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Concept And Purposes Of Conducting Scientific-Legal Expertise Of Draft Laws

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ABSTRACT

The article researches into the concept of scientific-legal expertise of draft laws, its goals and classification, as well as the role of expertise within the activity of the Chambers of the Oliy Majlis of the Republic of Uzbekistan. Also, there have been developed theoretical proposals aimed at revealing the essence and significance of scientific-legal expertise of draft laws, as well as its application in practice.

KEYWORDS

Scientific-legal expertise, classification of scientific-legal expertise, research institutions, preliminary consideration of bills, legislative technique.

INTRODUCTION

The concept of "expertise" comes from the Latin word "expertus" - "experienced" and means a study by a specialist (expert) of any issues, solution of which requires special knowledge in the field of science, technology, art and so on.[1]

Currently, expertise is very widely applied as a tool to support management and legal decisions. There are several reasons for this:

the need to optimize law enforcement and management methods, rejection of volitional methods in management, search for objective criteria for decision making, use of the achievements of modern science, technology in all sectors of the social and economic life of society.

The effectiveness of expertise can be achieved only if there are criteria and principles that will

allow regulating this type of activity, ensuring its legal and regulatory framework, as well as giving it the necessary legal status.

The term “expertise of draft normative legal act” is defined in terminology dictionary as a research activity of an expert institution or expert[2], A.V. Kudashkin also points out that "legal expertise is, first of all, a kind of research and is carried out by a specially authorized person – an expert" [3].

Until recently, these problems were considered almost exclusively in relation to the tasks of the judicial process within the framework of the theory of criminal and civil procedure. However, the widespread use of expertise in industrial, commercial, customs and other activities outside judicial scope, emergence of institutions and commercial firms engaged in peer activity in the absence of its legal regulations, lack of development of common principles and criteria for setting in expert's require consideration of the expertise as a procedural-legal institution of a more general and wider spectrum in the aspect of the general theory of making managerial and legal decisions.

President of the Republic of Uzbekistan Sh.M. Mirziyoyev in his speeches repeatedly noted that while improving legislation, we should be most concerned not with the fact of adopting new laws, but with what benefit the new laws will bring to people, how they will make their life easier. [4] When making laws people's representatives must ensure that they actually work and take necessary measures to this. They should be bold, demanding and determined not to allow adoption of laws that will not serve the interests of the people[5].

As noted by Urazaev Sh.Z., theoretical motifs and grounds for a new law are of unique importance in the process of adopting laws as they give clear and precise answers to the questions associated with identifying actual needs of society with giving economic, political, legal and moral justification of the need for new law. But today, some of the legislative work has lost, and somewhere has not yet acquired the qualities of scientifically grounded, democratic activity. Quite often a hastily expressed opinion without sufficient justification and careful processing is proposed to be “formalized” into a bill. Its justification is often prepared hastily and therefore it is somewhat superficial, to forecasts, lacks scientific foresight of their implementation consequences [6].

Therefore, it is necessary to transfer legislative activity to a strictly scientific basis. It seems that the solution to the problem of professional scientific substantiation in the actions of the legislator is the most important by far. It is necessary to strive to ensure that each deputy feels completely competent in the legislative solution of this or that issue, has his own professional point of view, reasonably implements it. The will of the deputy, as the regulating aspect of his consciousness, should be optimally motivated.

The task is to create a reliable organizational and legal barrier to unmotivated (or not sufficiently motivated) legislative acts. Only a scientifically grounded bill can be clothed in formal legal norms. In this regard, one of the important principles of lawmaking is the scientific validity of bills, that is, their compliance with objective laws. To be scientifically grounded means also to take into account the achievements of science and

technology, to be based on theoretical developments of problems that require a new regulatory solution. After all, the will of the legislator, free from motive, is capable of generating a “law of force” that is incompatible with legal statehood. To solve this problem, it is necessary, in our opinion, to establish mechanism and forms of participation of legal scholars in legislative work, so that it does not depend on the will of the case or only the legislative body. Then, scientific institutions, individual representatives of science branches including legal scholars with theoretical training and sufficient knowledge will be involved in the preparation of bills.

The forms of such participation seem to be both direct participation of scientists in the preparation of draft laws, and giving their scientific opinions, that is, conducting a scientific and legal expertise of draft laws.

Speaking about the first form, legal basis of it is the Law "On the order of preparation of draft laws and their submission to the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan". As indicated by Article 11, subjects of legislative initiative will create working group for preparation of draft laws. Working group may include representatives of the relevant subdivisions of legislative initiative subjects, ministries, state committees or departments responsible for development of the relevant industries, other interested state bodies, scientific and other organizations, as well as citizens.

Before starting work on a project, it is necessary to develop its concept, determine its purpose, scope, structure and its place in the system of legislation and this will ensure vital

activity of such an act. As the legislative practice of the chambers of the Oliy Majlis shows, scientific, educational and research institutions are directly involved in the preparation of almost all bills.

The committees of the chambers of the Oliy Majlis in the process of preliminary consideration of bills are not limited to the framework of inviting only members of special commissions or working groups to their meetings. This is due to the fact that in the work on bills, ministries and departments are concerned do not always provide a deep study, in a word, in the preparation process, departmental interests may prevail. On the other hand, scientists as members of the working group in the process of legislative work express their opinion, which, as a rule, is embedded in the text of the draft and in this regard they cannot always objectively approach assessment of the draft law, therefore independent scientists and specialists are crucial in drafting, otherwise the project may lose its basic constructive ideas.

At the same time, as noted by A.S. Pigolkin and T.N. Rakhmanin, it would be wrong to completely remove ministries or departments from legislative work in their profile. They have qualified specialists, they know the needs of the industry, its shortcomings, and pressing problems. Considering this circumstance, the committees, during the preliminary consideration of draft laws, hear the opinion of independent scientists, specialists, and it is also possible to speak out to members of the working group, including scientists. This demonstrates competence and efficiency of commissions, which means there will be every reason to hope for the preparation of sound projects. [7].

From the above mentioned we can conclude that the first form of participation of scientific institutions and scientists is divided into two types. The first is direct participation in drafting law (within the framework of a special commission or working group). The second is direct participation in the preliminary consideration of the draft law by a scientist who is not a member of a special commission or working group.

Analysis of the provisions of the bill is carried out during scientific expertise on its compliance with requirements: superior legislation, principles of law, presence or absence of criminogenic factors etc. In this regard, it is possible to state signs of documentary method, since the information recorded on paper is used. As accompanying materials, the expert examines the explanatory note to the bill and comparative table, if available [8].

Improving the quality of adopted laws is an urgent task at the current stage as the main drawback in the legislative machine's present work is that it quite often works in "assault" mode. Such "high-speed" lawmaking does not allow to deeply comprehend the problem or work out the law with the participation of scientists and specialists. And here scientists have to say their weighty word, who, along with theoretical research, should actively participate in legislative work. In this regard, we would consider it possible to dwell on the study of the second, relatively new form of participation of independent scientists and scientific institutions in the process of lawmaking - scientific and legal expertise on draft laws.

Working out the problems of scientific and legal expertise will be very useful. Firstly, a correct and uniform understanding of the expertise as a means of optimizing legislative decisions will be achieved as well as objectivity and validity of projects will be increased. Secondly, it will create scientific basis of unification of existing and new laws, conduct and use of expertise in legislative activities. Thirdly, there will be provided optimum conditions for expert work, enhancing its quality, credibility as well as determination of the legal status of members of expert activities.

Under these conditions, the legislator assigns a large role to science and, first of all, to legal science, and the possibility of science's influence on the process of lawmaking is directly regulated by law. Thus, Article 121 of the Rules of Procedure of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan grants the right to committees, if necessary, to send draft laws for scientific expertise, as well as to request the opinion of individual specialists on them. Thus, a certain legislative basis has been created in the republic for conducting scientific and legal expertise. So, what is scientific-legal expertise.

In our opinion, scientific-legal expertise of bills is a special study conducted by highly qualified specialists from among scientists - lawyers and legal research institutions to determine the extent of its scientific validity, scope and place in the system of legislation, its objectives, as well as the adequacy of legislative technique.

In our opinion, it is possible to classify scientific-legal expertise that will allow tracing the progress of the project in parliament. According to the time of carrying out,

preliminary, initial and subsequent expertise are allocated.

Preliminary expertise is carried out prior to the submission of a draft law to the legislative body, that is, it is carried out within the framework of bodies entitled to legislative initiative. Scientific research at this stage deals with the issues of studying current legal regulation of those social relations that the proposed law concerns, clarifying reasons for adoption of the bill, studying range of issues and main provisions and, finally, forecasting expected results of application of the new law.

Initial expertise, as a rule, is carried out at the stage of preliminary discussion and contains initial assessment of the project in terms of its scientific validity, defining scope and place in the system of legislation and objectives, as well as compliance of the specified project with the rules of legislative technology. That is, if a conceptual study is carried out during preliminary expertise of the project, then the initial one is aimed at a specific study and assessment of the content of the project itself and materials attached to it.

Subsequent expertise can be carried out both at the stage of discussion of the draft at a session of parliament, and at its adoption. The peculiarity of subsequent expertise is that it is carried out after preliminary consideration (discussion) of the draft law in committees and commissions. Moreover, a project which already undergone initial expertise can also be subject to expert assessment, but there are grounds for checking previous conclusions of the experts. Projects on which there are disagreements among the deputies, as well as in case of disagreement of the committees and

commissions with the conclusions of the initial expertise, are subjected to such research.

At the stage of adoption of a draft law, scientific-legal expertise can be carried out at the request of the deputies. Due to an exceptional case, timing of such an expertise will be insignificant. Practice of the activities of the Oliy Majlis is not yet aware of such cases, which indicates a sufficiently deep study of the bills and their comprehensive validity. At the same time, we would consider it possible to settle this issue in the Rules of Procedure of the Legislative Chamber of the Oliy Majlis.

As already noted, scientific and legal expertise can be named both by the body preparing the draft law and by the legislative body itself. This classification is carried out according to subjects that appoint expertise. There are other classifications of scientific-legal expertise: by subjects, by timing of their implementation and so on.

Based on this definition of scientific-legal expertise, it turns out that the subjects conducting scientific and legal expertise of draft laws are highly qualified specialists from among legal scholars, as well as legal research and educational institutions.

A reasonable question may arise. Why the activity of legal scholars is considered separately from existing legal scientific institutions? After all, these institutions have legal scholars. In this case, we believe the following should be taken into account. Today, legal scholars work not only in legal scientific institutions. They are available in law enforcement agencies, in the supreme bodies of state power and administration, central and local government bodies, public associations

and other non-governmental non-profit organizations, as well as in commercial organizations. In addition, they include legal scholars from foreign countries. When considering this issue, it is necessary to pay attention to the fact that the committee (commission) asks for the opinion of a legal scientist not in connection with his work in scientific institutions but since he is a specialist in a certain branch of law, which, in our opinion, is decisive moment.

Next subject conducting scientific-legal expertise is legal scientific institutions.

As the practice of our parliament shows, these are most often the Tashkent State University of Law and the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan. In this form, scientific opinion is given on behalf of the institution, although expertise is carried out by individual legal scholars. That is, in this case, expertise can be carried out not only by one specialist but several at once in a particular area of law, representing the opinion of an entire institution. Almost all bills submitted to parliament are sent to above-mentioned institutions for expertise.

Each of the presented opinions is important, as it helps the committees to draw correct conclusions about scientific validity, timeliness, place and role in the legislative system of the draft law under consideration. Scientific opinions help to anticipate possible consequences of the decision taken, to prevent adoption of draft laws that are not always justified, contradictory and do not comply with legislative requirements and rules.

Among the scientific institutions conducting scientific and legal expertise, the role of the

Institute for Legislative Problems and Parliamentary Research under the Oliy Majlis should be highlighted. This is due to the fact that one of the main tasks of this particular research institute is to conduct scientific expertise of draft laws. So, in 2018-2019, the Institute produced 120 scientific-expert advice at the request of members of the lower chamber.

The second important aspect of the process of conducting scientific-legal expertise is definition of its goals. As follows from definition of an expertise, the main objectives of its conduct are:

- 1) Determination of the degree of scientific substantiation of the draft law;
- 2) Determination of the scope and its place in the legislative system;
- 3) Compliance of the project with the rules of legislative technology.

As for the first goal, quite a lot has already been said about it at the beginning. In this regard, to emphasize the need the science to keep in pace with the practice, but somewhere in da g e and ahead of her. In this case, it will be possible to achieve a genuine scientific character of our lawmaking and ensure a closer contact between practice and legal theory.

Legislative practice of the Oliy Majlis shows that adopted laws always contain instructions on their sphere of action, including time of action, territory and range of subjects, as well as legislative acts regulating relevant relations.

As it is well-known, system of any legislation is characterized by division into laws and bylaws. Laws, as normative legal acts possessing the highest legal force, always occupy a special position in the system of a particular branch of

legislation. In this case, it will be possible to achieve under linear scientific character of our lawmaking and to ensure a closer contact between legal theory and practice.

Legislation, being the result of legislative activity, directly depends on those procedural forms with the help of which it is formed and ensure quality and viability of each adopted law. The more perfect are procedural forms, the more actively they can influence formation of the entire legal system of society. In this regard, pursuit of more effective legislation requires further improvement in the application of the rules of legislative technique.

A. Nashits considers legislative technique in broad and narrow sense [9] . In the broadest sense, legislative technique is most often understood as development of legislative acts, both in substance and in technical terms. In this case, legislative technique will cover both entire process of preparing acts and operations through which corresponding decisions acquire a specific legal and normative form of expression.

At the same time, A.S. Pigolkin believes that legislative technique, being an integral part of legal technique, can be defined as a set of rules and methods for preparing draft normative acts [10] . This understanding of legislative technique reduces the problem only to preparation of normative acts which is also associated with discussion and adoption.

In our opinion, legislative technique should be understood as a set of rules (means), methods, including the basic requirements for bills used in the preparation, discussion and adoption of draft laws, which ensure the fullest, simplest and most accurate compliance of new legal

regulations with the will of the legislator. Such a definition will make it possible to more fully reflect main content of the legislative technique, rules of which must be observed at all stages of lawmaking. It will also have an applied peculiarity reflecting main requirements for the draft law.

At the same time, rules of legislative technique are synthesized and generalized in the recommendations of scientists and practitioners involved in lawmaking.

The main requirements to the bill (from a formal point of view) are designed by Y.A. Tikhomirov with sufficient thoroughness:

Accuracy and definiteness of expressions and terms (concepts) of the bill;

Clarity and accessibility of the language of the law for the subjects of law (addressees) to whom it extends its action;

Completeness of regulation of the relevant sphere of public relations, absence of gaps and omissions in the law;

Specificity of regulation, clear definition of all necessary elements of the law;

Maximum efficiency, optimal capacity, compactness of legislative formulations;

System of law construction (integrity, balance, internal connection and interdependence of all parts of legislative structure, logical sequence of presenting legislator's thoughts);

Unification, uniformity of shape and structure of the law, ways of presentation of legal regulations [11] .

Techniques and methods in preparing a specific bill are based on strictly defined forms, relevant details, structural elements, literate language, style and legal terminology, precise concepts (legal definition), correct links, exact repetition and reproduction of normative provisions (if they are necessary in the text of the law), a clear order of listing of objects, bodies, persons, circumstances, conditions, etc., well-established legal constructions, necessary abbreviations of cumbersome concepts and so on.

Means, methods and rules can and should be enshrined in the law. The Law of the Republic of Uzbekistan "On the order of preparation of bills and their submission to the Legislative Chamber of Oliy Majlis of the Republic of Uzbekistan" rules of legislative technique discussed in a separate chapter whereas the essence of the rules of legislative technique is reduced to structure, content of the project and its details.

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