is aimed at developing recommendations aimed at eliminating the norms that directly or indirectly discriminate on the basis of gender.

Although a number of scientific researches have been conducted on this topic, a unified approach to the concept of "gender-legal expertise" has not been formed.

In particular, according to B.Abdullaev, "gender examination of draft laws should be considered as a necessary and mandatory condition of law-making" [9].

Legal scientist H.Hayitov in his research work refers to the concept of gender expertise of draft laws - "in the content of draft laws of experts who have mature knowledge and experience in a specific field of human rights and social activity, in the context of evaluating the inequality between the rights and social opportunities of men and women and eliminating various gender discriminations, the result of which is formalized in the form of a conclusion" [10].

According to P.V. Solovev, gender-legal expertise is the evaluation of a normative legal document or its draft by a specially authorized state body or other entity according to the principle of gender equality, the principles of ensuring equal rights and opportunities of men and women[11].

O.A. Korotkova stated that "it is necessary to understand that there is a thin line between differences and the right to discriminate in the process of conducting gender expertise of legislation, which the gender approach does not allow to cross. A gender approach in the field of law-making is not possible without reflecting the rights of differences between men and women, which cover their biological characteristics. These differences, of course, must be taken into account by the legislator in the process of law-making, but they cannot create certain advantages for women and men. In order to strictly distinguish and maintain the balance of constitutional rights and legal interests, a thorough analysis of each bill or law regulating this type of social relations is required, which is the most important task of gender expertise" [12].

In our opinion, the following can be mentioned regarding some aspects of the definition given to the concept of "gender-legal expertise" in the legislation.

In particular, Article 3 of the Law of the Republic of Uzbekistan "On Guarantees of Equal Rights and Opportunities for Women and Men" dated September 2, 2019 states that "gender-legal expertise - normative legal documents and their drafts for equal rights and opportunities for women and men" analysis of compliance with the principles of guarantee provision" is given a legal description.

Focusing on this concept, the concept of "opportunities" is used. However, the concept of opportunity is broad and is a general concept that encompasses several issues. That is, it is not clearly stated what exactly can be understood within this concept.

For example, in the explanatory dictionaries of the Uzbek language, the concept of "opportunity" (from the Arabic ? opportunity) is interpreted as the necessary or favorable conditions or the power available to bring about [13]. It can also be understood that opportunity depends on both descriptions.

However, according to paragraph 5 of the Uniform Methodology of legal-technical formalization of drafts of normative-legal documents, as well as information-analytical materials attached to them, it is not allowed to use "words and phrases with multiple meanings, metaphorical comparisons, adjectives, sarcasm" in the project.

In our opinion, gender-legal expertise should be understood as " analysis of legislative documents and drafts from the point of view of ensuring equal rights and freedoms and legal interests for women and men ."

Based on this,

the definition given to the concept of " gender-legal expertise " given in the first part



of Article 3 of the Law of the Republic of Uzbekistan "On guarantees of equal rights and opportunities for women and men" dated September 2 , 2019:

It should be edited in the form of " analysis of regulatory legal documents and their drafts in terms of compliance with the principles of guaranteeing equal rights and freedoms and legal interests for women and men ."

3.Criminological expertise.

"Criminology (lat. crimen - crime - Greek. lokos - teaching; ing. criminology) is a science that studies crime, the person of the criminal, the causes of crime and the conditions that cause it, methods and means of its prevention. If we consider only crime in this concept, crime is a social and criminal-legal phenomenon in society, and it is the sum of all crimes committed in a certain country during a certain period of time. The causes of crime and the conditions that create it are the system of events that create negative events and processes in the economic, demographic, psychological, political, organizational and administrative spheres and create conditions for their existence" [14].

The goal of criminology is to develop scientific and practical proposals and recommendations aimed at increasing the effectiveness of the fight against crime. In this, the role of the legislation being developed is incomparable, and it can be seen as a means of fighting crime.

In some of the research works, the criminological examination of the drafts of regulatory legal documents is cited as a synonym of the anti-corruption examination, while in some, it is researched as an independent examination.

In particular, O.A. Borodina stated that criminological expertise reveals the content of the draft legal document, that is, it determines the norms related to the emergence of criminogenic consequences (emergence of criminogenic risks) in various spheres of social relations[15].

B. Abdullaev stated that "criminological examination of draft laws should be considered as a necessary and mandatory condition of law-making"[16].

As stated by V.V.Tenitilova, the subject of criminological expertise should be not only law creation and its products in the form of normative documents, but also economic, social, political institutions and their activities, the effectiveness of the most important economic and management decisions, social reality in its various forms [17]

D.A. Shestakov in his research work mentioned the following issues that should be covered by criminological expertise, in particular: "the legal norm is not "dead"; that the norm is not criminogenic, i.e. does not create an opportunity to commit a crime; that the norm does not contradict international criminal law" [18].

Also, in the definition proposed by S.V. Borodin and V.V. Luneev, the goals of criminological expertise are indicated: "criminological expertise of projects or existing laws and other regulatory documents, to determine their compliance with the social needs of society in the field of combating crime, their adoption or application it is carried out in order to determine possible consequences of a criminogenic or anti-criminogenic nature" [19].

According to G.B. Kysykova, during the criminological examination, the expert uses the approximate-systematic method of scientific-legal examination to determine the existence of circumstances that help or prevent the commission of a crime in the draft law[20].

In our opinion, it is appropriate to define the concept of criminological examination of normative legal documents and their drafts as analysis from the point of view of determining the existence of norms related to the conditions and other situations that

will cause crime in the future .

Based on this definition, in our opinion, it is appropriate to include a new norm on "criminological expertise" in the Law of the Republic of Uzbekistan on April 20, 2021 "On Normative-Legal Documents" ORQ-682.

Also, at the same time, it is necessary to develop organizational and legal frameworks regarding the range of entities conducting criminological expertise of normative legal documents and their projects, the issues covered by this expertise, and the content of measures to be implemented as a result of the expertise.

In conclusion, it should be noted that the role of legal expertise is incomparable in the creation of effective and high-quality legislation, in serving the interests of society and the state, through which legality and the rule of law are ensured in the creation of norms and the legislative system.

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