

Procedural Aspects of Exercising the Right Of Legislative Initiative

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Abstract: This article delves deeply into the procedural aspects of exercising the right of legislative initiative. The right of legislative initiative plays a crucial role in democratic societies, as it allows citizens, organizations, and state bodies to participate in the development and adoption of draft laws. The article analyzes the stages, requirements, and limitations of exercising the right of legislative initiative. Furthermore, the article compares the experience of implementing the right of legislative initiative in various countries and develops proposals for improving the right of legislative initiative in the Republic of Uzbekistan.

Keywords: - Legislative acts, normative legal act, legislative technique, draft law, legislative initiative.

Introduction:

In the law-making process, the right of legislative initiative is exercised within the legal relationship of legislative initiative. Accordingly, the question of the content of the legal relationship of legislative initiative is a key procedural aspect of exercising the right of legislative initiative.

As an element of the law-making process, the legal relationship of legislative initiative is a public procedural legal relationship. Firstly, as mentioned above, it arises to achieve a procedural outcome – the parliament's decision to accept a draft law for consideration, after which the right of legislative initiative is considered exercised. Secondly, the authorized subject pursues not their own interest, but the interest of the state; accordingly, the obligated subject also acts in the interest of the state, not in the private interest of the authorized party, as is the case in private legal relationships. If the factor that motivates a subject with the right of legislative initiative to submit a draft law to parliament is the state interest in changing existing legislation, then in the direct legal relationship of legislative initiative, the state interest pursued by both the initiator of the draft law and the parliament consists of exercising the right

of legislative initiative in accordance with all established rules, that is, in lawfully exercising this right. Accordingly, the legal regulation of the content of the legal relationship of legislative initiative should include a system of guarantees for the lawful exercise of the right of legislative initiative. Thirdly, the action of each subject in the state's interest ensures that there may not be an absolute correspondence not only between rights and obligations, but also between obligations, as well as between the contents of corresponding rights and obligations. Fourthly, the participation of state authoritative subjects in public legal relations means that the content of this legal relationship includes rights and obligations that express the powers of these subjects.

Thus, within the scope of studying the procedural aspects of exercising the right of legislative initiative, it is necessary to reveal the content of the legal relationship of legislative initiative, taking into account all the features of public procedural legal relationships, and to present a model of its legal regulation, which should include a system of guarantees for the lawful exercise of the right of legislative initiative.

In addition to the right to submit draft laws to the relevant body, as mentioned above, the subject of legislative initiative possesses the following powers:

The right to demand consideration of their initiative;
The right to defend the norms established in the draft during parliamentary debate;
The right to withdraw their initiative.

The rights and obligations of the subject of legislative initiative correspond to a set of rights and obligations of the legislative body. From this perspective, the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan possesses the following rights and obligations:

The obligation to consider the draft law or legislative proposal;

The obligation to demand compliance with the rules of procedure;

The possibility of returning the draft to the initiator if they do not comply with the rules of procedure (returning the draft is a specific sanction for failure to fulfill their obligation);

The right to reject the submitted draft during the discussion process[1].

In legal literature, approaches to the content of the legal relationship of legislative initiative are distinguished by their diversity. Some researchers highlight the following among the rights of the subject of legislative initiative:

The right to submit a draft law to the legislative body;

The right to demand consideration of the draft by the legislative body;

The right to present a report on the draft;

The right to withdraw the draft.

Other researchers view these rights as powers constituting the subjective right of legislative initiative. These rights (powers) are matched by the obligations of the parliament to consider the draft law, to provide the subject of legislative initiative with the opportunity to present a report on the draft law at a parliamentary session, and to return the draft law to the initiator who is withdrawing it. In turn, in the scientific literature, the obligations of the subject of legislative initiative within the framework of legal relations with parliament include the obligation to prepare or submit a draft law and accompanying documents in strict accordance with the established requirements; if this obligation is not fulfilled, the legislative body has the right to return the draft law to the initiator.

Some authors also emphasize that the initiator of a draft law has the right to receive complete information

about the draft law, and that parliament has the obligation to inform the subject of legislative initiative about any changes occurring with the draft law.

The creation of working groups to work on draft laws is not only a justified but also a necessary step in improving law-making activities. Including in the composition of such groups representatives of both authorities and public structures, as well as experts in a particular field of activity, helps to develop a unified position on the draft law before its consideration by the legislative body, and to prepare a document that requires specific knowledge in a particular field of activity. At the same time, employees of the legislative body's staff should also be compulsorily included in the composition of such groups, since it is they, being professionals in law-making activities, who can create a draft law that most closely meets the rules of legal technique[2].

Furthermore, it can be concluded that the process of exercising the right of legislative initiative occurs during the period of consideration of the draft law in parliament, and therefore the content of the legal relationship of legislative initiative includes all the opportunities that the initiator of the draft law has in parliament during the legislative process, and all the actions carried out by parliament within the framework of the legislative process, which can be considered as fulfilling an obligation corresponding to the right of legislative initiative.

Since the legal relationship of legislative initiative develops within the scope of the legislative initiative stage, and the purpose of both the stage and the legal relationship is to exercise the right of legislative initiative, the legal criteria for including other rights and obligations of the draft law initiator and parliament in the content of the legal relationship of legislative initiative are that the rights and obligations are directed towards exercising the right of legislative initiative and that their implementation is limited to the scope of the legislative initiative stage. The majority of the rights and obligations listed above do not meet these criteria.

Rights and obligations that do not meet the specified legal criteria include, in particular, the subject of legislative initiative's right to withdraw a draft law and their obligation to present a report on the draft law at a parliamentary session.

The right to withdraw a draft law is exercised for the purpose of stopping the legislative process. That is, the purpose of exercising the right to withdraw a draft law is completely contrary to the purpose of exercising the right of legislative initiative. Therefore, exercising the right to withdraw a draft law is not directed towards exercising the right of legislative initiative, and therefore the right to withdraw a draft law cannot be included in the content of the legal relationship of legislative initiative. Furthermore, the boundaries for exercising the right to withdraw a draft law are not limited to the scope of the legislative initiative stage.

Therefore, the right to withdraw a draft law can be exercised both during the legislative initiative stage and during subsequent stages of the legislative process: the stage of preparing the draft law for consideration by parliament and the stage of considering the draft law in its first reading by parliament.

Contrary to the views expressed in legal literature, presenting a report on a draft law at a parliamentary session is not a right, but an obligation of the subject of legislative initiative, since this report is necessary for parliament to form a final will regarding the concept of the draft law. Accordingly, this obligation is fulfilled during the first reading stage, when the right of legislative initiative has already been exercised. Therefore, this obligation cannot be included in the content of the legal relationship of legislative initiative. Thus, based on the legal criteria that the rights and obligations are directed towards exercising the right of legislative initiative and that their implementation is limited to the scope of the legislative initiative stage, the subject of legislative initiative's right to withdraw a draft law and their obligation to present a report on the draft law at a parliamentary session are not included in the content of the legal relationship of legislative initiative, and neither are the corresponding rights and obligations of parliament[3].

In the scientific literature, the subject of legislative initiative is assigned the obligation to prepare or submit a draft law and the documents attached to it in strict compliance with the established requirements. The obligation to submit a draft law and the documents attached to it in strict compliance with the established requirements, as noted above, is a key part of the core content of the legal relationship of legislative initiative, is fulfilled simultaneously with the exercise of the right

of legislative initiative, and failure to fulfill it leads to the parliament returning the draft law to the initiator. However, the content of the legal relationship of legislative initiative does not include the obligation to prepare a draft law and the documents attached to it in strict compliance with the established requirements, because it is fulfilled before the legislative initiative is directed to parliament, that is, before the start of the legislative process and, accordingly, before the start of the legislative initiative stage and the legal relationship. The aforementioned position of some researchers that the right of the draft law initiator to receive complete information about the draft law and the parliament's obligation to provide this information are part of the legal relationship of legislative initiative is noteworthy. Therefore, a complex, continuous information legal relationship is formed between the subject of the right of legislative initiative and the parliament at different stages of the legislative process, from legal connections that arise regarding the former obtaining information about the movement of the draft law. Therefore, when defining the content of the legal relationship of legislative initiative, it is important to clearly distinguish the information legal relationship that arises between the subject of the right of legislative initiative and the parliament in general, and the legal connection between them regarding obtaining information about the movement of the draft law during the legislative initiative stage. It is the rights and obligations within the framework of this legal connection that can be included in the composition of the legal relationship of legislative initiative, based on the legal criterion that the implementation of the rights and obligations is limited to the scope of the legislative initiative stage. Within the scope of the legislative initiative stage, the authorized subject exercises their right of legislative initiative, that is, the right to raise the issue of issuing a new normative legal act before the legislative body[4]. The subject of legislative initiative's right to receive information about the movement of the draft law during the legislative initiative stage and the corresponding obligation of parliament also meet the legal criterion that the rights and obligations are directed towards exercising the right of legislative initiative. Within the framework of the legislative process, the right to receive information about the movement of the draft law and the corresponding

obligations are of an enabling nature, serving as a guarantee of the active participation of the subject of legislative initiative in the legislative procedures. The information coming from parliament about the movement of the draft law ensures the full participation of the subject of legislative initiative in the legislative process, and serves to achieve the goals corresponding to the purpose of the various stages of this process. Therefore, during the legislative initiative stage, the right to receive information about the movement of the draft law and the corresponding obligation are directed towards exercising the right of legislative initiative.

Thus, of all the rights and obligations mentioned in legal literature as belonging to the subject of legislative initiative and to parliament within the framework of the legislative process, the content of the legal relationship of legislative initiative includes only the right of legislative initiative belonging to the draft law initiator, the obligation to submit the draft law and the documents attached to it in strict compliance with the established requirements, and the right to receive information about the movement of the draft law during the legislative initiative stage, as well as the corresponding obligations of parliament to accept the draft law for consideration and to inform the subject of the right of legislative initiative about the movement of the draft law during the legislative initiative stage.

Further revealing the content of the legal relationship of legislative initiative, presenting a model of its legal regulation, which includes a system of guarantees for the lawful exercise of the right of legislative initiative, is possible by revealing the content of the specified rights and obligations.

A draft law is considered "introduced" from the moment it is accepted by parliament for consideration, that is, from the moment the right of legislative initiative is exercised. Accordingly, the introduction of a draft law cannot be limited to directing it to parliament. In addition to the legal opportunity to direct the draft law and the documents attached to it to parliament, the content of the legal opportunity to introduce a draft law also includes other legal opportunities predetermined by the principles of legality, separation of powers, popular sovereignty, judicial protection of the rights and freedoms of citizens, and the rationality of the legislative process,

since the active actions of the obligated subject (parliament) are necessary to exercise the right of legislative initiative. Such legal opportunities include the opportunity to present and/or defend the legislative initiative in writing and/or at meetings of parliamentary bodies participating in resolving the issue of accepting the draft law for consideration by parliament, the opportunity to eliminate non-compliance of the legislative initiative with the established requirements, and the opportunity to appeal to the court against the parliament's decision (inaction) regarding the acceptance of the draft law for consideration.

The content of parliament's obligation to accept a draft law for consideration to some extent reflects the content of the right of legislative initiative, the obligation to submit the draft law and the documents attached to it in accordance with the established requirements, and includes elements predetermined by the principle of legality. The elements of this obligation of parliament are the following requirements for its proper action:

Registering the legislative initiative received by parliament;

Verifying that the legislative initiative comes from an authorized subject and that this initiative complies with the conditions for exercising the right of legislative initiative, as well as allowing the initiator of the draft law to participate with advisory voting rights in meetings of parliamentary bodies participating in resolving the issue of accepting the draft law for consideration by parliament, and taking into account the position of the draft law on the legislative initiative and responding to its legal requirements addressed to parliament regarding accepting the draft law for consideration by parliament, which requirements it expresses orally and/or in writing at the specified meetings;

Leaving the draft law inactive in order to eliminate the inconsistencies identified in the legislative initiative by the initiator of the draft law;

Returning the draft law to the initiator if the legislative initiative does not comply with the conditions for exercising the right of legislative initiative (if these shortcomings cannot be eliminated or have not been eliminated after the draft law has been left inactive) or if the legislative initiative originates from an

unauthorized subject. At the same time, due to the principle of legality, it is important to emphasize that this element is precisely an obligation of parliament, and not its right, as indicated in legal literature, as was emphasized above;

Accepting the draft law for consideration.

In current legislation, the content of the right of legislative initiative and the obligation of parliament to accept a draft law for consideration are reduced to a minimum. It is mainly reduced to the legal opportunity to direct the legislative initiative to parliament, to parliament's proper action to register the legislative initiative after it has been received by parliament, to checking its compliance with the conditions for exercising the right of legislative initiative (without the requirement to allow the initiator to participate with advisory voting rights in meetings of the relevant parliamentary bodies, to take into account their position on the legislative initiative, and to respond to their legal requirements), and, based on the results of the check, to accepting the draft law for consideration or returning it to the subject of the right of legislative initiative, regardless of the degree to which the violations committed by it have been eliminated.

The consequence of such legal regulation is a significant reduction in the guarantees for the lawful exercise of the right of legislative initiative, which significantly reduces the effectiveness of exercising the right of legislative initiative, leading the legislative initiative stage to a formal verification of the compliance of the legislative initiative with the conditions for exercising the right of legislative initiative with the passive role of the initiator of the draft law.

The absence of a legal opportunity for the subject of the right of legislative initiative to present and/or defend the legislative initiative in writing and/or during consideration at meetings of the relevant parliamentary bodies excludes interaction between the initiator of the draft law and parliament to agree on positions regarding the issue of properly expressing the will to initiate the legislative process by the initiator of the draft law, to exchange reasoned arguments about compliance with the requirements for the legislative initiative, and about the compliance of the legislative initiative with other conditions for exercising the right of legislative initiative. And such interaction makes it possible to avoid illegal decisions that impede the

exercise of the right of legislative initiative, to eliminate emerging contradictions at an early stage, and to reach a common opinion. The need for this interaction with parliament in relation to draft law initiators who are state authoritative subjects stems from the principle of separation of powers, while for draft law initiators who are direct subjects of popular sovereignty, it ensures their full participation in the management of state affairs[5].

Taking into account that a number of requirements for a draft law and the documents attached to it are of a formal nature or can be eliminated in a short time for other reasons, based on the principle of rationality of the legislative process, the requirement for parliament's proper action in such cases is that it should not return the draft law to its initiator, thereby suspending the legal relationship of legislative initiative and the legislative process in general, but rather leave the draft law inactive, so that the inconsistencies identified in the legislative initiative can be eliminated by the draft law initiator within a reasonable time.

In this regard, I consider it necessary to establish mandatory requirements for the introduction of draft laws by deputies of the Legislative Chamber: to conduct a study on the feasibility and relevance of applying the draft law in current legislation; to conduct a legal examination of draft laws at the stage of introducing them to the Legislative Chamber[6].

Parliament controls the legality of introducing a draft law through appropriate verification. If parliament itself makes an illegal decision on the issue of accepting a draft law for consideration or is illegally inactive on this issue, the subject of the right of legislative initiative must have the legal opportunity to appeal this decision (inaction) to the court. For a situation where the initiator of the draft law is a state authoritative subject, the judicial dispute with parliament will be in the area of objective law, that is, the dispute is related to parliament's compliance with legal instructions on accepting a draft law for consideration, and its correct interpretation of them. If the initiator of the draft law is a direct subject of popular sovereignty, the subject of the judicial dispute is also the protection of the constitutional right of citizens to participate in the management of state affairs. Given the constitutional and legal nature of these cases, their consideration should fall within the competence of the Constitutional

Court and the Supreme Court of the Republic of Uzbekistan, in accordance with the level of the legislative process. It should be noted that the result of such legal regulation should be the exclusion of these courts from the list of subjects of the right of legislative initiative, so that they can avoid the situation where they may become "judges in their own case."

The principle of legal certainty implies the following requirements for the legal regulation of the fulfillment of parliament's obligation to accept a draft law for consideration: the requirement to establish a maximum time limit for parliament to resolve the issue of accepting a draft law for consideration; the requirement to establish a rule that parliament's decision to return a draft law to its initiator must be reasoned. Establishing these rules in legislation is also a guarantee of exercising the right of legislative initiative.

Without establishing the specified maximum time limit, the resolution of the issue of accepting a draft law for consideration by parliament can be unreasonably prolonged, and as a result, the right of legislative initiative may remain unexercised for an indefinitely long time. Legal uncertainty in terms of the normative establishment of the maximum time limit for resolving the issue of accepting a draft law for consideration by parliament creates conditions for violating the principle of legal equality in relation to subjects of the right of legislative initiative in parliamentary practice.

The rule that the decision to return a draft law to its initiator must contain the reasons for parliament's refusal to accept the draft law for consideration is a guarantee against the illegal return of the draft law and thereby ensures the exercise of the right of legislative initiative. In addition, this rule creates the conditions for legal certainty regarding the return of the draft law to its initiator, which is particularly important in the context of the subject of the right of legislative initiative's legal opportunity to appeal to the court against parliament's decision (inaction) regarding the acceptance of the draft law for consideration. Furthermore, this rule can help to exercise the right of legislative initiative when re-introducing the draft law to parliament.

The right of the draft law initiator, which is included in the content of the legal relationship of legislative initiative, to receive information about the movement

of the draft law during the legislative initiative stage, and the corresponding obligation of parliament to provide the relevant information, is also, in fact, a guarantee of exercising the right of legislative initiative. Thus, having received information about the movement of the draft law during the legislative initiative stage, the subject of the right of legislative initiative can present their draft law, defend it, justifiably demand that it be accepted for consideration, eliminate the shortcomings of the legislative initiative, and appeal to the court against parliament's decision to accept the draft law for consideration. That is, information about the movement of the draft law during the legislative initiative stage creates conditions for the draft law initiator to exercise the legal opportunities that are included in the content of the right of legislative initiative.

Therefore, the following should be provided for in current legislation:

The right to receive information about the movement of the draft law during the legislative initiative stage is the right of the draft law initiator, the content of which is constituted by the legal opportunities to obtain the specified information and to demand its provision from parliament in oral or written form;

Parliament's obligation to provide information to the draft law initiator about the movement of the draft law during the legislative initiative stage;

Among the documents submitted with the draft law, there are also financial justifications, which are obligatorily established for all draft laws.

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