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Байленова А.Қ.
тел.: 8 (7172) 26-61-29

Қазақстан Республикасы Ақпарат
және коммуникациялар министрлігі
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Қазақстан Республикасы, 010000,
Нұр-Сұлтан қ., Д. Қонаев к., 12/1
«Сулы-жасыл желекжол» БО
тел.: 8 (7172) 57-03-42

www.zqai.kz

E-mail: instzak-kz@mail.ru
institutzakonodatelstva@gmail.com

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Жумагелдина Б.Ж.
Байленова А.К.
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Адрес:

Республика Казахстан, 010000,
г. Нур-Султан, ул. Д. Конаева, 12/1
БЦ «На Водно-зеленом бульваре»
тел.: 8 (7172) 57-03-42
www.zqai.kz
E-mail: instzak-kz@mail.ru
institutzakonodatelstva@gmail.com

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ANALYSIS OF THE EFFECTIVENESS OF LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN ON NATIONAL CHAMBER OF ENTREPRENEURS IN THE LIGHT OF IMPLEMENTATION OF PUBLIC MONITORING

Klimkin Sergey Ivanovich

*Principal Researcher of the Center for legal monitoring
at the Institute of Legislation and Legal Information
of the Republic of Kazakhstan, candidate of legal sciences, Professor;
Almaty, the Republic of Kazakhstan; e-mail: sergklimkin@mail.ru*

Kazbayeva Assel Gabidenovna

*The head of the Center for legal monitoring
at the Institute of Legislation and Legal Information
of the Republic of Kazakhstan, candidate of legal sciences;
Nur-Sultan, the Republic of Kazakhstan; e-mail: kazbaeva.a@zqai.kz*

Keywords: legal monitoring, public monitoring, regulatory legal acts, the National Chamber of entrepreneurs, NCE RK «Atameken».

Abstract. The Center for legal monitoring of the Republican State Enterprise on the Right of Economic Management «Institute of Legislation and Legal Information of the Republic of Kazakhstan» is conducting a fundamental and applied scientific research on the topic: «Public monitoring: state and development prospects».

The issues on improving legal monitoring through the public monitoring of regulatory legal acts and law enforcement practice; analysis of legislation in the field of public monitoring, as well as legal regulation of civil society subjects and their participation in conducting legal monitoring shall be considered within the framework of this research.

The Conception of legal policy for the period from 2010 to 2020, approved by the Decree of the President of the Republic of Kazakhstan, notes the need to continue the work on systematization of current legislation, further consolidation in the context of branches of legislation, releasing it from obsolete and duplicative norms, filling the gaps in legal regulation, elimination of internal contradictions in the current law; minimization of reference norms in laws and expansion the practice of adopting direct-action laws within the range of issues on which the legislative acts can be adopted in accordance with the Constitution in order to increase the efficiency of rule-making activities¹.

Achievement of the goals specified in the Conception, as noted by the President of the Republic of Kazakhstan K-Zh. Tokayev in the pre-election platform in June 2019², should be accompanied by effective interaction between the society and the state with active participation of the former in the activities of the latter.

At the same time, it should be noted that successful interaction between the society and authorities is possible only within the framework of rule-of-law state, in which all civil society institutions conduct an equal dialogue with the bodies and officials with powers of authority. The quality of the rule-making process that determines all spheres of life of the population, as well as the quality of rendering public services, depends on how the state “hears” the problems of the society.

Due to the fact that public monitoring is one of the demanded forms of public control, this research will also study the main provisions and the mechanism of public control as a new democratic institution, allowing the civil society to control the activities of public authorities. It should be noted that the current regulatory legal acts often replace the concepts of monitoring, control and assessing each other.

This article is devoted to the analysis of the Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» for the presence of shortcomings, contradictions, inconsistencies, gaps, as well as the issues of public monitoring conducted by the National Chamber of entrepreneurs «Atameken». After all, the formulated theoretical and legal

¹ Conception of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020. Approved by the Decree of the President of the Republic of Kazakhstan dated 24 August 2009 // LIS «Әділет» [Electronic resource]. URL: <http://adilet.zan.kz>

² On measures to implement the pre-election program of the President of the Republic of Kazakhstan «Welfare for all! Continuity. Justice. Progress» and proposals received during the national action “Birge”: The Decree of the President of the Republic of Kazakhstan dated 19 June 2019 № 27 // [Electronic resource]. URL: <http://akorda.kz>

characteristics of public monitoring as a form of control in the rule-of-law state can significantly show its connection with the concept of the rule-of-law state and civil society.

ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ ҰЛТТЫҚ КӘСІПКЕРЛЕР ПАЛАТАСЫ ТУРАЛЫ ЗАҢНАМАНЫҢ ТИІМДІЛІГІН ҚОҒАМДЫҚ МОНИТОРИНГТІ ІСКЕ АСЫРУ АЯСЫНДА ТАЛДАУ

Сергей Иванович Климкин

Қазақстан Республикасы Заңнама және құқықтық ақпарат институты Құқықтық мониторинг орталығының бас ғылыми қызметкері, заң ғылымдарының кандидаты, профессор;
Алматы қ., Қазақстан Республикасы; e-mail: sergklimkin@mail.ru

Әсел Ғабиденқызы Қазбаева

Қазақстан Республикасы Заңнама және құқықтық ақпарат институты Құқықтық мониторинг орталығының басшысы, заң ғылымдарының кандидаты; Нұр-Сұлтан қаласы, Қазақстан Республикасы; e-mail: kazbaeva.a@zqai.kz

Түйін сөздер: құқықтық мониторинг, қоғамдық мониторинг, нормативтік құқықтық актілер, Ұлттық Кәсіпкерлер палатасы, «Атамекен» ҚР ҰКП.

Аннотация. «Қазақстан Республикасының Заңнама және құқықтық ақпарат институты» ШЖҚ РМК Құқықтық мониторинг орталығымен «Қоғамдық мониторинг: жай-күйі және даму перспективалары» тақырыбы бойынша іргелі және қолданбалы ғылыми зерттеу жүргізеді.

Осы зерттеу шеңберінде нормативтік құқықтық актілерге және құқық қолдану практикасына қоғамдық мониторинг жүргізу арқылы құқықтық мониторингті жетілдіру жөніндегі мәселелер; қоғамдық мониторинг саласындағы заңнаманы талдау, сондай-ақ азаматтық қоғам субъектілерін құқықтық реттеу және олардың құқықтық мониторинг жүргізу кезінде қатысуы қаралады.

Қазақстан Республикасы Президентінің Жарлығымен бекітілген 2010 жылдан 2020 жылға дейінгі кезеңге арналған құқықтық саясат тұжырымдамасында қолданыстағы заңнаманы жүйелеу, заңнама салалары бөлінісінде одан әрі шоғырландыру, оны ескірген және қайталанатын нормалардан босату, құқықтық реттеудегі олқылықтардың орнын толтыру, қолданыстағы құқықтағы ішкі қайшылықтарды жою; заңдардағы сілтеме нормаларды барынша азайту және нормашығармашылық қызметтің тиімділігін арттыру мақсатында Конституцияға сәйкес заңнамалық актілер қабылдануы мүмкін мәселелер шеңберінде тікелей қолданылатын заңдарды қабылдау практикасын кеңейту жөніндегі жұмысты жалғастыру қажеттігі туралы атап өтіледі³.

Тұжырымдамада көрсетілген мақсаттарға қол жеткізу, Қазақстан Республикасының Президенті Қ-Ж. Тоқаевтың 2019 жылдың маусым айында сайлауалды тұғырнамасында⁴ атап өткеніндей, қоғам мен мемлекеттің қызметке алғашқылардың белсенді қатысуымен тиімді өзара іс-қимылымен сүйемелденуі тиіс.

Сонымен бірге, қоғам мен билік арасындағы сәтті өзара іс-қимыл тек құқықтық мемлекет аясында ғана мүмкін болатындығын атап өткен жөн, онда азаматтық қоғамның барлық институттары билік өкілеттіктері бар органдармен және лауазымды тұлғалармен тең диалог жүргізеді. Халық өмірінің барлық салаларын, сондай-ақ мемлекеттік қызмет көрсету сапасын айқындайтын норма шығару процесінің сапасы мемлекеттің қоғам проблемаларын қаншалықты «естітініне» байланысты.

Қоғамдық мониторинг қоғамдық бақылаудың талап етілетін нысандарының бірі болғандықтан, бұл зерттеуде азаматтық қоғамға мемлекеттік органдардың қызметін бақылауға мүмкіндік беретін жаңа демократиялық институт ретінде қоғамдық бақылауды жүзеге

³ «Қазақстан Республикасының 2010 жылдан 2020 жылға дейінгі кезеңге арналған құқықтық саясат тұжырымдамасы туралы» Қазақстан Республикасы Президентінің 2009 жылғы 24 тамыздағы № 858 Жарлығы // «Әділет» Қазақстан Республикасы нормативтік құқықтық актілерінің ақпараттық-құқықтық жүйесі [Электрондық ресурс]. URL: <http://adilet.zan.kz>

⁴ «Қазақстан Республикасы Президентінің «Ігілік баршаға! Сабақтастық. Әділдік. Өрлеу» сайлауалды бағдарламасын және «Бірге» жалпыұлттық акциясы барысында алынған ұсыныстарды іске асыру жөніндегі шаралар туралы» Қазақстан Республикасы Президентінің 2019 жылғы 19 маусымдағы № 27 Жарлығы // [Электрондық ресурс]. URL: <http://akorda.kz>

асырудың негізгі ережелері мен тетігі де зерттелетін болады. Қолданыстағы нормативтік құқықтық актілер көбінесе мониторинг, бақылау және бағалау ұғымдарын бір-бірімен алмастыратынын атап өткен жөн.

Бұл мақала «Қазақстан Республикасының Ұлттық Кәсіпкерлер палатасы туралы» Қазақстан Республикасының Заңында кемшіліктердің, қайшылықтардың, сәйкессіздіктердің, олқылықтардың болуы тұрғысынан талдауға, сондай-ақ «Атамекен» Ұлттық Кәсіпкерлер Палатасы жүргізетін қоғамдық мониторинг мәселелеріне арналған. Шынында да, құқықтық мемлекеттегі бақылау нысаны ретінде әлеуметтік мониторингтің тұжырымдалған теориялық және құқықтық сипаттамалары оның құқықтық мемлекет және азаматтық қоғам тұжырымдамасымен байланысын айтарлықтай көрсете алады.

АНАЛИЗ ЭФФЕКТИВНОСТИ ЗАКОНОДАТЕЛЬСТВА РЕСПУБЛИКИ КАЗАХСТАН О НАЦИОНАЛЬНОЙ ПАЛАТЕ ПРЕДПРИНИМАТЕЛЕЙ В СВЕТЕ РЕАЛИЗАЦИИ ОБЩЕСТВЕННОГО МОНИТОРИНГА

Климкин Сергей Иванович

Главный научный сотрудник Центра правового мониторинга
Института законодательства и правовой информации
Республики Казахстан, кандидат юридических наук, профессор;
г. Алматы, Республика Казахстан; e-mail: sergklimkin@mail.ru

Казбаева Асель Габиденовна

Руководитель Центра правового мониторинга
Института законодательства и правовой информации
Республики Казахстан, кандидат юридических наук;
г. Нур-Султан, Республика Казахстан; e-mail: kazbaeva.a@zqai.kz

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Аннотация. Центром правового мониторинга РГП на ПХВ «Институт законодательства и правовой информации Республики Казахстан» проводится фундаментальное и прикладное научное исследование по теме: «Общественный мониторинг: состояние и перспективы развития».

В рамках данного исследования рассматриваются вопросы по совершенствованию правового мониторинга посредством проведения общественного мониторинга нормативных правовых актов и правоприменительной практики; анализ законодательства в области общественного мониторинга, а также правовое регулирование субъектов гражданского общества и их участие при проведении правового мониторинга.

В Концепции правовой политики на период с 2010 до 2020 года, утвержденной Указом Президента Республики Казахстан, отмечается о необходимости продолжения работы по систематизации действующего законодательства, дальнейшей консолидации в разрезе отраслей законодательства, освобождения его от устаревших и дублирующих норм, восполнения пробелов в правовом регулировании, устранения внутренних противоречий в действующем праве; минимизации отсылочных норм в законах и расширению практики принятия законов прямого действия в рамках круга вопросов, по которым в соответствии с Конституцией могут приниматься законодательные акты с целью повышения эффективности нормотворческой деятельности⁵.

Достижение целей указанных в Концепции, как отмечено Президентом Республики Казахстан К.-Ж. Токаевым в предвыборной платформе в июне 2019 года⁶, должно сопровождаться эффективным взаимодействием общества и государства с активным участием первых в деятельности вторых.

При этом, следует отметить, что успешное взаимодействие между обществом и властью возможно только в рамках правового государства, в котором все институты гражданского общества ведут равный диалог с органами и должностными лицами, обладающими властными

⁵ Концепция правовой политики Республики Казахстан на период с 2010 до 2020 года. Утв. Указом Президента Республики Казахстан от 24 августа 2009 года // ИПС «Әділет» [Электронный ресурс]. URL: <http://adilet.zan.kz>

⁶ О мерах по реализации предвыборной программы Президента Республики Казахстан «Благополучие для всех! Преемственность. Справедливость. Прогресс» и предложений, полученных в ходе общенациональной акции «Бірге»: Указ Президента РК от 19 июня 2019 года № 27 // [Электронный ресурс]. URL: <http://akorda.kz>

полномочиями. От того, насколько государство «слышит» проблемы общества, зависит качество нормотворческого процесса, определяющего все сферы жизни населения, а также качество предоставления государственных услуг.

В силу того, что общественный мониторинг является одной из востребованных форм общественного контроля, в данном исследовании будут изучены также основные положения и механизм осуществления общественного контроля как нового демократического института, позволяющего гражданскому обществу контролировать деятельность органов государственной власти. Следует отметить, что действующие нормативные правовые акты зачастую подменяют понятия мониторинга, контроля и оценки друг другом.

Данная статья посвящена анализу Закона Республики Казахстан «О Национальной палате предпринимателей Республики Казахстан» на предмет наличия недостатков, противоречий, несоответствий, пробелов, а также вопросам общественного мониторинга проводимой Национальной палатой предпринимателей «Атамекен». Ведь сформулированные теоретико-правовые характеристики общественного мониторинга как формы контроля в правовом государстве значительно могут показать его связь с концепцией правового государства и гражданского общества.

Currently, the Republic of Kazakhstan pays great attention to participation of civil society in the issues of improving legislation on strengthening the legal base and building a legal state. The President of the country supports and approves the initiatives taken by non-governmental organizations and public associations aimed at ensuring the rights, freedoms and legitimate interests of vulnerable groups of the population. An example of such an initiative can be the public monitoring of regulatory legal acts, adopted in July 2013.

Public monitoring of regulatory legal acts is governed by Article 51 of the Law of the Republic of Kazakhstan «On Legal Acts» dated April 6, 2016 No. 480-V and assigns the National chamber of entrepreneurs of the Republic of Kazakhstan to conduct the public monitoring of regulatory legal acts affecting the interests of private entrepreneurship subjects. It follows from this that the National Chamber acts as a monopolist in the field of conducting the public monitoring of regulatory legal acts.

In accordance with paragraph 3) of Article 1 of the Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» dated July 4, 2013 No. 129-V, the public monitoring means the activities of the National Chamber on collection, systematization, analysis and generalization of information, including assessment of achievement the degree of solving the problems and tasks to be solved by the regulatory legal act, as well as its impact on the situation of entrepreneurship in the Republic of Kazakhstan.

This innovation allows to conduct the monitoring by non-governmental and public organizations, scientific communities in order to improve the quality of conducted legal monitoring by state bodies. Meanwhile, in the context of development of statehood in the country, the problem of effective and multilateral control over the activities of power structures takes on particular significance. Of course, such a topical innovation is the idea of conducting the public

monitoring of regulatory legal acts, which allows to reveal negative phenomena and processes that are inevitably reflected in the legal field of government activity, such examples may be: abuse of powers, bureaucracy, corruption, which are aggravated by the ability to act at their discretion, low professionalism, immorality of powerful subjects and spiritual and ideological vacuum in the society. The tasks set formed the basis for the competence of the National Chamber in conducting the public monitoring [1; p. 116-120].

According to paragraph 1 of Article 10 of the Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» dated July 4, 2013 No. 129-V, the National Chamber in the field of public monitoring shall perform the following functions:

- 1) carries out the public monitoring;
- 2) submits proposals on improving the activities of central and local state bodies on the issues of entrepreneurship to the Government of the Republic of Kazakhstan;
- 3) participates in assessing the effectiveness of corporate governance in state-controlled joint stock companies.

In addition, on the basis of paragraph 2 of the above mentioned Article of the Law, the National Chamber carries out on a regular basis the preparation and maintenance of an independent rating «Business climate». This makes it possible to provide the society and the state with information on the state of entrepreneurial activity by preparing and publishing an annual national report on the state of entrepreneurial activity in the Republic of Kazakhstan (paragraph 3 of Article 10 of the Law). As a logical conclusion of conducted analysis, the National Chamber sends the results of monitoring to the Government of the Republic of Kazakhstan and (or) authorized state bodies, and based on the results for the year, the results of conducted analysis shall be submitted to the President of the Republic of Kazakhstan for consideration as part of an annual national report on the state of entrepreneurial activity in the country. In other words, the results

are summarized by the National Chamber in the country and formed in the form of a report.

At the same time, despite the legislative consolidation of the functions for conducting the public monitoring of regulatory legal acts, the Law of the Republic of Kazakhstan dated July 4, 2013 No. 129-V «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» requires further improvement.

First, we note that the Conception of the draft Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» marked the Address to the people of Kazakhstan “Strategy Kazakhstan-2050”: new political course of the established state», where the Head of the state N.A. Nazarbayev noted that “... to build a reliable dialogue on the principles of public-private partnership, it is necessary to continue the consolidation of business ... Analysis of international experience shows that the consolidation of entrepreneurs in the chambers is one of the important factors in the efficiency of the economy, where this is done, in fact the principle «strong business - strong state ...» will be embodied⁷.

Taking into account the above, the draft law was developed in pursuance of paragraph 28 of the National Action Plan for implementation of the Address by the Head of the state to the people of Kazakhstan dated December 14, 2012 “Strategy Kazakhstan-2050”: new political course of the established state», approved by the Decree of the President of the Republic of Kazakhstan dated December 18, 2012 No. 449, as well as paragraph 50 of the Plan of legislative works of the Government for 2013, approved by the Resolution of the Government of the Republic of Kazakhstan dated December 29, 2012 No. 1778.

The main message of the analyzed law is in consolidation of the subjects of entrepreneurship, using their mobility and a long-term vision of their place in the innovative economy of sovereign Kazakhstan, as well as within the framework of the Common economic space and forthcoming entry into the World Trade Organization.

In turn, the analysis of effectiveness of the Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» will serve, we believe, as an impetus, an additional guarantee in implementation of the right to carry out entrepreneurial activity in the Republic of Kazakhstan.

The Law of the Republic of Kazakhstan dated July 4, 2013 No. 129-V «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» regulates public relations arising in connection with creation and activity of the National

Chamber of Entrepreneurs of the Republic of Kazakhstan, the development of entrepreneurship in the Republic of Kazakhstan.

Since the day of its adoption, the Law has been amended and supplemented 18 times, which on average makes amendments 3-4 times a year (2014 - 3 times; 2015 - 3 times; 2016 - 2 times; 2017 - 1 time; 2018. - 5 times; 2019 - 3 times). At the same time, the last amendments were made by the Law of the Republic of Kazakhstan dated May 04, 2020 No. 321-VI «On amendments and additions to some legislative acts of the Republic of Kazakhstan on labor issues».

When analyzing the Law, its inconsistency with the provisions of the constitutional laws of the Republic of Kazakhstan was not revealed. However, subparagraph 3) of paragraph 1 of Article 5 of the Law (as well as the very fact of its presence in it), according to which the Government of the Republic of Kazakhstan performs other functions assigned to it by the Constitution, this Law, other laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan, seems to be incorrectly formulated.

Firstly, general provisions on the Government of the Republic of Kazakhstan are contained in Section V of the Constitution of the Republic of Kazakhstan and disclosed in the Constitutional Law of the Republic of Kazakhstan dated December 18, 1995 No. 2688 «On the Government of the Republic of Kazakhstan»;

secondly, in the Constitutional Law of the Republic of Kazakhstan dated December 18, 1995 No. 2688 «On the Government of the Republic of Kazakhstan», we did not find any competences of this state body, especially related to the National Chamber of entrepreneurs. In this regard, this issue falls under subparagraph 16) of Article 9 of the specified Constitutional Law: “16) performs other functions assigned to it by the Constitution, laws and acts of the President”;

thirdly, in this regard, the analyzed Law from the point of view of the hierarchy of regulatory legal acts cannot entrust the Government with the performance of not specifically defined “other functions”;

fourthly, on the issues of competence of the Government, it also cannot refer to “other laws of the Republic of Kazakhstan and acts of the President of the Republic of Kazakhstan”.

Further, in accordance with part one of paragraph 3 of Article 34 of the Civil Code of the Republic of Kazakhstan dated December 27, 1994 No. 268-XIII, a legal entity that is a non-commercial organization can be created in the form of an institution, a public association, a joint-stock company, a consumer cooperative, a

⁷ Poslaniye Prezidenta Respubliki Kazakhstan - Lidera natsii Nursultana Nazarbayeva narodu Kazakhstana «Strategiya «Kazakhstan-2050»: novyy politicheskiy kurs sostoyavshegosya gosudarstva» ot 14 dekabrya 2012 goda // <https://www.akorda.kz/ru>

fund, a religious association and in another form provided for by legislative acts.

Paragraphs 2 and 3 of Article 17 of the Law of the Republic of Kazakhstan «On non-commercial organizations» dated December 27, 1994 № 268-XIII established, that the autonomous organizations of education, the autonomous cluster fund, the notary chambers, bar associations, law firms, the National chamber of entrepreneurs of Kazakhstan, the Chamber of judicial experts of the Republic of Kazakhstan, the Republican chamber of private bailiffs, the Arbitration chamber of Kazakhstan, professional audit organizations, cooperatives of apartments owners, associations of property owners of multi-apartment residential buildings and other non-commercial organizations may be formed in other organizational-legal form. The specifics of the legal status of other organizational-legal forms are regulated by legislative acts.

According to paragraph 2 of Article 15 of the analyzed Law, regional chambers are created by the National Chamber in each region, the city of republican significance and the capital city. Only one regional chamber may be created and operate on the territory of the region, the city of republican significance and the capital city.

At the same time, the legal status (organizational-legal form) of the Regional Chamber is not defined by the Law.

In accordance with subparagraph 10) of paragraph 3 of Article 21 of the analyzed Law, the exclusive competence of the Presidium of the National Chamber includes the approval of a standard charter of Regional Chambers and a standard regulation on branches of Regional Chambers.

In this regard, by the decision of the Presidium of the National Chamber of entrepreneurs of the Republic of Kazakhstan dated October 8, 2013 (Protocol No. 2), the Standard charter of the Chamber of entrepreneurs of the region (the city of republican significance, the capital city) was approved.

In accordance with paragraphs 2.1 - 2.4 of the Standard charter, the Regional Chamber is created in other organizational-legal form of a non-commercial organization, the specifics of the legal status of which are regulated by the Law «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» and other legislative acts of the Republic of Kazakhstan. The Regional Chamber is a legal entity, has a separate property on the right of ownership, is responsible with this property for its obligations, can acquire and carry out property and personal non-property rights and

obligations on its own behalf, be a plaintiff and defendant in the court. The Regional Chamber has an independent balance sheet, settlement and other accounts in national and foreign currency in banks, an emblem registered in accordance with the established procedure, a flag, a seal, a stamp and letterheads indicating its name in the state and Russian languages, as well as in the state and English languages. The only founder of the Regional Chamber is the National Chamber of entrepreneurs of the Republic of Kazakhstan «Atameken» (hereinafter - the National chamber, NCE RK «Atameken»). The decisions within the competence of the sole founder of the Regional Chamber shall be taken by the National Chamber individually and drawn up in writing.

Based on the foregoing, we believe that by doing so, the Presidium of the National Chamber of entrepreneurs of the Republic of Kazakhstan introduced a new organizational-legal form into the system of non-commercial organizations – “the Chamber of entrepreneurs of the region (the city of republican significance, the capital city), thereby violating the requirement of part one of paragraph 3 of Article 34 of the Civil Code of the Republic Kazakhstan and paragraph 3 of Article 17 of the Law of the Republic of Kazakhstan «On Non-Commercial Organizations» on the possibility of creating non-commercial legal entities in other organizational-legal forms provided only at the level of legislative acts.

At the same time, other subsidiaries of NCE RK «Atameken» were created by it in organizational-legal forms provided for by the legislative acts of the Republic of Kazakhstan⁸:

- LLP «Foreign trade chamber of Kazakhstan»;
- LLP «Center for researches of entrepreneurship development»;
- LLP «Center of competences»;
- LLP “Center for monitoring and expertise of the market”;
- PI «Arbitration Center of the National chamber of entrepreneurs of the RK «Atameken».

The fact itself on adopting a special law dedicated to a specific subject also raises questions. So, on the 29th of August, 2013, the Government of the Republic of Kazakhstan, in order to implement paragraphs 2 and 3 of Article 32 of the analyzed Law, decided to form a non-commercial organization in other organizational-legal form «National Chamber of entrepreneurs of the Republic of Kazakhstan» together with the association of legal entities «National economic Chamber of Kazakhstan «Union «Atameken»⁹.

Meanwhile, in accordance with subparagraph

⁸ *Ofitsial'nyy sayt Natsional'noy palaty predprinimateley Respubliki Kazakhstan «Atameken»* <https://atameken.kz/ru/departments/43-too-centr-monitoringa-i-ekspertizy-rynka>

⁹ *Postanovleniye Pravitel'stva Respubliki Kazakhstan ot 29 avgusta 2013 goda № 897 «Ob obrazovanii Natsional'noy palaty predprinimateley Respubliki Kazakhstan»* // <http://adilet.zan.kz/rus/docs/P1300000897>

4) of Article 1 of the Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V «On Legal Acts», the law is a regulatory legal act that regulates the most important public relations, establishes the fundamental principles and norms provided for by the Constitution of the Republic of Kazakhstan.

In accordance with subparagraph 18) of Article 1 of this Law, a rule of law is a generally binding rule of conduct of a permanent or temporary nature, designed for repeated application, extending to an individually indefinite circle of persons within the framework of regulated public relations.

However, we note that other cases are known to the legislation of the Republic of Kazakhstan when separate (special) Laws are devoted to one, specific subject of legal relations:

- Constitutional Law of the Republic of Kazakhstan dated July 20, 2000 No. 83-II «On the First President of the Republic of Kazakhstan - Elbasy»;

- Law of the Republic of Kazakhstan dated March 30, 1995 No. 2155 «On the National Bank of the Republic of Kazakhstan»;

- Law of the Republic of Kazakhstan dated February 1, 2012 No. 550-IV «On the National Welfare Fund».

This situation is probably dictated by special importance of these institutions in the life of the country.

In accordance with part one of paragraph 1 of Art. 15 of the Law, the National Chamber is created in other organizational-legal form of a non-commercial organization.

We have already critically assessed this provision earlier. So, in the Article “Legal monitoring of the Law of the Republic of Kazakhstan dated January 16, 2001 No. 142-II “On non-commercial organizations”, we noted the following: “Considering that Article 17 of the analyzed Law names several organizational-legal forms of non-commercial organizations, the list of which is open, it is advisable to use the plural form in the title of the Article («Other organizational-legal forms of non-commercial organizations»). The use of the singular form leads to misunderstanding that «another» organizational-legal form is considered as an independent form of a non-commercial organization, not specifically indicated in the Civil Code of the Republic of Kazakhstan. At least, this approach is observed in the Law of the Republic of Kazakhstan dated July 4, 2013 No. 129-V «On National Chamber of Entrepreneurs of the Republic of Kazakhstan», according to part one, paragraph 1 of Article 15 of which the National Chamber is created in another organizational-legal form of a non-commercial organization» [2].

In fact, in this case, the word «another»

should be understood as a synonym for the word «other».

Another disadvantage of the current Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» is the presence of obsolete norms in the law. Thus, in accordance with subparagraph 4) paragraph 7 of Article 6 of the Law, the National Chamber interacts with self-regulating organizations on the issues of self-regulation, including the provision of arbitration and arbitration court services to resolve disputes arising between the members (participants) of a self-regulating organization in the field of entrepreneurial activity, as well as between them and consumers of goods (works, services) produced by the members (participants) of a self-regulating organization, and other persons in accordance with the legislation of the Republic of Kazakhstan. However, with the entry into force of the Law of the Republic of Kazakhstan dated April 8, 2016 No. 488-V «On Arbitration», the Law of the Republic of Kazakhstan dated December 28, 2004 «On Arbitration Courts» became invalid.

Also, the term «arbitration court» was excluded by the Law of the Republic of Kazakhstan dated April 8, 2016 No. 489-V «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Arbitration Issues» in the texts of a number of legislative acts.

It is noteworthy, that subparagraph 6) of paragraph 2 of Article 9 of the analyzed Law is set forth in a new (current) edition, without using the term «arbitration court» in it by the specified Law.

Another example, the phrase “the city of republican significance” is used in a number of cases (paragraph 2 of Article 15; subparagraph 3) of paragraph 3 of Article 19; paragraph 1 of Article 25) in the Law. Meanwhile, the city of Shymkent is also classified as a city of republican significance by the Decree of the President of the Republic of Kazakhstan dated June 19, 2018 No. 702 «On some issues of the administrative-territorial structure of the Republic of Kazakhstan». In this regard, in specified norms, the word «city» should be stated in the plural form (in the subject cases).

Here, we note that by the Law of the Republic of Kazakhstan dated December 28, 2018 No. 210-VI «On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on the Issues of the Administrative-Territorial Structure of the Republic of Kazakhstan and Counteraction to the Shadow Economy» in subparagraph 4) of part two of paragraph 1 of Article 21 of the analyzed Law, the word “sixteen” was replaced by the word “seventeen”, which corresponds to the total number of Regional Chambers in Kazakhstan.

In addition, a provision that duplicated the norms of other regulatory legal acts was found in the analyzed Law. In particular, paragraph 2 of Article 2 of the Law, if an international treaty ratified by the Republic of Kazakhstan establishes other rules than those contained in this Law, then the rules of the international treaty shall be applied. This provision duplicates paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan, as well as paragraph 2 of Article 6 of the Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V «On Legal Acts».

Only one, blanket Article 17: «Reorganization and liquidation of the National Chamber shall be carried out in accordance with the laws of the Republic of Kazakhstan» is devoted to the issues of reorganization and liquidation of the National Chamber of entrepreneurs in the Law.

Such approach seems to be erroneous, since, as we noted earlier, the analyzed Law is dedicated to a specific, individual subject, therefore, it must independently, without reference, regulate this issue.

Moreover, in accordance with part one of paragraph 5 of Article 41 of the Civil Code of the Republic of Kazakhstan, the charter of a legal entity determines: its name, location, the procedure for formation and competence of its bodies, the conditions for reorganization and liquidation.

Thus, if the legislator nevertheless did not consider it possible (or expedient) to regulate this issue in the Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan», then it (the Law) should contain a norm referring not to the «laws of the Republic of Kazakhstan», but the charter of the National Chamber of entrepreneurs. In addition, we did not find any reference in the Law to the body of the National Chamber of entrepreneurs, which competence includes making decisions on reorganization and liquidation of the Chamber.

Part one of paragraph 1 of Article 45 of the Civil Code of the Republic of Kazakhstan established that reorganization of a legal entity is carried out by the decision of the owner of its property or the authorized owners of the body, founders (participants), as well as the body authorized by the constituent documents of a legal entity, or by the decision of judicial bodies in cases stipulated by the legislative acts of the Republic of Kazakhstan.

According to part one of paragraph 1 of Article 49 of the Civil Code of the Republic of Kazakhstan, by the decision of the owner of its property or a body authorized by the owner, as well as the body of a legal entity authorized by the constituent documents, a legal entity may be liquidated for any reason.

In accordance with paragraph 22.1 of the Charter of the NCE RK «Atameken», approved by

the joint decision of the founders of the National Chamber of entrepreneurs of the Republic of Kazakhstan dated September 4, 2013 No. 223 / NK, No. 04-02 / 303-p (as of October 24, 2019), the reorganization and liquidation of the National Chamber shall be carried out in accordance with the Civil Code of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan» and other regulatory legal acts of the Republic of Kazakhstan on the basis of the decision of the Congress, as well as on other grounds provided for by the legislative acts of the Republic of Kazakhstan.

In this regard, paragraph 3 of Article 19 of the analyzed Law should be supplemented with subparagraph 13) with the following content: «13) making a decision on voluntary reorganization or liquidation of the National Chamber.»

In addition, in accordance with part one of paragraph 3 of Article 16 of the Law, the founders of the National Chamber do not have property rights to the property of the National Chamber.

According to paragraph 8 of Article 50 of the Civil Code of the Republic of Kazakhstan, the property remaining after the satisfaction of creditors' claims shall be directed to the purposes specified in the constituent documents.

Paragraph 22.2 of the Charter of the NCE RK «Atameken» established that upon liquidation of the National Chamber, the property remaining after the satisfaction of creditors' claims shall be directed to the purposes specified in this Charter, unless another procedure is provided for by the legislation of the Republic of Kazakhstan.

At the same time, the charter of NCE RK «Atameken» does not indicate the specific purposes for which the property will be directed in case of liquidation of the Chamber.

In this regard, paragraph 3 of Article 19 of the analyzed Law should be supplemented with subparagraph 14) of the following content: «14) determining the purposes for which the property remaining after the satisfaction of creditors' claims shall be directed, in case of liquidation of the National Chamber.»

The second part of paragraph 1 of Article 15 of the Law is puzzling, according to which the National Chamber shall not be entitled to engage in political activity, create and reorganize into a political party.

In accordance with part one of paragraph 3 of Article 41 of the Civil Code of the Republic of Kazakhstan, the subject and purpose of a legal entity's activity must be determined in the constituent documents of a non-commercial organization and a state enterprise.

This requirement is due to the fact that these legal entities have a special (limited, targeted) legal personality, and their activity is aimed at performing clearly defined tasks.

The paragraphs 1, 2 of Article 3 of the analyzed Law established that the purpose of creating the National Chamber is to form an institutional basis for the growth and further development of entrepreneurship in the Republic of Kazakhstan.

The tasks of the National Chamber shall be:

1) consolidation of an entrepreneurial community;

2) presentation, ensuring and protection of the rights and legitimate interests of entrepreneurship subjects;

3) organization of effective interaction of entrepreneurship subjects and their associations (unions) with state bodies;

4) assistance in creating favorable legal, economic and social conditions for the implementation of entrepreneurial initiative in the Republic of Kazakhstan;

5) participation in the process of improving the legislation of the Republic of Kazakhstan affecting the interests of entrepreneurship;

6) other tasks stipulated by the legislative acts of the Republic of Kazakhstan.

Relevant provisions are contained in section 3 of the Charter of the NCE RK «Atameken».

It is obvious, that these goals and objectives are in no way related (and cannot be related) with any political activity. With the same success, the analyzed Law could provide for a ban on the National Chamber from engaging in religious activity.

Moreover, in accordance with paragraph 1 of Article 1 of the Law of the Republic of Kazakhstan dated July 15, 2002 No. 344-II «On political parties», a political party is a voluntary association of citizens of the Republic of Kazakhstan, expressing the political will of citizens, various social groups, in order to represent their interests in representative and executive bodies of state power, local self-government and participation in their formation. Paragraphs 1, 2 of Article 8 of this Law established that a citizen of the Republic of Kazakhstan who has reached the age of eighteen can be a member of a political party. Membership of foreigners, stateless persons, as well as collective membership in a political party shall not be allowed.

At the same time, in accordance with paragraph 1 of Article 28 of the Law of the Republic of Kazakhstan «On National Chamber of Entrepreneurs of the Republic of Kazakhstan», the members of the National Chamber are the subjects of entrepreneurship, unless otherwise provided by this Law. In accordance with subparagraph 1-1) of Article 1 of the Law, the subjects of entrepreneurship are commercial legal entities, individual entrepreneurs, peasant

(farm) farms registered in accordance with the legislation of the Republic of Kazakhstan and carrying out entrepreneurial activity in the territory of the Republic of Kazakhstan.

In our opinion, just the above-mentioned formal requirements for membership in a political party on the one hand, and in the NCE on the other, are sufficient to consider the provision of the analyzed Law prohibiting the National Chamber to create and reorganize into a political party as meaningless.

Thus, an analysis of the effectiveness of the main subject on conducting the public monitoring testifies the need for further improvement.

Meanwhile, currently the issues of this type of monitoring are insufficiently developed in the theory of law. Few studies are devoted mainly to public control. In Kazakhstan, public monitoring of the quality of public services rendering, regulated by the Law of the Republic of Kazakhstan «On Public Services» dated April 15, 2013 No. 88-V often acts under the public control.

Hence, there is a question about such identification of these paradigms. Therefore, during public monitoring, the main focus is on the quality of public services with assessment of regulatory legal acts regulating the procedure for their rendering. It can be assumed that the concepts of public monitoring of the quality of public services and public monitoring of regulatory legal acts are identified by the National Chamber.

One could agree that there is no difference between the public monitoring of the quality of public services rendering and the public monitoring of regulatory legal acts, and their division is conditional. However, the seriousness of this issue is due to the need to somewhat dilute these concepts at the legislative level, realizing that a certain amount of conventionality still exists.

To substantiate the fact that these categories can and should be considered independently, we will cite the norms that, in our opinion, most clearly reflect the essence of the public monitoring of public services quality and which is different from the essence of public monitoring of regulatory legal acts affecting the interests of private entrepreneurship subjects. Essentially, these functions have different purposes. It is obvious that the purpose of public monitoring of the quality of public services rendering is collection, analysis of information on the level of quality of rendering public services and development of recommendations (paragraph 11 of Article 1 of the Law on Public Services¹⁰). A different purpose is provided for the public monitoring of regulatory legal acts, which

¹⁰ *Zakon Respubliki Kazakhstan ot 15 aprelya 2013 goda № 88-V «O gosudarstvennykh uslugakh»* // <http://adilet.zan.kz/rus/docs/Z1300000088>.

corresponds to the legal monitoring of regulatory legal acts (paragraph 20) of Article 1 of the Law on Legal Acts¹¹). Consequently, the target direction of such monitoring is identification of obsolete and corruptogenic norms of law contradicting the legislation, assessment of effectiveness of their implementation. Such a clear distinction between the two concepts of public monitoring is not considered to be different by the National Chamber.

Moreover, the public monitoring of regulatory legal acts as an activity on the part of society over functioning of public institutions and relations is considered as part or a type of public monitoring of the quality of public services rendering, which is aimed at assessing (controlling) a specific sector of functioning of a given society - the public sector in the framework of interaction between the state and civil society [3; p. 96-101]. In our opinion, the situation is different here. On the contrary, this public monitoring of the quality of public services rendering will act as part of public monitoring of regulatory legal acts and, in contrast to the introduced monitoring of acts, is more organizationally formalized and normatively fixed. In addition, from the analysis of reporting information of the National Chamber on public monitoring of the quality of public services rendering, this activity reproduces on an ongoing basis the system of actions of non-commercial organizations aimed at establishing restrictions on the part of public authorities by taking their own obligations in the process of realizing public interests, in particular in business area.

We should agree with the conclusion that a distinctive feature of public monitoring of regulatory legal acts from monitoring the quality of public services is: its much less structured, lack of formalization and regulatory regulation, irregular implementation, limited scope of application [4; p. 78-83].

Consequently, the lack of clear legal regulation of public monitoring of regulatory legal acts, in a sense, can be considered a gap made by both the legislator and the direct subject conducting

such monitoring. At the same time, we note that ignoring the requirements of international legal acts that enshrine human and civil rights and freedoms prevents the construction of a democratic constitutional state, where power is limited by the law, accessible, predictable, and effective. Only in the presence of a civil society, the state is called upon to carry out regulating of its relations with the population, mutual control, mutual restriction of state and non-state bodies and movements.

It is quite obvious that the norm on public monitoring of regulatory legal acts, enshrined in the Law of the Republic of Kazakhstan «On Legal Acts» creates an opportunity for the society to control power in the field of legal monitoring, which is a sign of civil society. In other words, only the monitoring of legal acts, acquiring legal forms, shall be able to subordinate power to law, and only under the condition of existence a civil society, the state is “under the law”, herewith the state becomes “legal”. To summarize, at least two conditions are necessary for implementation of the public monitoring of regulatory legal acts:

firstly, the presence of a clear distinction between the concepts of “public monitoring of the quality of public services rendering” and “public monitoring of regulatory legal acts”;

secondly, such conditions of interaction between the state and civil society in the field of legal monitoring of regulatory legal acts affecting the interests of private entrepreneurship subjects, in which they are presented as equal subjects.

As a result, public monitoring of regulatory legal acts, implemented in an organized and purposeful manner, will allow to solve emerging problems between entrepreneurs and the state in a completely civilized manner, by using the channels of interaction and mutual responsibility determined by the law. Thus, the introduction of the Institute of public monitoring is the first step towards regulating the issues of public control, which will require the adoption of a huge array of legal acts, which, ultimately, can ensure «transparency» of relations between the state and society.

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¹¹ Закон Respubliki Kazakhstan ot 6 aprelya 2016 goda № 480-V «O pravovykh aktakh»// <http://adilet.zan.kz/rus/docs/Z1600000480>