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# THE PLACE AND ROLE OF LEGAL TECHNIQUE IN LEGAL CREATIVITY

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## ABSTRACT

This article analyzes the place and role of legislative technique in legal creativity, the content and essence of legislative technique. Proposals and recommendations on the development of legislative techniques are given.

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## KEYWORDS

Legal Creativity, Legal Technique, Legal Language, Legal Style, Legal Terminology.

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The process of legal creativity is important in any state activity. It expresses the will of the people of the entire country and reflects their dreams, aspirations, moral and national spirit in the laws. Laws regulate socio-political, economic, cultural relations in this society. Defines the rights and obligations of civil society members. It ensures justice and legal order in the territory of the country, prevents crime and delinquency. Therefore, the law is the only means of regulating social relations, ensuring order and legal order in society.

Any law is the result of legal creativity. One of the most important components of legal creativity is law creation, which requires a lawyer not only to acquire legal knowledge, but also to acquire special knowledge, skills and abilities in the field of legislation, to invent appropriate forms of the method of expressing the law.

Such knowledge related to the field of legislation is called "legal technique" in the theory and practice of jurisprudence. Legislative technique serves as the main tool in any state activity, especially in building a legal state. The high level of legislative technique allows to find a clear and clear expression of the legal norm expressed in the law in the documents, it does not allow legal norms to be misunderstood or described or interpreted in different terms. The normative-legal document ensures the creation of appropriate forms of expression. This makes it convenient to apply this law in practice. Also, the legislative technique ensures that the drafts of regulatory legal documents are of a very high quality. The project prepared in strict compliance with the legislative technique will be of high quality.

In legal scientific literature, legislative technique is described as a set of rules and methods for drafting normative-legal documents, the internal structure of the document, its language and style, legal terminology (legal terminology), the art of translating legal documents from one language to another. It is considered to be the organizational and technical rules of quick and thorough preparation of normative legal documents and the method of correct organization of additions and changes to normative legal documents, as well as a means of more clearly expressing the opinion of the legal expert in drafting the law.

However, due to the comprehensiveness and complexity of these problems, there are various disputes, debates, various opinions, and sometimes conflicting views among legal scholars on issues such as the object of study, subject, scope, and boundaries of the legal technique.

Most legal scholars look at the legal technique as a set of rules and methods for preparing a draft of a normative legal document<sup>1</sup>. Some legal scholars give a wide comment on the object of legal technique, including I. L. Braude in the article "Issues of legal technique": "Legal technique - in our opinion, covers not only the rules about the language of legal norms, but also issues such as their structure and nature takes" - he writes and emphasizes that legislative technique is an integral part of legal technique<sup>2</sup>.

I. L. Braude continued his opinion: "It would be wrong if we understand the legislative technique as consisting only of a set of rules for the presentation of bills of law. Legislative technique should not be considered as a way to achieve external uniformity of legal drafts (although such experiments are useful as expressive rules of a regulatory legal document). Legislative technique is based on legal theory. Accordingly, it should also include issues such as classification (classification) according to the content and order of normative documents, defining the limits of legislative documents of different fields, and stating the legal norms related to different fields of law in a holistic state. In particular, the theoretical issues of the legislative technique should be determined in relation to the norms expressed in the documents according to their content."<sup>3</sup>

A.A. Ushakov developed this idea further and writes: "Issues related to the general doctrines of the legal system, its structure and construction allow us to open a new field of legal knowledge, and we call it legislative technique."<sup>4</sup>

"Such a solution to the problem - the authors of the book of legal techniques object to it - may cause the subject of legal technique to be replaced by the subject of legal theory, and even worse, it may create a misconception that the subject of legal technique is equal to the subject of the entire theory of law."<sup>5</sup>

Professor A.S. Pigolkin D.A. Supporting Kerimov's opinion: "If the legal technique is so wide-ranging and comprehensive, then what does the whole theory of law mean with its content and essence, in any case, it is necessary not to include such broad issues in the subject of study of the legal technique, the concept of legal creativity itself is the essence of this concept fully expresses".<sup>6</sup>

In our opinion, the opinions of professors A.S.Pigolkin and D.A.Kerimov are correct. As noted by I.L. Braude and A.A. Ushakov, a broad interpretation of the legislative technique is controversial. In our opinion, a broad interpretation of the scope of legislative technique expands the scope and boundaries of its study. As a result, as Uzbek jurist L.M. Boyko<sup>7</sup> rightly pointed out, the technical issues of drafting this normative document (the most important, base point of the legislative technique) are left aside, and issues such as the essence of law creation and its social and political importance come to the fore.

Some legal scholars believe that the legal technique should be understood in a broad and narrow sense. It is broadly a decision-making activity through which legislative policies and principles are put into practice. Such activity shows its essence and technical order. They believe that legislative technique in a narrow sense is a set of rules for creating and expressing legal norms.<sup>8</sup>

Legal scientist B.A. Mirensky understands the legal technique as the set of organizational and technical rules, methods, and tools of the work of the legislative body reflecting the legal policy aimed at the preparation and publication of legal acts, as well as making additions and changes to them while

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<sup>1</sup> Керимов Д.А. Кодификация и законодательная техника. -М.:Госюриздат, 1962. -С.47.; Законодательная техника. Под ред. проф. Д.А.Керимова.-Л.:Изд-во ЛГУ,1965. -С.5.; Гродзинский М. Об усовершенствовании законодательной техники // Социалистическая законность, 1957 №1, -С.11.; Лях Т.В. Проблема кодификации советского социалистического права. Дисс... канд. юрид.наук. -Л.: 1954. -С.118.; Корнев А.П. Законодательная техника и кодификация советского административного права // Правоведение. 1961. №3, -С.36.; Ильин И.К., Миронов Н.В. О форме и стиле правовых актов // Советского государства и право. 1960. №12, -С.65-66.; Пиголькин А.С. Теоритические проблемы правотворческой деятельности в СССР. Дисс... докт. юрид. наук. -М.: 1972. -С.220. кабилар.

<sup>2</sup> Брауде И.Л. Вопросы законодательной техники // Советское государство и право. 1957. № 8, -С.53.

<sup>3</sup> Брауде И.Л. Вопросы законодательной техники // Советское государство и право.1957. № 8. -С.53,54.

<sup>4</sup> Ушаков А.А. Важнейшие кодификационные работы на первой фазе развития советского государства. Автореф. дис... канд.юрид.наук. -Л.: 1953. -С.21.

<sup>5</sup> Законодательная техника. Под ред.проф. Д.А.Керимова. -Л.:Изд-во ЛГУ, 1965. -С.6.

<sup>6</sup> Пиголькин А.С. Подготовка проектов нормативных актов. -М.: Юридическая литература, 1968. -С.6.

<sup>7</sup> Бойко Л.М. Совершенствование законодательной техники в условиях ускорения социально-экономического развития советского общества.- Т.:Фан, 1988. -С.10,11.

<sup>8</sup> Нашиц А. Правотворчество: теория и законодательная техника.- М.:Прогресс, 1974.- С.138.; Ушаков А.А. О понятии юридической техники и её основных проблемах // Ученые записки Пермского госуниверситета, Т.ХІХ. вып.V. 1961. - С.82-84.

preserving the basic principles of laws<sup>1</sup>. Jurist H.T. Odilgoriev also touched upon the issues of studying legislative technique and writes: "Legislative technique is a system of theoretically deeply observed rules and methods of preparing drafts of legal acts, based on the practice of law creation, and it is full of the content of the form of normative legal provisions and exactly in accordance with ensures that the regulatory material is comprehensible, simple and easy to progress and follow, and that it comprehensively covers the regulated issues".<sup>2</sup>

Thus, there are different opinions in the scientific literature about the legislative technique, its object of study, scope, scope. Indeed, the issue at hand is a very broad one, but an extremely important problem to solve.

The point is that legislative technique is related to legal theory, legal practice, and legal creativity (lawmaking). Therefore, when defining the object of study of legislative technique, scientists express their opinions from different points of view, introduce different rules regarding the content and essence of legislative technique. As a result, the legislative technique acquires some generality, or rather uncertainty.

Although the object and scope of the study of legislative technique are described differently in scientific literature, in our opinion, the following issues should be included in the scope of study of legislative technique:

- 1) the form and structure of the regulatory legal document;
- 2) components of the regulatory legal document;
- 3) issues of the organizational method of preparation of normative legal document drafts at the level of international standards, mature and thorough in all respects;
- 4) development of methods of making additions and changes to regulatory legal documents;
- 5) to determine the main requirements for drafting the text of regulatory legal documents;
- 6) legislative linguistics;
- 7) the method of expression of legal norms in normative-legal document drafts;
- 8) legislative methodology;
- 9) the language of the law;
- 10) legal terminology;
- 11) translation of legal documents from one language to another;
- 12) name of the law;
- 13) on the basis of serious research of the structure, components, language and methods of expression of sharia laws based on our national legal traditions, assimilation of their advanced aspects into today's Uzbek national legislative technique.

Also, the most important rules of the legal technique developed in the process of legal creativity of our country and foreign countries should be included in the framework of the Uzbek national legislative technique.

Studying these issues allows you to solve the following issues:

- first, the logical consistency of the legal norms expressed in the normative legal document is achieved and their interrelationship is ensured;
- secondly, the reciprocity between the content and form of the regulatory legal document is ensured;
- thirdly, it becomes easier to apply normative legal documents in practice;
- fourthly, different interpretations of regulatory legal documents are prevented;
- fifthly, a wide way is opened for the development of the legislative method;
- sixth, it is ensured that the regulatory legal document is very clear, fluent and understandable;
- seventh, necessary conditions are created for the formation and improvement of the legal language as the basis of the national legal language;
- eighth, national legal terminology is regulated;
- ninthly, quality translation of normative legal document drafts from one language to another is ensured.

So, it can be seen from these thoughts that the laws of a country with a highly developed legislative technique are created in such a perfect, thorough and mature manner. Legislative technique plays a special role in ensuring that laws are in line with world standards. In general, the law-making process is a very creative product. In this case, the cooperation of legal knowledge, language and logic is necessary. In our view, the process of law writing is a certain special scientific field. The process of creating a law is a multifaceted, complex process.

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<sup>1</sup> Миренский Б.А. Методологические основы и методы совершенствования законодательства. -Нукус: Каракалпакстан, 1990. -С.156.

<sup>2</sup> Одилориев Ш.Т. Ўзбекистон Республикасида онун чиариш жараёни. - Т.:Ўзбекистон, 1995.- Б.183.