

On the legal framework for the provision of public services in the Russian Federation and the Republic of Kazakhstan: a comparative legal characteristic

N Kandrina^{1*}, O Kazantseva¹, and V Zubkova¹

¹ Altai State University, 61 Lenina prospect, Barnaul 656049 Russia

E-mail: nadezhda.candrina@yandex.ru

Abstract. The article is devoted to a comparative legal description of the legal framework for the provision of public services by public authorities in the Russian Federation and the Republic of Kazakhstan. The article discusses the controversial issues of legislative practice and makes proposals for the adaptation of its positive experience in the legislation of a cross-border state.

Keywords: public service, provision of public services, legal framework, legislation

1. Introduction

In the practice of contemporary public administration of the advanced democracies of the world, the institution of providing public services to the population occupies a leading position [1]. In Russia and Kazakhstan, the mentioned processes are also characterized by active formation, consolidation in legislation and dynamic development as a new form of interaction between the modern state and the individual. Improving the quality and availability of public services to the population is defined as state priorities of the Russian Federation [2] and the Republic of Kazakhstan [3].

The relevance of considering the legal framework for the provision of public services in Russia and Kazakhstan from the standpoint of comparative jurisprudence is caused by the following main circumstances. First, Russia and Kazakhstan, as the former Soviet republics as part of a single state of the USSR, have the same tasks to form a new paradigm of interaction between the state (a service provider) and the individual (a service recipient). The contemporary realities vividly demonstrate the active formation of their legislation in the mentioned area. In this regard, the study of the legal framework for the provision of public services to the population in Russia and Kazakhstan is aimed at identifying their general principles and mechanisms for implementation, identifying the main trends for further development.

Second, legislation in the system of providing state services to sovereign states of Russia and Kazakhstan is also characterized by certain features; in particular, they are due to the use in legislative practice of various approaches to the concept and essence of public services, the definition of entities providing and organizing the provision of public services, etc.

Consequently, the purpose of the work is to study special laws and other regulatory legal acts of Russia and Kazakhstan in the system of providing public services for understanding the legal nature of public services and the mechanism of its provision. Also, the aim of the work is the possible

adaptation of the positive experience of legal regulation to the legislative practice of a cross-border state.

2. Materials and Methods

The subject of our research was the fundamental provisions of the Constitutions of the Russian Federation and the Republic of Kazakhstan, the normative legal acts of these states adopted on their basis on the provision of public services, as well as the advanced research in the above-mentioned sphere.

So, the constitutional legal basis for regulating social relations in the system of providing public services in Russia is the provision of the Constitution of the Russian Federation that Russia is a democratic federative legal state with a republican form of government in which a person, his rights and freedoms are the highest value [4]. The legislation of Kazakhstan on the provision of public services is based on the norms of the Constitution of the Republic of Kazakhstan, according to which Kazakhstan claims to be a democratic, secular, legal and social state, its highest values are epy people, their lives, rights and freedoms [5].

In the Russian Federation, the Federal Law of July 27, 2010 No. 210-FZ on the Organization of Provision of State and Municipal Services [6] (hereinafter, the Federal Law of 2010) is considered to be a special law on the provision of public services. In accordance with this law and other federal laws, other regulatory legal acts are adopted. In particular, Resolution of the Government of the Russian Federation dated May 16, 2011 No. 373 on the Development and Approval of Administrative Regulations for the Implementation of State Control (Supervision) and Administrative Regulations for the Provision of Public Services [7] and Resolution of the Government of the Russian Federation of December 22, 2012 No. 1376 on Approval of the Rules for Organizing the Activity of Multifunctional Centers for the Provision of State and Municipal Services are of key importance among them [8]. In accordance with the 2010 Federal Law, the provision of public services in the constituent entities of the Russian Federation is governed by their laws and other regulatory legal acts; municipal legal acts on the provision of municipal services to the population are also to be adopted.

In the Republic of Kazakhstan, on the basis of the provisions of the Law of the Republic of Kazakhstan dated April 15, 2013 No. 88-V "On Public Services" [9] (hereinafter, the 2013 Law of the Republic of Kazakhstan) as the basic law on the provision of public services, other regulatory legal acts of the Republic of Kazakhstan are adopted. The legislation of Kazakhstan in the provision of public services also includes, for example, the Resolution of the Government of the Republic of Kazakhstan dated September 18, 2013 No. 983 on Approval of the Registry of Public Services [10] and Resolution of the Government of the Republic of Kazakhstan dated January 29, 2016 No. 39 on the Establishment of a Non-Profit Joint-Stock Company State Corporation "Government for Citizens" [11]. The Order of the Minister of National Economy of the Republic of Kazakhstan dated December 3, 2014 No. 126 approved *The Rules for the Development of Standards and Regulations of Public Services* [12], In turn, the regulations of state services provided by the state revenue bodies of the Republic of Kazakhstan are approved by the order of the Minister of Finance of the Republic of Kazakhstan dated June 4, 2015 No. 348 [13], etc.

When analyzing the studied legislation, we took into account the most generally accepted scientific approaches in jurisprudence, which relate to a greater degree to the definition of the legal nature of public services provided by public authorities to the public [14, 15, 16, 17, 18].

In carrying out the study, the methods of dialectics as a general scientific method of cognition were used, as well as more specific scientific methods were used: formal legal, legal comparative case studies.

3. Results

As a result of the conducted research, it can be shown that the system of legislation on the provision of public services has been formed in both the Russian Federation and the Republic of Kazakhstan. It is

based on the same fundamental constitutional provisions, consisting of a special law, laws and other subordinate regulatory legal acts.

In this regard, the following provisions can be attributed to similar, common features and approaches to the legal regulation of social relations arising in connection with the provision of public services in Russia and Kazakhstan.

First, the legislation of Russia and Kazakhstan establishes, in general, similar basic principles for the provision (provision) of public services. For example, according to the 2010 Federal Law, similar principles are the legitimacy of the provision of public services; application procedure for the provision of public services; the legitimacy of charging state fees for applicants for the provision of public services; the openness of the activities of bodies providing public services, as well as other organizations; the availability of applying for the provision of public services; the possibility of obtaining public services in electronic form, if it is not prohibited by law, as well as in other forms provided for by the legislation of the Russian Federation [6]. In the 2013 Law of the Republic of Kazakhstan, the basic principles for the provision of public services are as follows: the equal access to services to beneficiaries without any discrimination in any circumstances; the inadmissibility of red tape and red tape in the provision of public services; accountability and transparency in the provision of public services; quality and availability of public services; continuous improvement of the process of rendering public services; cost effectiveness and efficiency in the provision of public services [7].

Second, the legislation of both states establishes similar provisions on the mechanism and forms of providing public services, including on the principle of “one window”, in electronic form, on the powers of special state-created organizations in the system of organizing and providing public services: the State Corporation “Government for Citizens” in Kazakhstan and multifunctional centers providing state and municipal services in Russia, as well as others.

Along with this, the laws of the Russian Federation and the Republic of Kazakhstan in the system of providing public services have a number of differences. With the similarity of their common basic principles of the provision of services, these differences determine the possibility of adapting the positive experience of legal regulation to the legislative practice of another cross-border state.

First, it should be noted that the legislation of the Republic of Kazakhstan in this area is more centralized than in the Russian Federation, due in part to their different state structure – Russia is a federal state, Kazakhstan is a unitary state.

Second, in the Russian legislation in the sphere of providing services as a public law category, the category “municipal service” is used along with the concept “public service.” The last one is provided by local governments and other authorized organizations to address local issues, as well as in other cases provided for by a special federal law on local self-government. Under the Kazakhstan law, municipal services are not provided.

And third, the key difference of the studied legal framework is the different approaches of the legislators of Russia and Kazakhstan to the concept of the state service itself as a public legal category. According to the 2013 Law of the Republic of Kazakhstan, public service is interpreted in a constitutional and legal sense as one of the forms of realization of certain state functions carried out individually on the request of service recipients. And the state service is aimed at the appropriate tangible or intangible benefits [7]. According to the 2010 Federal Law, it is considered in its administrative and managerial meaning as an activity to implement the functions of the federal executive body of a constituent entity of the Russian Federation, the state extra-budgetary fund, and the local government body in the exercise of transferred state powers. Public service is carried out at the request of applicants within the authority of the bodies providing public services [6].

4. Discussion

The following questions are the most controversial: issues of different definitions of the concept of state services in the laws of Russia and Kazakhstan, the absence of municipal services in the legislation of Kazakhstan as a public law category, the use of the concepts of “provision” or “rendering” in relation to public services in the legislative practice of states.

First, the existing differences in the definition of the concept of public service in the 2010 Federal Law and the 2013 Law of the Republic of Kazakhstan reflect the scientific approaches to the concept of public service as a public law category. Following the provisions of the 2010 Federal Law, the public service is considered, for example, as an organizational and legal form of administrative activity of public authorities [15]; as an activity of the executive authorities and local self-government aimed at "... realizing the rights and the needs of applicants ..." [16]. In this case, the public service is characterized not only as an external administrative procedure, but also its internal content is narrowed.

Personally, we share one point of view, according to which the essence of the state service flows through the mechanism of ensuring the subjective rights and freedoms of the individual, and the conditionality of the state service is determined by the tasks and functions of the state. Since it is the modern state that is obliged to ensure the constitutional rights of the individual on the instructions of society, including by providing services as public goods. In particular, this echoes the opinion of V. I. Kruss. According to the researcher, the state service provision activities are filled with the corresponding constitutional essence, content, and form [17]. State services are the objects of specific constitutional legal relations aimed at the realization of the rights and freedoms of the individual [18]. Therefore, the definition of public services in the Law of the Republic of Kazakhstan of 2013 is the most correct, reflecting the harmonization of its internal and external features.

Second, the problem of the lack of a municipal service in the legislation of the Republic of Kazakhstan is presented as a question for discussion. It seems that this is illegal, as in the Republic of Kazakhstan, along with the implementation of local government, local self-government is recognized [5]. Accordingly, the content of the municipal service would be aimed at providing public goods to address local issues, primarily.

And finally, from the point of view of legal hermeneutics and the legal nature of the legal relationship between the state and the individual, the use of the term "provision of public services" in the legislation is the most correct, which is enshrined in the 2010 Federal Law. The concept of "rendering" of services is characteristic of private law contracts, for example, paid services and should not be applied in public law relations.

5. Conclusion

The conducted research allows making the following recommendations on how to adapt the experience of legal regulation in the system of public services to the legislative practice of a cross-border state. First, it is necessary to make changes in the definition of the concept of public service in the 2010 Federal Law. Second, the term "rendering" in relation to public services is changed to "provision" in the 2013 Law of the Republic of Kazakhstan. Third, the municipal service as a public-law category should be introduced into the legislation of the Republic of Kazakhstan.

References

- [1] Tikhomirov Yu A 2007 *Public services and law: scientific and practical guide* (Moscow, Russia: Norma)
- [2] Presidential Executive Office 2012 *Presidential Decree On the Main Directions of Improvement of the Public Administration System* (May 7, 2012 No. 601) Available at: <http://www.pravo.gov.ru> (Access 13 03 2019).
- [3] Official site of the president of the Republic of Kazakhstan 2010 *Decree of the President of the Republic of Kazakhstan On the Strategic Development Plan of the Republic of Kazakhstan until 2020* (February 1, 2010 No. 922) Available at: http://ru.government.kz/docs/u100000922_2010020.htm (Access 13 03 2019)
- [4] The Constitution of the Russian Federation (adopted by popular vote on December 12, 1993, as amended on December 30, 2008; February 5, 2014, July 21, 2014) Available at: <http://www.constitution.ru> (Access 13 03 2019)
- [5] Constitution of the Republic of Kazakhstan (adopted at a republican referendum on August 30, 1995, as amended on March 10, 2017) Available at: http://www.akorda.kz/ru/official_documents/constitution (Access 13 03 2019)

- [6] State Duma of the Russian Federation 2010 *Federal Law On the Organization of Provision of State and Municipal Services* (July 27, 2010 No. 210-FZ as amended on July 29, 2018) Available at: <http://www.pravo.gov.ru> (Access 13 03 2019)
- [7] Government of the Russian Federation 2011 *Resolution of the Government of the Russian Federation On the Development and Approval of Administrative Regulations for the Implementation of State Control (Supervision) and Administrative Regulations for the Provision of Public Services* (May 16, 2011 No. 373, as amended on November 3, 2018) Available at: <http://www.pravo.gov.ru> (Access 13 03 2019)
- [8] Government of the Russian Federation 2012 *Resolution of the Government of the Russian Federation On Approval of the Rules for Organizing the Activity of Multifunctional Centers for the Provision of State and Municipal Services* (December 22, 2012 No. 1376, as amended on March 13, 2019) Available at: <http://www.pravo.gov.ru> (Access 13 03 2019)
- [9] Mazhilis of the Republic of Kazakhstan 2013 *Law of the Republic of Kazakhstan On State Services* (April 15, 2013 No. 88-V, as amended on June 13, 2018) Available at: <http://adilet.zan.kz/rus/docs/Z1300000088> (Access 14 03 2019)
- [10] Government of the Republic of Kazakhstan 2013 *Resolution of the Government of the Republic of Kazakhstan On Approving the Registry of Public Services* (September 18, 2013 No. 983, as amended on December 29, 2018) Available at: <http://adilet.zan.kz/rus/docs/P1300000983> (Access 14 03 2019)
- [11] Government of the Republic of Kazakhstan 2016 *Resolution of the Government of the Republic of Kazakhstan On the establishment of a non-commercial joint-stock company "State Corporation "Government for Citizens"* (January 29, 2016 No. 39, as amended on December 29, 2018) Available at: https://online.zakon.kz/Document/?doc_id=36631834#pos=0;100 (Access 16 03 2019)
- [12] Ministry of National Economy of the Republic of Kazakhstan 2014 *Order of the Minister of National Economy of the Republic of Kazakhstan On Approval of Rules for the Development of Standards and Regulations of Public Services* (December 3, 2014 No. 126, as amended on June 17, 2016) Available at: https://online.zakon.kz/document/?doc_id=31666599 (Access 14 03 2019)
- [13] Ministry of Finance of the Republic of Kazakhstan 2015 *Order of the Minister of Finance of the Republic of Kazakhstan On Approval of Regulations for Public Services Rendered by the State Revenue Authorities of the Republic of Kazakhstan* (June 4, 2015 No. 348, as amended on February 18, 2019) Available at: https://online.zakon.kz/Document/?doc_id=36799693 (Access 14 03 2019)
- [14] Kuldybaeva I U 2014 *Legal regulation of the provision of electronic public services* (abstract of the dissertation of the candidate of of legal sciences) (Chelyabinsk, Russia)
- [15] Romanov R A 2012 *State services in the sphere of public security (legal and organizational aspects)* (abstract of the dissertation of the candidate of of legal sciences) (Moscow, Russia)
- [16] Kruss V I 2014 Public services in the context of the Russian constitutionalization *Constitutional and Municipal Law* **5** pp 60-64
- [17] Kandrina N A 2016 Provision of public services to the population as a constitutional relationship *Constitutional and Municipal Law* **11** pp 38-41