

КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО

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The legislative process in the Republic of Kazakhstan

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Мақалада Қазақстан Республикасының Конституциясы мен конституциялық заңдарының негізінде Қазақстан Республикасының заң шығару қызметі талданады. Автор ҚР заң шығару үрдісін зерттейді, ҚР Парламентінің заң шығару рәсімдерінің кезеңдерін анықтайды. Сондай-ақ ҚР Президентінің заң шығару қызметіндегі орны мен мәніне ерекше назар аударады. ҚР Конституциясына 2007 ж. толықтырулар енгізілгеннен кейін Президент заң шығару бастамашылығы құқығына ие болып, ҚР Парламентінің заң шығару үрдісіне қатысады. ҚР Парламентінің заң шығару үрдісін реттеу сұрақтары бойынша өзгерістер енгізу ұсынылады.

В статье на основе Конституции РК и конституционных законов анализируется законодательная деятельность в Республике Казахстан. Автор проводит исследование законодательного процесса Парламента Республики Казахстан, выявляет стадии законодательной процедуры Парламента. Особое внимание автор уделит роли и значению Президента Республики Казахстан в законотворческой деятельности. После поправок в Конституцию РК 2007 г. Президент обладает правом законодательной инициативы, тем самым он вовлекается в законодательный процесс Парламента РК. В статье автором предлагается внести изменения в нормативно-правовые акты по вопросам регулирования законодательного процесса в Парламенте Республики Казахстан.

The Republic of Kazakhstan after proclaiming itself democratic, legal state took the way of civilizational development and turned to great values of constitutionalism. On our point of view the parliamentarism is one of such immutable values.

Nowadays the exploration of becoming process of Kazakh parliamentarism represents rather great practical and theoretic interest. So problems of legislative process in and outside of Parliament require fixed attention of scientists — lawyers.

The legislative process can't be limited only by Parliament and the role of Parliament in adoption of law, so far as it is not the only legislative organ according to Constitution of Kazakhstan.

For example according to the Constitution of 1993 the Supreme Soviet was defined as the only legislative organ (article 62) [1], but according to the Constitution of 1995 the Parliament can enact laws only by the most important points of social life; that assigns main principles and norms.

The constitution of 1995 sets several legislative organs. First of all, it is President, as Parliament can endow with authority of law adoption (article 53) [2].

Besides the Government has an authority of law adoption, as far as Constitution, having enumerated number of points regulated by laws of Parliament, specifies that other relations are regulated by sub legislative acts. Consequently the Government of the Republic of Kazakhstan owns authority in law adoption.

According with aforesaid constitutional establishments we have some issues, connected with turning the principle of division of authorities in life. State authority is divided into 3 main branches, where each of them must be supreme and independent in vigorous sphere of the state.

Thus, parliament is the head of the legislative authority, and there comes up a question how much Parliament can be independent and supreme, if legislative functions of parliament are restricted in definite level. Parliament still has immutable function of making amendment to the Constitution and adoption of Constitu-

tion that is one of the principles of democratic society. Withal, the Constitution of 1995 eliminates a number of matters connected with amendments and alterations in constitution. Such alterations and amendments can be made only in Republican referendum or by Parliament but only in case if President initiates the alterations and amendments (article 53) [2].

Moreover, not only the Parliament can adopt laws but also, In definite cases except of signing and publication of them (article 44), the President of Republic of Kazakhstan has the right to promulgate laws and decrees, which have a force of law (article 45). The Constitution takes into consideration such opportunity in following cases: Firstly, when two thirds of voices of each of chambers, under initiative of the President at joint session of chambers, the parliament delegates to it legislative powers for the term of not exceeding one year (article 53).

Secondly, by defaulting of Parliament of requirements of the president about a priority or urgent consideration of any bill, the President has the right to promulgate the decree, which has a force of law, that operates before adoption by Parliament of the new law on the same matter (article 61) [2].

Thus, as it was specified by us above, the legislative functions of Parliament in the certain measure are restricted as by the constitution, and the constitutional laws.

In a whole, it is necessary to note that legislative process leaves far for frameworks of Parliament and active of Parliament as legislative organ. It is shown, first of all, in fastening legislative functions to the President, and as in fastening powers of the Republican referendum on acceptance, introduction of changes and additions in the constitution of Republic of Kazakhstan, and also on acceptance constitutional laws, laws of Republic, amendments and additions (by clause 2 of the constitutional law about republican referendum). Powers and functions of Parliament became rather narrow, than it has been stipulated by the Constitution of 1993 [3].

The number of questions and relations are so very debatable, on which the constitution of 1995 defined a possibility of acceptance of laws by Parliament of Republic Kazakhstan. The indistinct formulation given in item 3 of clause 61 of Constitution assumes both an opportunity of wide interpretation, and an opportunity for narrowing powers of Parliament.

First of all, it is established, that Parliament can pass concerning juridical personality of physical and legal persons, civil rights and freedom, obligations and responsibility of natural and juridical persons, a mode of the property and other rights.

If the given norm is interpreted in a broad sense the Parliament, as a matter of fact, can be empowered with the unlimited rights in legislative activity.

Legal capacity is understood as an opportunity of the subject natural and juridical persons to be the owner of his right and obligations, defined by the law, and therefore Parliament is empowered by great potentialities on passing laws, which define legal capacity of any subject of law.

Further, if we admit that property relations make a conclusion, that *Parliament* can pass a wide range of economic laws.

Defining of regulative competence of high organs of government is highly important in law making process. Though the Constitution has defined a certain range issues, on which Parliament can pass laws, but it hasn't been formulated accurately, as we have mentioned above, and needs further study.

It is necessary to define and differentiate the law making competence between the President and Parliament. It would be meaningful to define the sphere of law- making powers of the President in the constitutional legislation.

As it has been said, normative — legal documents of the highest rank are adopted by several bodies, therefore defining of law regulative function of each of them, and place in legal space is of paramount importance. These problems were hard to solve and for Parliaments of the previous convocations though some experience has been acquired. The constitution defines a direction: Parliament passes laws, regulating the most important relations. What relations are the most important at present? The answer to the question — one of the most crucial facets of lawmaking process. And basically parliamentarians should answer this question.

On the whole ordering and precise differentiation of the competence and functions of law regulative authorities in the state makes it necessary to establish law and order at the state level [4].

Legal forms of realization of the competence of Parliament are statutory acts adopted by them. The basic documents of Parliament are laws. We consider it to be lawful if laws are passed only by Parliament since it is the supreme legislative body of the Republic of Kazakhstan.

In law on normative-legal documents the notion law is defined it is desirable to define it's basic properties. In our opinion, it would be rightful to limit and specify bodies of the state which have the right to pass laws.

According to the constitution the President is invested with lawmaking powers. In our estimation documents issued by the President should have another name in contradistinction to the legal documents issued by Parliament.

They should be named if only the law enforceable Decrees in the law.

Further, it would be necessary to define the status of the constitutional laws, having specified, on what issues the constitutional laws can be passed. In our opinion, the following should be regulated by constitutional laws:

- Legal bases of formation and functioning of the supreme bodies of the government. (The President, Parliament, Government, Supreme Court);
- Problems of functioning of political system elements.
- Problems of regulating the rights and freedom of the person.
- Problems of citizenship.
- Problems of republican referendum.
- Problems, connected with the policy of the martial law and state of emergency.
- Problems of suffrage and electoral system.

It is necessary to define the person, who can initiate the passing of the constitutional law. Whether there is that range of subjects of legislative initiatives, defined by the Constitution or it should be extended (article 71) [1].

The President having the right of bill initiation and thus being the subject of bill initiation exercises his powers under the control of Parliament. And by that the President joins in unified system of restraints and counterbalances of the organization of the state power It will enable Parliament as a main legislative body to regulate law making process and to pursue a balanced policy in a law making sphere. The development of the legislative process in Kazakhstani Parliament is considered to be important in the making of Kazakhstan parliamentarism. We admit, that defining the stages of great interest nowadays.

The first stage of law making process in Parliament starts with the stage of bill initiation. At this stage subjects of bill initiation bring in a bill to Mazhilis. According to the Mazhilis Regulations, the right to bill initiation is exercised in the following forms:

- 1) Bringing in a new draft bill of the Republic of Kazakhstan.
- 2) Bringing in a new draft bill on alternation, amendments and repeal of laws in force of Republic of Kazakhstan.
- 3) Bringing in draft normative resolutions of Parliament of Republic of Kazakhstan on law enforcement [5].

The stage of bill initiation is very significant on the whole in law making activity. This is the stage for laying the foundation of making standard laws. It is generally known that alterations and amendments to newly passed laws almost became a regular phenomenon in our law making practice.

And frequent amendments to laws are attributes of weaknesses of law making activities. And consequently the stage of initiation of bills demands very critical and scrupulous attitude to every bill that is brought in Parliament, and first of all on part of the Government. Therefore the legislator should provide a very serious and careful selection of the bill, that is brought in Parliament. Consequently, an initiator of a bill besides draft bill should submit the following:

- 1) A well- grounded explanatory note on the necessity of passing a law, with comprehensive account of the aims, objectives, main provisions and prognosticated consequences of the law to be passed.
- 2) Financial and economic calculation, if enforcement of a law entails expenses, and also the decision of the Government.
- 3) The list of legislative acts which are a subject to alteration or considered to be invalid due to passing of the given bill and proposals on elaboration of statutory acts, that are necessary for realization of the given law.
- 4) The draft decision of Parliament on enactment of law.
- 5) Decision of independent and scientific expert examinations.

It is necessary to note that law making stages can be slightly changed, for there are several law making organs and different law passing procedures. In particular there is a different procedure of passing of consti-

tutional laws and making amendments to the Constitution by Parliament, and naturally, law making stages will also be different.

Bellow we will be considering the passing of common parliamentary law.

Besides there is a stage of preliminary preparation. Clause 71 of Parliament Regulations points out that preparation of the bill for consideration by Mazhilis should not exceed 120 days from the moment of its registration in the General department of Mazhilis [6]. At the same time clause 28 of Mazhilis Regulations specifies, that the registered bill should be prepared within 30 days.

The second stage of legislative process is a preliminary consideration of the bill. The registered bill by the decision of Mazhilis is sent to corresponding committee and the department of the legislation of the Device of Chamber.

The preparation of the conclusion on the bill should be made within 30 days during this period of time committees should submit corresponding the decision on the bill. If the bill is considered to be urgent by the President then the period of preparation of the conclusion on it is reduced to 7 days.

At the third stage bill is examined at sessions of Mazhilis. The bill should be directed to deputies of Chamber not later than 10 days before its consideration at Plenary session. At this stage the Chamber can make a decision on submitting the bill for referendum. On the whole the bill according to Mazhilis Regulations goes through one reading, sometimes 2 readings. In our opinion the bill should pass not less than 2 hearings at Plenary Session of Parliament. Besides we admit, that for detailed study of draft constitutional laws the special order of hearings should be established and thus consideration of the constitutional bill should constitute not less than 3 readings at joint Plenary Sessions. The stage of consideration results in Mazhilis approval of the bill by the majority of votes and is submitted to the consideration of the Senate of Parliament with the corresponding decision.

The fourth stage — consideration of the bill by the Senate. In the Senate the bill can be considered within no more than 60 days. The bill can be approved by the Senate or rejected on the whole or partially. Adopted by the majority of votes from the general number of deputies of the Senate the draft bill becomes a law. The law within 10 days should be submitted to the President for signing.

In case the Senate rejects the bill there is a special way of settling disagreement between Mazhilis and Senate. Difference of opinion between them can be settled by Mazhilis by 2/3 votes or by decision of conciliation commission.

The fifth stage is a stage of signing of laws by the President and their publication the Chairman of counter-signed by both Chambers of Parliament, in some cases by the Prime-minister, the law is submitted for the signature to the President. At this stage within 30 days the President signs and promulgates law. And it is considered to be enacted. It is considered to be signed by the President if within 30 days it has not been sent back to Parliament.

The President, as it has been specified above, within 30 days can return the law with objections on the whole or on its separate clauses, and use veto power. The legislation defines special order of overcoming of the President veto power which constitutes a special stage of legislative process.

It is necessary to point out, that if there is disagreement between the President and Parliament the later is confined to strict terms. The President objections should be considered within 30 days. If during this period of time Parliament has not succeeded in considering the objections of the President, then the objections of the President are regarded as accepted.

Further, the Mazhilis should study and consider objections of the President within 15 days, and the Senate within 10 days. Objections of the President are considered to be got over if the Parliament by 2/3 votes from the general number of deputies of each of Chambers of Parliament will confirm the decision made by it on the whole or on its separate clauses. In this case the law is considered to be passed by Parliament and signed by the President in 30 days term from the date of submission to signing.

If by voting the Parliament could not overcome the objection of the President, the law is: not considered to be passed. If the President submits new version of the law or its separate clauses, it is considered to be passed in the President's wording. It is not quite clear in this respect the fortune of the law that has not been passed.

The dilemma is can Parliament resume its efforts on passing of the rejected law and during what period is it possible?

Special procedure is provided for passing of amendments to the Constitution and constitutional laws. First of all, neither in Mazhilis Regulation, or in Parliament Regulation or in any definite legislative act a preliminary consideration of corresponding laws is not established.

Clause 91 of the Constitution of the Republic of Kazakhstan does not a clear answer to the question whether the President is the only initiator of making amendments to the Constitution of the Republic of Kazakhstan or Parliament and the Government enjoy the same rights to amendments. If we proceed from literal interpretation of Clause 91 one can assume that Parliament and the Government have the right to initiate amendments to the Constitution by moving a resolution to the President on holding a national referendum. It seems to us that a special law should be passed on the iniation of amendments to the Constitution by Parliament as a collective body and this right be consolidated in normative documents. The Kazakhstan Constitutional theory has been further developed in the amendments made to the Constitution on October, 7, 1998 by the law of the Republic Kazakhstan “on making amendments to the Constitution of the Republic of Kazakhstan”.

Clause 91 has been amended the by following constitutional item which contains major Parliament powers. If the President turns down a proposol made by Parliament on holding national referendum on making amendments to the Constitution then Parliament have the right to pass a law on making amendments to the Constitution.

If the only initiator of making amendments to the Constitution is considered to be the President of the Republic of Kazakhstan who in that case initiates the constitutional laws? In any case in the legislation in force there are other subjects, except those stated in the Constitution.

The stage of preliminary consideration is not stipulated particularly in the legislation. There is reference which stipulates that the order of consideration of the President proposals in Parliament is fixed by the President of the Republic of Kazakhstan.

We admit, that making amendments to the Constitution requires very careful analysis and discussion of this issue will be of paramount importance in law making process. That is to say it makes sence to fix limited dates for the consideration of the law corresponding committees of corresponding Chambers. If it takes not less than 30 days to consider common laws it is in order to determine the period of time allotted to the preparation of a decision on the bills — not less than 45 days. Only then laws can be civilized enough and worthwhile if they have been studied to the full.

The same can be said relating to constitutional laws. It is stipulated, by Parliament Regulations that Parliament by its resolution defines the period of the time for consideration of the bill and then they are submitted to the Senate and Mazhilis. They have the right for a wilful establishment of terms. And for the state which considers itself lawful it would be quite natural to define more careful and well-thought out procedure for passing of constitutional laws. Besides, the stipulated 2 readings are insufficient and it would be more reasonable to establish not less than 3 readings for passing both the constitution law and making amendments to the Constitution.

On the whole it is necessary point out that regulation of law enactment procedures and law making process itself are in the making.

The more well throught out is a law making process the better are the laws that our legislative bodies will pass.

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