

THE CONCEPT AND SUBJECTS OF LAW-MAKING

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Abstract

Law-making is a specific intellectual activity of authorized entities for the creation, processing and cancellation of legal norms recorded in certain sources of law (in normative legal acts, normative contracts, legal precedents, etc.).

Keywords:

Law, Law-making

Law-making is a specific intellectual activity of authorized entities for the creation, processing and cancellation of legal norms recorded in certain sources of law (in normative legal acts, normative contracts, legal precedents, etc.).

Law-making, its features, forms and techniques are not new to the legal science. However, despite a fairly large number of works on law-making, many issues remain controversial, and some of them have only recently been raised. Unfortunately, Russian science has not even developed a single definition of the concept of "law-making".

The activity of creating norms of law is characterized through different legal categories, denoted by different terms. This activity is defined as "law-making", "law-making", "rule-making", "legal formation", "legal education", "legal establishment" and even "norm-making" [1].

Law-making, as a specific legal activity, is also characterized by certain subjects. First of all, we will focus on the definitions that are correct in essence, but do not fully reflect the subjects of law-making. For example, V. D. Perevalov interprets law-making as "the activity of the competent state bodies for the adoption, amendment and cancellation of legal acts containing the norms of law"[2].

The effectiveness of legislation is determined by many circumstances related both to the legislative activity itself and to the implementation of the adopted laws. It also depends on the social and legal activity of the subjects of lawmaking and law enforcement, on the level of their legal awareness and legal culture.

The scope and content of the law-making powers of a particular subject of law depend on the type, form, method and level of law-making. It is methodologically important when classifying the subjects of law-making, depending on the scope and content of their powers, to distinguish the subjects and participants of law-making activities, as well as the subjects providing the law-making process.

Mixing the subjects of law-making with the subjects involved in this activity or providing it can adversely affect both the theoretical development of the problems of law-making, and the practical activities aimed at improving law-making activities. Within the framework of the general theory of law, among the subjects of law-making, there are, first, subjects authorized to establish legal norms, second, subjects involved in law-making activities, and, finally, subjects providing the law-making process.

A key role in the process of forming and establishing a legal norm is played by the subject of law-making activity, who is authorized to establish legal norms. According to the legal approach, such a subject is a rule-making body (official), that is, a state body (official) authorized (authorized) to adopt (issue) regulatory legal acts.

We believe that among these subjects, taking into account the doctrinal approach, it is possible to distinguish participants in law-making activities and subjects that provide the law-making process. Participants in law-making activities, without having the authority to establish legal norms, have the right to take part in it. According to the theory of legal education, they can be individuals and legal entities that can become the author of a legal idea, that is, they have the right to offer law-making solutions.

At the first stages of law-making activity (pre-project and project preparation), it is possible, and even optimal, "to have a set of preliminary options for "decisions" that are taken by all participants in the creation of a future norm, although none of them has a final, norm-setting value" [3].

The subjects that ensure the law-making process are those subjects without whose activities it is impossible to implement the law-making process, although they are not authorized to independently establish (authorize) the norms of law. These include, for example, those organizations that carry out various procedures within the framework of standard-setting activities (legal, criminological and other examinations of draft regulatory legal acts, official publication of regulatory legal acts, etc.).

The activity of publishing them is one of the forms of executive and administrative activities of the executive authorities. Within its limits, law-making processes are implemented, each of which is to a certain extent "individual" in terms of the composition of the rule-making relations included in it, depending on the content of the normative act. The peculiarity of law-making relations is that they reflect a special need for legal regulation of the executive and administrative activities of executive authorities to establish or change the existing norms of law.

In the Republic of Uzbekistan, ministries and departments may adopt departmental normative-legal acts if they are granted the authority to adopt the relevant act or to regulate specific public relations by legislative acts, decrees, resolutions and orders of the President of the Republic of Uzbekistan, resolutions of the Cabinet of Ministers of the Republic of Uzbekistan.

It should be taken into account that the structural divisions and territorial bodies of ministries and departments do not have the right to adopt departmental normative legal acts. Ministries and departments do not have the right to delegate the powers granted to them to adopt departmental normative legal acts to other bodies, as well as to their structural and territorial divisions[4].

Subjects of law-making relations are considered by the theory of state and law and the science of administrative law. In general theoretical terms, all subjects of legal relations are divided into two main groups: 1) an individual (individual); 2) an organizationally formed collective entity[5]. This general theoretical division of subjects in legal relations requires clarification, taking into account the relations that develop in the management of executive authorities.

In the administrative and legal literature, various judgments are made about the composition of the subjects of these relations.

B. V. Dreyshev refers to the subjects of law-making: citizens; public administration bodies; their internal divisions and officials; state and public enterprises, organizations; public organizations[6].

N. Yu. Khamaneva also refers to the subjects of law-making of citizens; executive authorities; commercial and non-commercial organizations[7].

The analysis of the legal literature, in which a number of authors consider the subjects of law-making and the subjects of administrative law, allows us to distinguish three groups of subjects of law-making relations.

The first group should include citizens as subjects of law-making relations.

The second group — civil servants (managers, officials, representatives of the authorities) as subjects of law-making relations.

The third group is the executive authorities (ministries and services) as subjects of law-making relations.

Citizens as subjects of law-making relations must have the necessary criteria. Such criteria for individuals should be citizenship and legal personality. The legal personality of citizens in law-making relations is determined by their rights and obligations. Citizens also participate in law-making indirectly, through their representatives or through a system of collective appeals and discussions.

The subjects of law-making relations include civil servants. The definition of the law-making activity of civil servants depends on a number of criteria. Such criteria are the legal personality of civil servants[8], the position held by a civil servant, the classification of a civil servant as a manager, officials and representatives of the authorities.

To determine the law-making activity of the head, his legal personality in rule-making relations, it is necessary to clarify the classification of managers. In the legal literature on these subjects, there are different points of view.

Thus, V. M. Manokhin divides civil servants into two categories: 1) employees who have administrative powers are managers; 2) employees who do not have such powers are officials, representatives of the authorities[9].

Law-making legal personality of the head, according to V. S. It is manifested in the adoption of managerial decisions and the implementation of organizational activities for the implementation of the goals, objectives and functions of management[10]. This is the right and capacity of the manager to make a management decision on the adoption, introduction of amendments and additions to regulatory legal acts.

In general, it should be said that officials are the subjects of rule-making relations. In particular, E. S. Slesarev devoted his research to individual management acts and officials in the exercise of their powers[11].

The normative legal personality of officials is manifested in their competence, which can be material and procedural[12].

Thus, it can be concluded that two criteria should be used when deciding whether to grant normative competence to the executive authorities. The first criterion is legal personality. The second criterion is the legal regulation of the system of executive authorities.

When determining the bodies of executive power, the subjects of rule-making relations, it is also necessary to proceed from the criterion of legal personality. The legal personality of executive authorities in the field of rule-making relations is the right and capacity of a public administration body to issue normative legal acts, make proposals for changing normative legal acts as a rule-making initiative, and participate in the discussion of draft normative legal acts. Executive authorities have different legal personality in the field of issuing normative legal acts: "full", not "full", or "limited", legal personality.

The full legal personality of the executive authorities in law-making relations should be recognized as such a right and legal capacity that will allow them to participate in any relations, including the right to issue normative legal acts. Ministries and services are currently granted full legal personality.

The participation of ministries in legislative activities is carried out on behalf of the executive authorities.

The full legal personality of the ministries is manifested in the preparation of draft laws, opinions, amendments to draft laws and official reviews. We believe that the role of the ministries in the legislative activity is huge and every year it will increase both in quantitative and qualitative terms.

Departmental rulemaking of ministries is intended for the implementation of general and special competence. General competence is one of the most important elements of public administration. In this regard, ministries are given full legal personality to create normative legal acts.

Special competence is the publication of normative legal acts, the legal force of which is determined by the place of the executive body in the system and structure and the scope of competence for the implementation of state powers.

Detailing the legal personality of the executive bodies of law-making relations, establishing the procedure for their participation in the process of a higher executive body has a practical direction. A specific law-making process involves a range of subjects. The optimal result depends on their activities, i.e. whether a regulatory legal act will be created or not.

The establishment of the legal personality of the executive authorities in law-making relations is the contribution of each participant to the creation of a normative legal act. This is the direct connection between the subject and the object of law-making relations. Depending on the stage of the law-making process and the state of a particular object, certain subjects of law-making relations are required.

Legislative relations, promoted by the publication of normative legal act, as well as all other legal relations, is inherent to certain objects[13]. A. V. Dudin considers regulatory legal act subject to such legal relations related to rule-making[14].

B. V. Drachev believes that legislative relations, public management, and perform substantive and procedural legal relationship[15].

When solving the issue within the framework of law-making relations, different methods are used to ensure an effective impact on the object. For example, when preparing a draft regulatory legal act, the method of expert assessment is most often used. When collecting information and processing it, an analysis method is used, which allows you to select the information that is necessary for using it in a relationship. Therefore, the effectiveness of the impact on the object depends on the timely provision of information. The subject of law-making relations on the basis of reliable information makes a management decision on the development and adoption of a regulatory legal act.

Numerous law-making legal relations in their content require scientific qualification. They can be grouped according to the criteria developed by the general theory of state and law and the theory of administrative law.

Scientists in the theory of state and law suggest choosing functions as a criterion for classifying law-making legal relations. These functions can be divided into regulatory, law enforcement, and law-making functions. Along with this classification, it is necessary to carry out a specific qualification of law-making legal relations, in particular, by purpose, by content, by form, by subjects, by time of implementation[16].

Therefore, coming to the conclusion according to the paragraph of the dissertation, we can say that law-making legal relations provide a direct influence on the subjects and objects of management with the help of legal influence.

Thus, the subjects of law-making are:

- the state represented by the authorized bodies or directly represented by the entire people (in the case of a referendum);
- * local self-government bodies (which are not state bodies, as stipulated in the Constitution).

Nevertheless, despite the fact that the law-making initiative may come from different subjects of legal relations, the decision to issue a normative legal act is made by one of the officials of the authority. Usually, after the leadership of a state body, in connection with the direct command of a regulatory legal act of a higher state authority or "by its own will", decides on the need to develop and adopt a regulatory legal act aimed at regulating certain public relations, the most difficult stage of departmental rule — making begins-the preparation of a draft regulatory legal act. At this stage of the departmental law-making process, a special role is played not by the subjects of law-making, who have the right to adopt departmental normative legal acts, but by the subjects who ensure the rule-making process in the executive authorities. At the same time, the subjects that ensure the law-making process often act as initiators of initiative projects. Such initiators in most cases are the structural divisions of the executive authorities.

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