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The role of legislative technique in the professionalization of members to legislative activities

This article discusses some of the problems of members' professionalization to legislative activity. It was determined that the professionalism of the legislator expressed primarily in the possession of legislative technique, which is necessary for all participants in the legislative process without exception. The article reveals the importance of legislative technique in professionalizing the subjects of lawmaking, their special training, their acquisition of the necessary skills for creating an effective system of legislation and its effective improvement.

Key words: the right, the law, systems of legislation, the legislative technique, subjects of law-making, professionalization, rule-making, regulation, systematization, law-making process, the culture of law-making.

Currently, the system of law of our country is in a position to reform. The main principles of legal regulation are in key areas of law established and scientifically grounded. Several new principles that did not exist in Soviet law sectors were formed. We have gained the regulatory framework, but despite this legal reform are not over. A single mechanism of legal regulation, which is relevant to the system of social relations in our country, is still forming at the moment. It creates new laws and changing old laws. New industries and institutions of law are developing too. A huge number of laws and regulations are in the process of systematization. Acts are creating in the one line with each other. Gaps in the law and the collisions have been eliminated.

Legal reform in our country takes place in parallel with the creation of the system of parliamentarism, which should be the basis of public and legal life. The parliamentary system is designed to provide a mechanism for ensuring democracy and constitutionality of our social life, but first it must improve the legislative process. It is impossible not to recognize that young native parliamentary system played an important role in the formation of a new legal system in our country. Improved legislative work of the Parliament of Kazakhstan has created a completely new, detailed and very complex system of legislation. Keeping up with parliamentarian's executive bodies created the system of sub-legal acts, which is no less complex and multi-level. Current law reform creates a huge amount of regulatory material at various levels. We can say that Kazakhstan currently finishing fold system of law developed state with a market economy and democratic constitutional order.

However, as the quality of native legislators, the regulatory capacity of many published in our country normative legal acts is not well developed, so we can't certainly talk about the positive results of legal reform. And with all the reason we can say that the weakness of the native legal system prevailing in the mass consciousness is not too respectful to the law was largely the result of new technical imperfection of Kazakhstan's laws.

Current legislation of Kazakhstan, unfortunately, remains largely haphazard, inconsistent, incomplete, vague, declarative (or casuistry), inaccessible to full awareness. It also suffers from the lack of legal mechanisms for the effective implementation of the requirements contained therein. Issues are also gaps and conflicts between legal acts of various levels. Gaps in the legislation, the contradictions between published at different times and by different bodies of normative legal acts often put the subjects of public relations to a standstill.

All of this leads to a strong decrease in the effectiveness of the new system of law, for failure of legal reform, to the disappointment of it, to such a sad phenomenon of modern Kazakhstan society as the legal nihilism. The abundance of the complex and constantly changing legal regulations makes it very difficult assimilation contained in them (as well as short stories, additions and changes) the requirements of not only ordinary citizens, but also professional lawyers. The same problem, unfortunately, concerns officials. Even more worse off incompleteness legal reform, when a number of institutions and even the sub-branches of the law has not yet been built. But social relations are not static; they evolve rapidly progressive, constantly causing the need for new legal acts and their entities, complicating the legislative system.

Under these conditions is particularly important basis for professional activity of lawmakers that would optimize their performance and improve the quality of established legal acts (as each specifically, and in the system). At first glance it may seem that in the main legal act is the content, and form of presentation is secondary. Unfortunately, such views are usually not only for ordinary people, but also for lawyers, and even that is particularly tragic for participant's lawmaking. This view is fundamentally wrong. The legal act is equally significant as it is the content and form, the method of presentation of the text, which largely determines its effectiveness. It is not enough to know that prescribe what type of behavior defined as compulsory, need to be able to do it, know how to prescribe, in what form, what tools and techniques used in this case. It is not enough to realize the target of legal influence on social relations. No less important is accurate, complete, understandable and enforceable form to express this requirement in textual form, to provide a logical and semantic unity between the essence of the text of the regulations and normative legal act, expressing him. Scientific support for this is the main task of science legislative technique. Getting the idea of creating a system of law allows you to better discover the essence of legislation and more accurately know the importance and ways of achieving the rule of law. Insufficient attention to the design of the legal regulations in practice inevitably leads to unsystematic, cumbersome, imprecise, declarative, contradictions and ambiguities in the texts of regulations and, ultimately, to difficulties in the legal regulation, to the ineffectiveness of the regulation. It is no accident in the scientific juridical literature recently quite strongly held idea of the need to change attitudes to the design regulations, the need to develop the scientific technology of their creation and ordering. Moreover, attempts are being made (and unsuccessfully) to fix the known rules of registration of law-making in the law-making, using scientific achievements and international experience [1; 28].

All these factors cause the necessity of a systematic and regular review of a set of principles, techniques and methods of creating and improving the system normative legal acts.

The system of legal knowledge of the legislative machinery occupies a very important place, describing the nature and functionality of the legislation as a mechanism of regulation of social relations. By studying the legislative technique, lawyer gets an opportunity to study the mechanism of creation of normative legal acts and legislative system in general and make changes to the legislative mechanism of regulation of social relations. All this helps to understand the genesis of the law, their organic connection with the objective social reality, their role and place in society.

Lawmaking activities associated with the creation or changing regulations, embodied in the activity of of so many people and organizations.

Successful activities in creating laws and normative legal acts, as well as their classification depends primarily on the professionalism of members of the legislative process, that is, persons involved in the drafting normative legal acts, their processing, as well as the adoption of these acts and change them.

Members of the legislative process, whose professional activity is connected with the legislative technique — they are not only members of parliamentary chambers, directly involved in the enactment of laws. In the process of legislative regulation involves many actors, each of which — it's strictly defined function, defined and studied legislative technique.

Subjects of legislation can be divided into two big groups [2; 11].

The first group includes the direct participants of the process of creation of normative legal acts. These people directly determine the course of lawmaking, directly involved in the process of development, adoption and improvement of laws and regulations. They can only be public servants working in the state bodies. This category includes a lot of government officials.

Examining the legislative process, it can be assumed that the most active participants are employees of law-legal departments of ministries and departments. They carry not very significant for ordinary people, but perhaps the most important function in the process of lawmaking. Their function is to study the system of laws and regulations with the aim of improving them, the development of the draft law, legislative planning, analysis of changes in the legislation, as well as expert analysis of bills and laws. Their activity and a greater role in the legislative process are due to greater opportunities as a result of professionalism and specialization in a certain area of social life. Working with the legal regulation of issues within the competence of departments, these officials as anyone else understand them; know the essence and the main problems are well aware of the specifics of legal regulation in this area. In addition, the staffs of ministries and departments have more than other participants in legislative activity to obtain the necessary information on the subject of legal regulation in the framework of its departments on information and statistics departments. All this causes a special activity of ministries and departments in the legislative work, preliminary preparation of draft laws for adoption. Ministries and departments have no right of legislative initiative in the country, but the

Government of Kazakhstan (as well as in most other countries) nominated for the parliamentary discussion of the draft laws developed in this regard is the active subject of the legislative initiative. In addition, an employee of the legal departments of ministries and departments function belongs to the development and preparation for the Resolution of the Government of departmental regulations.

An important role in the legislative process play officer of the government of Kazakhstan and the Administration of the President of Kazakhstan. Their functions include drawing up the draft law (though much less than in the case of employees of ministries and departments), as well as the drafting of relevant regulations of higher legal force (Presidential Decrees and Resolutions of the Government), which play a huge role in the functioning of the system of legislation. They edit lawful projects by employees of ministries and agencies; summarize the incoming material carried out the final preparation of the bills to the legislative initiative.

The role of senior government officials (in our country — the president, prime minister, heads of ministries and departments) is largely organizational and has a guide character. President of Kazakhstan carries out the overall planning legislation, under which the planned legislative work of the Government, ministries departments. This official supervises exercise generalization process of drafting legislation and regulations. They sign these acts as the final authority in the process of adoption of these regulations. Kazakh President and the Prime Minister have the right of legislative initiative and make a final conclusion about the readiness of the bill to a parliamentary review.

Members of Parliament, contrary to prevailing opinion, play a greater role in the formal lawmaking. Being professional politicians, they usually are not professionals in the field of lawmaking. They need help to create laws. In fact, no less, and perhaps a greater role in lawmaking play deputies' assistants. Their functions include the preparation of parliamentary bills, collecting materials for the legislative work of deputies and participate in the development of amendments to the bill. From a technical point of view, a very great role in the improvement and adoption of laws employees parliamentary committees. They participate in the preparation of the materials needed for the legislative work of Parliament, to organize information and legal support of parliamentarians, as well as carry out the examination of bills, from which very much depends on their fate. Other actors can participate in the development and adoption of normative legal acts too.

The second group consists of the members of lawmaking, not directly involved in the creation and adoption of normative legal acts, but promoting it, providing assistance to its direct participants. These participants can be both government employees and private individuals. Their range is very wide.

This category includes members of lawmaking for example public servants engaged in informational support of members of the legislative process. Typically (although not always), it is the staff of specialized information and statistical departments of ministries and departments, whose duties include the collection, analysis and processing of information in a particular sphere of public life and then ensure that this information all in need of public officials, including those involved in the legislative process. Provision of information parliamentarians also carried out by special parliamentary bodies (committees — in their areas of competence, as well as the parliamentary library and other services).

In addition, a greater role in lawmaking play experts with special immersed knowledge required to lawmaking. The experts can serve as civil servants (for example specialized expert subdivisions of the Ministry of Justice of Kazakhstan) and individuals (for example, legal scientists and other specialists in the field of regulated public relations or technical matters of legislation). Their activities on-rule in the adjustment effort directly involved in the creation and improvement of normative legal acts, they make conclusions about the results of lawmaking.

Interest causes the participation in the legislative process such subjects as lobbyists. The forms their participation in legislation, the role and importance of their influence on him, unfortunately, not been sufficiently studied by native legal science. However, in today's world, their participation in the legislative regulation is very powerful, despite attempts to combat the phenomenon of lobbying by [3; 22].

Other persons also took part in the legislative process. In certain cases, the subjects of law-making can be considered all the citizens of the state (for example, by adopting a law on the referendum or the citizens in expressing their views on the bill).

Necessity of special training of people directly involved in lawmaking, enable in the curriculum of law schools a special course on the legislative technique is currently undeniable. In modern conditions, when the adjustable right public relations is unusually complex, where the dynamics of social development is the need for continuous improvement of the system of lawmaking, professionals involved in the direct writing of laws and legal acts need to be systematic knowledge about the peculiarities of the process of rule-making, about

the techniques, methods, and methods of legislative activity, as well as its basic principles and rules. Their professionalism, their special training is essential to the creation of an effective system of law, clear and suitable for the full and effective legal regulation of the legal acts.

The professionalism of the participant's rulemaking involves [4; 10]:

- that they have a system of knowledge in the field of law (the best — legal education), possession of legal technique;
- a high level of legal culture, the presence of a specific form of it as the culture of law-making;
- good knowledge of the subject of legal regulation. Possession of information to accurately and fully define the objective need in a particular area of public relations;
- possession of techniques of creating legal and regulatory requirements, techniques, methods and ways of presentation of the law in the text of legal acts;
- possession of professional language legislation, the ability to use logic and style of the law;
- knowledge in systematization of technology standard material, so to speak, «a sense of the system», the constant striving for systematization of existing standards (however, it is «a sense of the system» must be virtually any lawyer);
- efficiency, punctuality and accuracy, because the rule-making is hard, tedious and monotonous work that does not allow relaxation and even the smallest of errors and defects.

Professionalism of rule makers, in addition, always presupposes collaboration skills among the participants rulemaking with specialists in various fields of knowledge, the existence of their specific methodology for such cooperation. Officials who officially develop and adopt regulations, is not completely determine the legislative process, the determining role belongs to those who drafts of these acts. These are professional lawyers, economists, sociologists, political scientists and even specially invited experts in the field of natural sciences. One person is not able to understand at the right level in all matters subject to legal regulation. Large groups of experts working on projects of normative legal acts. Each of them does its job. The task of the legal experts is the organization, unity and complex nature of their work — it is also a question of professionalism.

Professionalism, the scientific basis of participants' regular activities of the legislative process intended to ensure the legal nature of their activities, compliance with the law as a result of this activity in the public interest, caused by the interests of social life. Normative-legal acts issued by specialists with special training, act as a factor contributing to the achievement of the common good, sustained positive social development.

The effectiveness of the law created by them depends largely on the specific training rulemaking. Clarity, precision and clarity of expression in the legal acts requirements, the possibility of their use, defining reality of their impact on people's behavior, achieved at the expense of the author's skill in possession of special methods of improving the law. In addition, the feasibility and enforceability of the regulations, the mechanism of their maintenance — all this also depends on subjects' the specific training of legislative activity.

Moreover, professionalism is a guarantee of the constitutionality of rulemaking, the unity and consistency of legislation, complete and unambiguous settlement laws and regulations of all the social relations which, because of its importance, are subject to such regulation.

Knowledge of legislative technique cans more efficient implementation of legal acts. Ability to use a technique of formulating legal regulations and implementing them in textual form can properly interpret the laws and regulations, immediately grasping their meaning. Proper understanding of the legislative provisions is provided, inter alia, with the knowledge of the legislative technique.

Knowledge of the legislative machinery is necessary for any professional who works in the field of jurisprudence. It allows you to more fully and clearly aware of the nature and structure of the regulatory and legal framework, the main factors influencing its formation, functioning and change, to study the dynamics of the legal system and its dependence on the development of public relations. The study of legislative technique makes it possible to understand the underlying factors that determine the genesis of the legislation, to penetrate into the essence of legal and regulatory impact on people's behavior and social relations in general.

Knowledge of methods and techniques of legislative technique can be used not only in the course of work on the bill and the creation of sub-of normative legal acts, but also in the creation of systems of corporate standards called statutory regulations of corporation — associations of people, created to achieve the common goal, which is the vast most legal entities (various internal regulations of organizations, legal contracts, etc.) [5; 272]. The basic principles of the legal prescriptions' presentation and the main methods of

creating and organizing are the same for all kinds of norms. The basic principles of the legal prescriptions and presentation on the basics of creating and organizing the same for all kinds of norms. Even in small business organizations are often problems with the creation of all sorts of internal corporate rules due to the inability of unauthorized persons and bodies clearly and systematically describe these provisions in the text of internal corporate documents. The problem is even more acute in the non-profit organizations (especially political). The ability to formulate standards to prescribe a particular type of behavior the participants of social relations — all of this is important for specialist in the field of law, if he is going to take part (in any form) in the regulation of social relations.

The lack of professionalism of participants of the legislative process is very costly to the whole system of legal regulation. Contradictory and inconsistent legislation, the unconstitutionality of its elements, spaces, non-legal nature of the laws and their contradiction of the public interest, impossibility to understand clearly the exact meaning contained in the legal acts of the legal regulations, the complexity, casuistry, violation of fundamental legal principles (constitutional and sect oral) — all These harmful to the effectiveness of the legal regulation of the phenomenon largely because of the lack of professionalism of the authors of legal acts.

Professionalism of the legislator is primarily expressed in the possession of the legislative technique, which requires the legislative process to all participants without exception. Actors' professionalization activities in lawmaking, the acquisition of the necessary skills to create, change, improvement and systematization of legal acts is one of the most important conditions for effective improvement of the legislation.

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Н.С.Ахметова

Заң шығармашылық әрекетке қатысушыларды кәсібилендірудегі заңдық техниканың рөлі

Мақалада заң шығармашылық әрекетке қатысушыларды кәсібилендірудің кейбір мәселелері қарастырылды. Заң шығарушының кәсібилігі бірінші кезекте заң шығармашылық үрдісінің қатысушыларына қажетті заң шығармашылық техникасын иеленуінен көрінеді. Заң шығармашылық субъектілерін кәсібилендірудегі оларды арнайы дайындау, олармен әрекеттегі заңнама жүйесін қалыптастыру бойынша жұмысқа дағдылану және оны тиімді дамытудағы заңдық техниканың маңызы ашылып көрсетілген.

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Роль законодательной техники в профессионализации участников законотворческой деятельности

В статье рассматриваются некоторые проблемы профессионализации участников законотворческой деятельности. Профессионализм законодателя в первую очередь выражается в овладении законодательной техникой, которая необходима всем участникам законотворческого процесса без исключения. Раскрыто значение законодательной техники в профессионализации субъектов законотворчества, их специальной подготовке, приобретении ими необходимых навыков работы по созданию действенной системы законодательства и её эффективного совершенствования.

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