

Zharbolova A.Z.,
Kussainov D.O.

**Role of historical-social and
natural-geographical conditions
in legislative process**

The article describes the role of the socio-historical and natural and geographical conditions in lawmaking. Respectively, in article are considered questions of influence of objective factors on lawmaking, communication of legislative activity with public conditions and their interdependence. In article it is emphasized that objective regularities which were created for many years and don't depend on will and consciousness of person and legislator are the bases of lawmaking. In article are analyzed extents of influence of these objective regularities on lawmaking of the country, on formations of contents of laws. Also, in article are considered the essences of social-historical and natural-geographical conditions, their value, need to consider them in the process of lawmaking.

Key words: Parliament, law, legislative activity, legislator, deputy, society, objective factor, social-historical and natural-geographical conditions, culture, mentality, traditions.

Жарболова А.Ж.,
Құсайынов Д.Ә.

**Қоғамдық-тарихи және табиғи-
жағрафиялық жағдайлардың
заң шығармашылығын жүзеге
асырудағы рөлі**

Мақалада тарихи-қоғамдық және табиғи-жағрафиялық жағдайлардың заң шығармашылығын жүзеге асырудағы рөлі қарастырылған. Тиісінше мақалада объективтік факторлардың заң шығармашылығына әсер етуі мәселелері, заң шығару қызметінің қоғамдық жағдайлармен байланысы және оларға тәуелді болатындығы қарастырылған. Мақалада заң шығармашылығының негізінде көптеген жылдар бойы қалыптасқан және адамның, заң шығарушының санасынан, еркінен тыс, тәуелсіз болатын объективтік заңдылықтар жатқандығы сараланып, олардың еліміздің заң шығармашылығына, заңдардың мазмұнының қалыптасуына әсер ету дәрежесіне талдау жасалған. Сонымен қоса, мақалада тарихи-қоғамдық және табиғи-жағрафиялық жағдайлардың мәні, олардың маңызы, заң шығармашылығы барысында оларды ескеру қажеттігі қарастырылған.

Түйін сөздер: Парламент, заң, заң шығару қызметі, заң шығарушы, депутат, қоғам, объективтік фактор, тарихи-қоғамдық және табиғи-жағрафиялық жағдайлар, мәдениет, менталитет, әдет-ғұрып.

Жарболова А.Ж.,
Қусаинов Д.О.

**Роль общественно-
исторических и природно-
географических условия
при осуществлении
законотворчества**

В статье исследована роль общественно-исторических и природно-географических условий при законотворчестве. Соответственно, в статье рассматриваются вопросы влияния объективных факторов на законотворчество, связь законодательной деятельности с общественными условиями и их взаимозависимость. В статье подчеркивается, что в основе законотворчества лежат объективные закономерности, которые сформировались в течение многих лет и не зависят от воли и сознания человека, законодателя. В статье анализируется степень влияния этих объективных закономерностей на законотворчество страны, на формирование содержания законов. Также в статье рассматриваются суть общественно-исторических и природно-географических условий, их значение, необходимость учитывать их в процессе законотворчества.

Ключевые слова: Парламент, закон, законодательная деятельность, законодатель, депутат, общество, объективный фактор, общественно-исторические и природно-географические условия, культура, менталитет, традиции.

**ROLE OF HISTORICAL-
SOCIAL AND NATURAL-
GEOGRAPHICAL
CONDITIONS IN
LEGISLATIVE PROCESS**

Despite ways of lawmaking, it is known that this activity doesn't happen unjustly and at any time when the lawmaker wishes. Lawmaking arises from different public, political, economic processes, life regularities, and it is connected with them. These processes, certainly, make impact on formation of legal regulations. They, being in dependence or independence from our will, together with lawmaking put certain restrictions for the general behavior of mankind. Because the person is not isolated from nature and society. He is united with society in which lives, one of its members. A certain personality in his activity can be conscious and unconscious, free and weak-willed. But in the end he always relies on objective regularities. This is the proved concept. It is the regularity recognized by scientists of all times.

Society and human life for thousands of years for centuries formed an objective based on current laws. They are independent of our choice and they impose certain restrictions on the behavior of mankind. Legislative activities of the Parliament and the people of the Republic, the legislative powers of the President in the case of legislative acts aimed at the creation of intelligent, purposeful, creative activity. Legislative activities including law-making arises from the effects of certain strength. This is the efforts in the philosophy called «factor». Accordingly, the factor of – in this case, the event has been a driving force. If we talk about law- it affects the creation of legislative activity, to build the text of the law. Legislative activity is the result of necessities and the needs of the people, resulting from the interests and goals. And, in turn, of the public relations needs of the people, natural, and social conditions.

The objective factors (bases) it's being independent from people's will, the processes which revive lawmaking and put any restrictions. In the nature, and the bases of society and human lives lie objective bases, regularities which developed over the millennia and centuries. They are independent from our will, and they put certain restrictions for actions of mankind. Also, it is undoubted that they directly influence lawmaking activity. Connection of legislative activity of legislator with objective factors (bases) is the need of entire periods. Because, activity of the legislator and an objective basis, need of communication, apart from quality of the law, leads to not depreciation of importance of consciousness and will of the legisla-

tor and gives confidence in conscious achievement of goals.

In science objective factors (bases) are all situations which are independent from consciousness and will of the subject, i.e. «objective situations (an objective factor) – all situations independent from consciousness, will and desire of persons, groups, party and all mankind» [1, p.62].

Concept of objective basis – factor is important. Because, it gives the chance to show that historical movements are defined by objective laws which are independent from consciousness of people and allows to understand how objective course of history is connected with people, with their consciousness, intelligence and action, etc.

Conscious deputies' activities as well as other subject participating in lawmaking process depends on public life, economic development of society and other objective conditions. Therefore, subjective factors of lawmaking are connected with the objective foundations.

There are some objective bases – factors influencing the legislation. In total they are prerequisites, a driving force of legislative activity. One of them – historical-social and natural-geographical conditions. If to consider these two conditions separately, the main objective basis influencing lawmaking is historical-social conditions. They are created in the process of long interrelation of person and nature. The chain of historical development is continuous, and since first moment, that is since the moment when the person became a person, he is in direct link with nature, considering its regularities people from the culture, national values, customs, ceremonies, different mechanisms of work and daily life, and appropriates equipment of different types of activity which indicate a certain extent of true production work. At all times stories the created own culture, ways of maintaining life, to be exact, concerning Kazakh people, nature of agriculture and cattle breeding, work and receiving profit, ways of existence, customs, national mentality – all this is the objective proof of correct, convenient ways of their development and convenient life. In that case, all these specified situations have to be the main and defining through making legislative acts. Because, natural-social achievements (customs, ceremonies, culture, work and ways of life, etc.) of certain people are results of their development at all times of history. Such situations are formed and adapt in certain living conditions. In this sense it will be pertinent to stop on the following thought: «In spite of the fact that people live in the West, East or South, it is necessary to study and know achievements of all

mankind. Also it is necessary to know the following: any culture develops in «environment» of social condition, in this situation they can be used only in case of replacement of one culture with another, in acceptance and absorption of opportunities and achievement of this culture. Own culture describes the real situation of life, and the culture accepted from others describes situations which can be both good or bad» [2, p.59-60]. The author in this thought considers only culture, but regularity concerns to all situations. The conclusion following from everything told: legislator at implementation of legislative activity without separating everything created by people for long time and persistent work, always has to consider common. All this was considered 85 years ago by the leader of Kazakh people Akhmet Baytursynuly. Akhmet Baytursynov demanded that laws (his contents and sense) have to be adopted considering ethnic features of national psychology, their factors of housekeeping. This requirement of this figure can only be supported. As, the laws adopted by state without account and recognition of all traditions and customs created by people in all spheres of history, will lead to the fact that a legal possibility of such laws will be limited in settlement of certain public relations and in the end such laws will hardly find support (among the population) from the people. The wise figure formulated his point of view thus: «each people have an old traditional way on which he goes. If there is a need to correct this way, then it is necessary to correct only unsuitable moments, without touching the suitable moments. Especially for people which stay in the dark will be difficult to follow on such new and at the same time alien to him way therefore, despite of the fact that roots of the law are identical, laws for each people corresponding to his state, tradition and character are issued» [3, p.280]. A. Baytursynov points to the importance in activity of the legislator not just to be considered with historically developed social conditions of people, and also pay the legislator's attention that the laws issued (accepted) taking into account with necessary condition, promote prosperity and wellbeing of these people. If the legislator knows customs, tradition and national mentality of people badly (insufficiently), then the laws issued by it will precisely lead to decline or do not lead to the revival and prosperity of people at all. A. Baytursynov's follower scientist Saken Uzbekuly proves epy case of views of the teacher, analyzing negative events which took place in the history of Kazakh people at the Soviet power. In particular, he writes: «From history it is well known that under the slogan of internationalism the norms of law of imperial charac-

ter alien to national consciousness and mentality of Kazakh people which had serious consequences for Kazakh people were accepted by establishment of Russian colonial policy and Bolshevik communistic and totalitarian system» [4, p.143]. Therefore, legislators and all participants of this process shouldn't forget that not to consider reality of objective bases of lawmaking process, will lead to deterioration in welfare of people, environmental disasters, even to fluctuation of bases of democratic objects of the state, and other negative results.

The next objective basis influencing lawmaking is the natural-geographical condition as one of the bases which influence formation of the law in an example of our country is a geographical condition of the Republic of Kazakhstan in today's time. Kazakhstan as well as other countries has its own natural-geographical place. To this place, according to his natural features and being in relationship with them, people of Kazakhstan for a long time have reached acceptable, necessary opportunities for their activity. In my opinion concerning participation of natural-geographical situation of the state on activity of people it is possible to tell the following rule: «On earth each people own territory. Natural feature (climate, soil, a relief, water resources, a geographical arrangement, etc.) of this territory offers people forms of equipment of a production activity and public life, necessary for their demand» [5, p.58]. Therefore it isn't casual that not only production activity, but also lawmaking, legislative activity irrespective of the historical period depends and adapts on natural-geographical conditions.

In the process of lawmaking it is frequent using of foreign practices, rules. In the last fifteen-twenty years cultural-spiritual, social views of our country in many respects imitate abroad views, especially the countries of Europe. It is impossible to form laws of Kazakhstan rather, in accuracy with other countries. As, one of objective bases – not to reckon with a natural-geographical condition of Kazakhstan or neglect them can lead any activity to the return consequences. In this regard I think it is appropriate to stop on thought of B. Tutkushev about this problem. He says: «I am not a supporter of application of any foreign practice to Kazakhstan. We have our own mentality, social and economic features. Therefore we need to use and develop all benefits and right causes. Palm-oil is a very good oil. But, despite this fact it is senseless to grow up it in our climate. It is easier to buy this oil» [6]. And even now legisla-

tors and the Government (participants of legislative process) develop laws, drafts of laws disregarding geographical and national mentality of the people. They have to consider and reckon with natural conditions of our republic – features of change of seasons, distinction of weather, soil, etc. Of course, this problem is wider than is told. To geographical conditions also concerns environment. And our ecology not in the best state. And it influences lawmaking process too.

The legislator at execution of conscious activity has to be able to estimate not only natural-geographical, historical-social conditions, but also he has to estimate other important factors which render an influence on legislative activity. Without knowing all aspects and not completely considering bases, rendering on productive legislative activity it is impossible to create favorable conditions for development of lawmaking. Modern practice of lawmaking proves this point (principle).

Deputies are humans that express people's will and legalize people's will by adopting laws. Will of the people is always connected with own, but not alien natural-public achievements (customs, traditions, culture, forms of labor and lifestyle, etc.). Therefore, lawmakers in taking laws must not give up different influences to reach within short time big achievement, they must operate resting on social conditions, not to inflict harm on values, that were accumulated for a long historical time. Lawmaker within the process of law making must not separate himself from the people what is has aggregated within a long period of time, and must view them in holistic way, as an integral part. To this end, the legislator must know the customs, traditions of his people, the national mentality.

Also, objective factors will be initial and defining. Lawmaker actions concerning the law making process are objectively grounded. Lawmaker does not select external objective conditions underlying lawmaking process by his own choice. He is always bound to certain objective causes and is dependent on objective necessity.

Thus, the legislature in connection with the conduct of the work of the law is based on the activities. The legislature – cannot be completely unreasonable in its sole discretion, to take any action. It always depends on the specific need and he has a real historical content. The history demands on the parliament to take laws considering specifics of people's psychology, traditional foundations, natural-climatic, social, economic conditions of the state.

Литература

- 1 Антонян М.О. Соотношение объективных условий и субъективного фактора при социализме. – Ереван: Изд. АН Арм.ССР, 1967. – 239 с.
- 2 Атаманчук Г.В. Теория государственного управления. Курс лекции. – М., Юр. лит., 1997. – 400 с.
- 3 Байтұрсынов А. Ақ жол. – Алматы: «Жалын», 1991. – 464 б.
- 4 Законотворческий процесс в Республике Казахстан: состояние и проблемы. // Материалы международной научно-практической конференций 27-28 марта 1997 г. / Отв. ред. Сапарғалиев Г.С. – Алматы, 1997. – 624 с.
- 5 Бурлаков Л. Законы должны отражать уровень демократизации. // Юридическая газета. 12.04.2000
- 6 Сапарғалиев Ф. Қазақстанның бірыңғай мемлекет ретіндегі идеологиясының мәселелері. // Ақиқат. – №9-10. – 1999. – 3-11 бб.

References

- 1 Antonyan M.O. Sootnoshenie obyektivnykh uslovyi y subyektivnykh factorov pry socializme. – Yerevan: Yzd. AN Arm.SSR, 1967. – 239 s.
- 2 Atamanchuk G.V. Theorya gosudarstvennogo upravlenya. Kurs lektsyi. – M.: Jur. lit., 1997. – 400 s.
- 3 Baytursynov A. Ak zhol. – Almaty, «Jalyn», 1991. – 464 s.
- 4 Zakonotvorcheskiy process v Respublike Kazakhstan: sostoyanie y problemy. // Materialy Mezhdunarodnoy nauchno-prakticheskoy konpherensy 27-28 marta 1997 g. Otv. red. Sapargalyev G.S. – Almaty, 1997. – 624 s.
- 5 Burlakov L. Zakony dolzhny otrazhat uroven democratizatsyi // Yurydycheskaya gazeta. 12.04.2000
- 6 Sapargalyev G. Kazakhstannin biryngay memleket retindegi ideologyasinin maselelery. //Akikat. – №9-10. – 1999. – 3-11 b.