

ANALYSIS AND RECOMMENDATIONS FOR IMPROVEMENT OF NATIONAL LEGISLATION ON ELECTRONIC PUBLIC SERVICES IN KAZAKHSTAN

Ruslan Dairbekov

Senior Legal Expert
The European Union funded Project
“Regional Development of
Kazakhstan”

43 Apt., 24 Building, Samal-1,
Almaty, Kazakhstan.
050000
+7701 2501457
rdairbekov@yandex.ru

ABSTRACT

In the area of social development of the Republic of Kazakhstan, provision of public services is perhaps one of the most important for the whole system of executive power.

The overall objective of this paper is to contribute to a more equitable regional development and increasing living standards in the regions of Kazakhstan through the reviewing and analyzing the Law of the Republic of Kazakhstan on Public Services – Law 88-V, of 15th April 2013¹ and Law 89-V, of April 2013 on amendments to some legislative acts of the Republic of Kazakhstan on issues related to the public services².

The specific objective of this work is to support the government of Kazakhstan at central and regional levels in designing and implementing a coherent legislative and institutional framework conducive to local development.

The considered experience paper is focused on the following: (i) analyze the existing regulations and bylaws in order to assess the current gaps in meeting international standards; (ii) propose a coherent legislative and institutional framework conducive to local development in Kazakhstan; and (iii) identify the challenges facing the e-government policy implementation.

The paper argues for a strong access to information component in public service provision that plays vital role in the ability of citizens to claim their right to information and to use it to demand better governance and public services.

This paper is particularly beneficial for academics and practitioners from other post-Soviet countries which share many of the challenges and problems facing e-government implementation in Kazakhstan.

METHODOLOGICAL APPROACH

This paper is based on public services legislation review. The research findings and conclusions are primarily based on the use of the secondary sources: first, laws and bylaws; second, reports (strategies, roadmaps) published by the international organisations and relevant government bodies.

General Terms

Standardization, Theory, Legal Aspects.

Keywords

- E-Government;
- Information access for public service delivery;
- The Law on public services;
- Local development in Kazakhstan;
- Electronic public services;
- Central government functions.

1. INTRODUCTION

UNESCO describes e-Governance as the use by the public sector of ICTs to improve delivery of information and services, encourage participatory decision making among citizens, “and make the government more accountable, transparent and effective”.

President of the Republic of Kazakhstan raised the issue of public services organization in his message to the people of Kazakhstan “Social and economic modernization is the major development vector of Kazakhstan” in January 2012, in which the Head of State has determined quality improvement of the public services provided to the population as one of the priority directions of the country development.

¹ The Law No 88-V of the Republic of Kazakhstan on Public Services of 15 April 2013

² The Law No 89-V on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Public Services dated 15 April 2013

The 2010 - 2020 legal policy concept of the Republic of Kazakhstan stated the need to improve the legal framework for public services, fully introduce standards for services provision, expand the roster of public services, and implement effective external control of their compliance using the latest technologies.

To ensure further reform of public administration in the Republic of Kazakhstan, the Law No 88-V of the Republic of Kazakhstan on Public Services and the Law No 89-V of the Republic of Kazakhstan on Amendments and Additions to Certain Legislative Acts on Public Services were adopted on 15 April 2013.

2. CURRENT LEGAL ENVIRONMENT

As part of Law on issues related to the public services, its drafters attempted to address a number of conceptual issues in the provision of public services, including on creation of legal conditions for defining the essence of the public services scope, basic principles, and objectives of the formulation and implementation of the state policy in this area. The law provided a new concept of “the public service”, which was brought in compliance with the Resolution No 8 of the Constitutional Council of 15 October 2008 and the resulting decisions No 51-7.3 of the Legal Policy Council of May 29, 2012.

This way, a public service is defined as “a form of implementation of certain state functions performed individually based on the appeal from service recipients and aimed to provide them with appropriate tangible and non-tangible benefits”.

The rights of the consumers of public services, including the right to participate in public discussions of draft standards for public services were legislatively regulated.

At the same time, drafters of the law have provided the norms for separating powers of state bodies in the public services area and improving procedures for rendering public services, including those provided in an electronic format.

The law provided the conditions for citizens and organizations to exercise their social rights through participation in the public monitoring of the quality of public services.

A positive novel of the law “to inform services recipients about public services provision procedure” should also be noted, which regulates, among other things, the requirement to post standards for public services on the web-portal of the “electronic government” and Internet resources of the central government agencies, as well as the possibility to apply to the one-stop contact center on public services provision related issues.

In order to bring the legislation of the Republic of Kazakhstan in compliance with the Law on Public Services, some amendments were made to certain legislative acts related to public services as part of the accompanying draft law. These include the Budget Code of the Republic of Kazakhstan and the Code on Public Health and Healthcare System, as well as the Laws on Pension Security in the Republic of Kazakhstan, on Normative Legal Acts, on Administrative Procedures, on State Social Order, on Private Entrepreneurship, on Informatization, on the Order of Considering Appeals of Physical and Legal Persons, and on State Registration of Real Estate Rights.

As a legal framework to ensure the provision of public services, mechanisms for legal regulation of public services provision by state bodies and their interaction in the process of rendering such services were legislatively approved. This way, in order to

implement the concerned Law on Public Services of the Republic of Kazakhstan more than 17 subordinate normative legal acts were adopted in the following areas of legal regulation of public services provision:

- a. methodology for determining the cost of the public service;
- b. optimization and automation of public services;
- c. monitoring the quality of public services provision;
- d. development of standards and regulations for public services;
- e. activity of the public service centers, and etc.

There is no doubt that adoption of a special Law on Public Services, the purpose of which was incorporation and unification of norms regulating all major issues related to rendering public services in a single legal act is a significant contribution to the formation of legislation in the sphere of public services provision. However, it is too early to talk about complete formation of a comprehensive legal framework for the provision of public services.

Given the lack of the results on state monitoring of enforcement of the Law on Public Services, the major objective of this analysis was to identify certain problems resulting from insufficient legal regulation of social relations in the field of public services rendering and the recommendations for improving certain provisions of the concerned law and normative legal acts to ensure its implementation.

It must be stressed that Kazakhstani legislation lacks an access to information law. As a result, the public governance including its electronic part remains non-transparent. The responsibility of the Republic of Kazakhstan arises towards access to information not only from the Constitution of the Republic of Kazakhstan³, but also from the recommendations of Organization for economic co-operation and development (OECD) in the framework of anti-corruption network for Eastern and Central Asia⁴.

The failure to adopt access to information legislation goes against international law which recognizes this right and obliges states to ensure that public authorities respond to information requests.

3. ELECTRONIC PUBLIC SERVICES

As part of the Information and Communication Technologies Development Program in the Republic of Kazakhstan for 2010 - 2014, the Government of the Republic of Kazakhstan has set a goal of switching at least 50 percent of socially significant public services to electronic form by 2014.

³ The Constitution of the Republic of Kazakhstan

Article 20 “Everyone shall have the right to freely receive and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law”

⁴ The Istanbul Anti-Corruption Action Plan plenary meeting on 10 October 2014 at the OECD Headquarters in Paris.

Find out more at

www.oecd.org/corruption/acn/istanbulactionplan/.

On 27 January 2012, in his annual message to the people of Kazakhstan “Social and economic modernization is the major development vector of Kazakhstan”, the President of Kazakhstan stated: “...e-government should be developed. 60 percent of socially significant public services, including all types of licenses shall be provided in electronic form only by the end of 2012. Starting from 2013, Kazakhstani people should also obtain all permits from the government either in an electronic form or through public service centers”.

Based on the analysis of the lawmaking process related to the reform of information legislation and elimination of the existing legal gaps in public services provision using information and communication technologies (hereinafter - ICTs) it should be noted that to date many essential aspects in this area were legislatively improved. The example is the “List of public services provided in the electronic form on the basis of a unified application” approved by the Resolution No 624 of the Government of the Republic of Kazakhstan on 19 June 2013⁵. Pursuant to this list, at present, the following public services in electronic form are ensured:

- Registration of citizens of the Republic of Kazakhstan at the place of their residence;
- Deregistration of citizens of the Republic of Kazakhstan at the place of residence;
- Issuance of address related certificates at the place of residence;
- Registration and recording of unemployed citizens;
- Issuance of certificates to unemployed citizens;
- Registration records of an individual entrepreneur, private notary, private judicial enforcement agent and attorney;
- Issuance of a patent to a sole proprietor;
- Birth registration, including changes, additions and corrections to the records of civil status, granting allowances for childbirth and child care;
- Placing pre-school age children (under 7 years) on the waiting list for their direction to pre-school institutions.

Speaking about future work on transition of public services to an electronic form, the “List of public services subject to optimization and automation, timing of their transition to the electronic form and invalidation of certain decisions of the Government the Republic of Kazakhstan” approved by the Government Resolution No 991 of the Republic of Kazakhstan on 23 September 2013⁶ should be noted.

This way, 442 public services are subject to optimization, automation and transition to the electronic form from 2013 to 2016.

⁵ Resolution No 624 of the Government of the Republic of Kazakhstan on 19 June 2013

⁶ Government Resolution No 991 of the Republic of Kazakhstan “On approval of the List of public services subject to optimization and automation, timing of their transition to the electronic form and invalidation of certain decisions of the Government the Republic of Kazakhstan” dated 23 September 2013

The above services are subject to optimization and automation by the state central authorities in accordance with the “Rules of optimization and automation of public services” approved by the Government Resolution No 845 of the Republic of Kazakhstan on 26 August 2013⁷.

The above Rules govern the process of optimization and automation of public services by the relevant state authorities, which implies, among other things, conducting a survey to determine the possibility of public services optimization (including through automation). For this purpose a working group composed of a number of employees of the state authority, representatives of concerned government agencies, authorized body, services providers, accredited associations of private entities and independent experts in the area of activity of the responsible state agency is created.

In this context, speaking about further optimization of the public services provision process, attention should be paid to the fact that the above Rules do not include any criteria and mechanisms for selection of public services subject to automation, as well as the order of their automation.

In addition, the order of public services transition to an electronic format (stages, result forms, key responsible persons), the order of interaction between the state central and local executive bodies in integrating information systems for public services provisions and their responsibility for accuracy of the information in the state databases are not fully established.

Significant social and economic issues are linked with the ICT development. It is important to address them from the perspective of protecting interests of citizens. The state is obliged to ensure universal access to public e-services, including for ethnical minorities, the poor, homeless and people with physical disabilities. These vulnerable population groups may need special assistance, including information and consultations on the order of these services provision. It is important to ensure public awareness of the advantages of the public e-services.

In this regard, certain provisions of the “Rules for the development of standards and regulations for public services” approved by the Order No 249 of the Minister of Economy and Budget Planning of the Republic of Kazakhstan dated 14 August 2013⁸ should be noted with a greater extent of satisfaction. Thus, in accordance with paragraph 10 of Article 2 of the Rules, the standard for public services must include the section “Other requirements given specificity of public services provision, including those provided in an electronic form and through public services centers”, which in turn should include:

“specificity of public services provision to persons attributable to the socially vulnerable population groups given their inability to

⁷ Government Resolution No 845 of the Republic of Kazakhstan “On approval of the Rules of optimization and automation of public services” of 26 August 2013

⁸ The Order No 249 of the Minister of Economy and Budget Planning of the Republic of Kazakhstan “On approval of the rules on the development of standards and regulations for public services” dated 14 August 2013. Registered with the Ministry of Justice of the Republic of Kazakhstan of 16 August 2013, No 8622

personally approach a service provider, and (or) the public service center”.

However, details of the user groups and description of their social and demographic characteristics remain unclear in the above standard for public service. The normative legal base on public services must reflect the needs of people and involve them in adopting the decisions on how services should be provided, and be sensitive to the needs of particular groups of people. All these can be analyzed only through processing data on users of electronic public services.

3.1 RECOMMENDATION

- The Kazakhstani legislation shall provide definition of the criteria and mechanism for selecting public services to be automated, as well as the order of their automation;
- The information detailing user groups and description of their social and demographic characteristics shall be added to the standard for public services.

4. THE RIGHT OF ACCESS TO INFORMATION ON THE ORDER OF PUBLIC SERVICES PROVISION

Special attention should be paid to the right to access information in the context of legal formalization of the order of providing public services.

The current regulation of issues related to provision of information to citizens of the Republic of Kazakhstan indicates of the need not only to formalize efficient mechanisms to ensure this constitutional right in certain normative legal acts, but also the need for a unified legal regulation of this issue.

In light of the topic concerned, certain provisions that to some extent govern the right to information are scattered in various laws.

As an example, the Law on Protection of Consumers' Rights of the Republic of Kazakhstan sets forth the consumers' rights and their protection, in particular:

- the right of consumers to access information on the protection of consumers' rights;
- the right of consumers to obtain information about the goods (works, services), as well as about the seller (producer, provider).

The Law on Public Services also includes certain norms relating to exercise of citizens' right to information on the order of public services provision.

The content of the right to information is reflected in the Law as the right of a service recipient “to receive complete and accurate information about public services” (paragraph 1 of Article 4 of the Law on Public Services), and the responsibility of the service providers “to provide complete and accurate information on the procedure of public services provision to service recipients in an accessible form” (paragraph 2 of Article 12 of the Law on Public Services).

The positive provision of the Law “to inform service recipients of the procedure of public services provision (Article 23 of the Law on Public Services), which regulates, among other things, the requirement to post standards for public services on the web-portal of the electronic government, Internet resources of the

central government agencies, as well as the opportunity to apply to a one-stop contact center on public services provision should be specifically noted. The requirement to post online information on the procedure of public services provision is a significant improvement. This broad approach to proactive publication is one of the most positive aspects of the law.

In addition, drafters of the law formalized procedural aspect of the right to information, namely the ability of individuals and non-profit organizations “to request the required information relating to the provision of public services from the central state bodies, in cases when this information is not posted on their internet resources” as part of the community monitoring of public services provision (Article 29 of the Law on Public Services).

Unfortunately, none of the above norms requires mandatory publication of information on the procedures for submission and consideration, the results of handling the inquiries, complaints and suggestions from individuals and legal entities.

In this regard, a model of legal regulation of this issue can be provided as an example. Article 5 of the Model Law on Electronic Public Services approved by the Resolution No 34-7 of the Interparliamentary Assembly of the Commonwealth of Independent States of 07.04.2010 reads as follows:

“Executor (provider) of the electronic public service shall mandatory publish information on its activity related to the performance (provision) of the electronic public service, including: on the procedure for submission and consideration, on the results of handling the inquiries, complaints and suggestions from individuals and legal entities”.

Therefore, it should be stated that the Law does not fully ensure exercise of the service recipient's right to complete and accurate information about the public service. The above statement is due to the lack of procedural aspects of legal formalization of the right to information, which include the procedure of requesting information from state bodies. Since the national legislation, as well as the concerned draft law do not provide any clear legal mechanism that would ensure access to information, including components such as the inquiries registration procedure, terms of information provision, and etc., its implementation seems impossible in many cases.

4.1 RECOMMENDATION

The Law shall provide for procedural aspects of legal formalization of the right to information, namely, the procedure for requesting information from the state bodies.

5. THE POLICY IMPLEMENTATION

Despite a number of complex public administration reforms implemented in Kazakhstan, the delivery of public services still has some institutional weaknesses. Given a number of policies, laws, and frameworks have been designed to enhance and promote the use of ICT in service delivery; and to regulate it, there still remain important issues, with respect to which the national legislation falls short of meeting international standards.

The Kazakhstani government has put high expectations on the introduction of e-government for three objectives: to provide fast and quality access to public services; to improve public services' effectiveness through the widespread use of ICT in the public sector; and to minimize personal contact between customers and

government officials in order to reduce administrative corruption (Moskalenko, 2007; World Bank, 2006c).

While promoting transparency and public accountability, e-government policy has posed a serious challenge for the Kazakhstani traditional bureaucrats who perform in the corrupt public sector environment. Corruption is considered to be a part of public sector culture in Kazakhstan (Bhuiyan, 2010; Cummings, 2005; Jandosova et al., 2002; Janenova, 2009a, 2009b; Perlman and Gleason, 2007).

After years of e-government implementation the majority of government bodies still provide informational services at the very basic level despite significant investments in improvement of technological infrastructure, training of the government officials and IT staff.

An e-government program has been in place since 2006 to provide citizens with fast and reliable access to public services on-line. This has included the creation of a network of public electronic centers where people without direct access to the internet can avail themselves of on-line services, examples of which are: filing tax returns and making tax payments, pension fund deductions, property registration, and setting up a business (Knox, 2008).

Since the launch of the new policy in 2004, Kazakhstan has made good progress in modernizing and improving public services. According to the United Nations E-Government Survey 2012 (UN Survey 2012) Kazakhstan has improved its position in the rating from 81st position in 2008 to 38th position out of 192 in 2012. In terms of the e-participation index Kazakhstan now holds 2nd position together with Singapore.

The expected outcome of e-government policy is building joined-up government, which enables information to be gathered and shared across departments, and public services to be re-organised and joined together in an integrative manner. Thus, the technological infrastructure in the country can enable or constrain service integration as a means to overcome distance and assist vulnerable groups in remote locations to get access to the public services.

As repeatedly pointed out in this paper, Access to Information legislation of Kazakhstan needs to be complemented by specific legal provisions that link information access to service delivery

The lack of effective mechanisms for feeding back citizens complaints, views, requests in relation to public services. As a

result, public services to the citizens lack transparency, accountability and quality.

While law on Access to information is not directly geared toward improving service delivery, the introduction of provisions regulating the access to information into national legislation increases citizens' ability to monitor and enhance the accountability of agents involved in public service delivery.

It is important to identify governance problems, provide means for assessing the effectiveness of policy reforms to address those problems and formulate better policies. The national legislation should contribute to better delivery of public services responding to the needs of population, assisting in building a sustainable society.

REFERENCES

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