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## THEORETICAL AND LEGAL FOUNDATIONS OF LEGAL CREATIVITY

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### ABSTRACT

The theoretical and legal foundations of law creation and the issues of improving its activity and ensuring the strict execution of legal documents are considered in the article. Also, the concept, essence and opinions of the famous foreign and local scholars of jurisprudence are discussed.

### KEYWORDS

legal creativity, theory, legal framework, legal consciousness, legal culture, legal norms.

### INTRODUCTION

It is important to ensure the acceptability, perfection, popularism and effectiveness of legislation in the formation of the legal state and civil society. In a word, the development of the society and the state depends on the quality of the adopted normative legal documents. Therefore, improving the process of law creation, increasing the effectiveness of cooperation between the legislature and the scientific community in order to identify and eliminate gaps in the legislation, and developing reasonable proposals is one of the urgent issues today.

However, it should be recognized that there are still problems in terms of harmonizing our national legislation with international standards and ensuring the balance between social life and new regulatory legal documents, preventing collisions in our national legal system, and increasing the effectiveness of the application of legal documents on this basis.

In fact, as social relations develop, the need for new legal norms to regulate them also increases. Today, the process of law creation is thoroughly regulated, and

the improvement of law creation of local authorities is becoming one of the urgent issues.

Legal creativity is one of the urgent problems of state and legal theory. At the same time, the process of law creation and law formation is one of the most complex types of state activity. Because law creation is a form of state activity aimed at creating legal norms, improving them, changing or canceling them in the future. It is the process of creation and development as a single and purposeful system of universally binding norms that legally regulate social relations and have the status of official activity on special, establishment. Development and approval of new legal norms is considered the most important for legal creativity. In this, first of all, the defined tasks of state activity are expressed in law.

Legal creativity, by its essence, implies the manifestation of the will of the state in relation to the law, legal instructions of universal importance. At the current stage of the development of legal creativity, first of all, the adoption of legal documents by the people of the country directly through the referendum or the publication of documents containing legal norms by the state and other governing bodies is clearly manifested. In some countries, one of the forms of law creation is judicial precedent. The importance of agreements with normative content among different legal entities is increasing day by day.

It is worth noting that law-making is essentially defined in many legal literatures in the form of law-making and norm-making. In our opinion, it is necessary to distinguish between the concepts of law-making and law-making, because if law-making means the process of adopting any normative legal document that reflects the right, law-making means the process related to the adoption of laws.

For example, K.N. Dmitriyevtsev defined the process of law creation as follows: "Law creation is the consideration of generality and particularity in the creation of legal norms that reflect the current trends of individual, society and state development by specially authorized state bodies and officials and in the interests of all social objects is an activity expressed in the formation of social, group and individual legal consciousness for the purpose of finding an agreement and objectively regulating social relations of a legal nature" [1; p. 20].

According to Professor Z.M. Islamov, "Legal creation is a type of state activity, as a result of which the will of the people rises to the status of law, finds its expression in the legal norm in a specific source of law" [2; p. 585]. At this point, it is worth noting that in the process of law creation, not only laws are created, but also other types of regulatory legal documents, i.e., legal documents, can be created. From this point of view, we believe that it is appropriate to describe the process of law creation as law making.

In this regard, legal scholars A.Kh. Saidov and Sh.N. Kochimov express the following opinions: "Any law is a result of legal creativity. Legal creativity is a multifaceted complex social phenomenon, it is the only means of formation and development of law in state activities, as a result of which the state order takes the form of a legal norm. At this point, the authors emphasize the creation of law as a result of law creation, and ignore the creation of subordinate documents, which are a component of this process. It should be noted that although law-making is considered the most important, basic form of law-making, these concepts differ from each other in a number of features. The analysis of current legal documents shows that the creation of norms covers the process from the development of normative legal documents to their adoption and publication.

The democratization of the law-making procedure requires the active participation of parties, public movements, business organizations, and citizens' gatherings in the creation of legislation, their initiative, free, broad and business-like discussions provided for in the legislation.

However, this process does not mean that no matter how the law creation process is implemented, it is still a state activity, a form of the state's domination over the society. The state creates the main part of legal norms through its bodies. If such norms are announced by non-governmental organizations, their law-making powers are determined by the state [3; pp. 307-308].

Of course, when it comes to state functions, first of all, it is appropriate to dwell on the forms of their implementation and, as one of them, law-making or law-making work, which is one of the manifestations of state leadership to society. Therefore, regardless of the state's mission, type, implementation and organization of state power, law creation is carried out by the state.

That's why "Legal creation is a process that includes identification and evaluation of legal needs of society and the state, formation and adoption of legal acts by authorized entities in the prescribed manner [4; p. 75]. This definition emphasizes the following important aspects: 1) understanding, studying and analyzing a situation or process that requires legal regulation; 2) to identify the body (subject) authorized to adopt this or that legal act; 3) choosing the form of the act to be adopted; 4) preparing, adopting or changing a legal act within the framework of the relevant procedure. Of course, these listed aspects are interrelated and a holistic process.

According to its content, law creation consists in raising the will of the state to the level of law,

expressing it in the form of general binding legal rules for all. Legal creation is carried out by various bodies of the state with appropriate authority. Through the activity of state power and management (executive) bodies, the main set of legal norms is created" [5; p. 71].

Legal creativity is such a type of state activity that, as a result of it, the will of the people rises to the status of law, finds its expression in a legal norm, a specific source of law.

As mentioned above, together with the adoption of new legal norms, the cancellation and change of outdated normative legal instructions is also included in the activity of law creation. At the moment, the level and culture of law creation, the quality of the normative legal documents adopted accordingly, indicate the high level of cultural development and democracy of the state and society. Norms of natural law enter into the form of normative documents by means of legal creativity and turn into positive (positive) law, i.e., a law that exists in the form of law.

Political and legal reforms, reform and modernization of society, the development of democracy, the strengthening of the legal order, the level of development of legal culture and consciousness in society, the correct understanding and effective use of each person's rights and freedoms, the conscientious fulfillment of obligations and is determined by the basis of the law in its activities. On the other hand, if the opposite of these situations happens, the negative influence of legal nihilism and legal idealism will undoubtedly arise in terms of modernization of the process of norm creation, ensuring the strict execution of legal documents. That is why the goals set in the second priority direction of the development strategy of New Uzbekistan for 2022-2026 called "Making the principles of justice and the rule of law in our country the most basic and necessary condition for

development" are relevant as they are dedicated to these issues [6; 22-b].

Summing up from the above, in order to effectively influence social relations, modernize the process of law creation in society, ensure the strict implementation of legislation, raise legal consciousness and legal culture, inform the population, especially young people, about the socio-economic reforms being implemented in our country, adopted legal documents and state programs. formation of a system of consistent transmission of content and essence, wide promotion of the ideas of maintaining a balance between personal interests and the interests of society, as well as state authorities and management bodies, including strengthening the mutual cooperation of law enforcement agencies and civil society institutions in the implementation of targeted legal propaganda and in-depth research of the scientific basis of raising legal awareness and legal culture among the population, are of great importance in raising legal awareness and culture in the society.

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