



PRINCIPLE OF SCIENTIFICITY IN THE PROCESS OF LAW-MAKING: THEORETICAL AND LEGAL ANALYSIS

D.Mustafakulov

Lecturer of Tashkent State University of Law

Abstract

This article analyzes the essence, theoretical foundations and mechanisms of its implementation in practice of the principle of scientificity in the activity of normative-legal creativity. The author emphasizes the need for a scientific approach in the development of normative-legal documents, justifying the growing need for legal regulation in the context of the complexity of social relations in modern society. The various interpretations of this principle in the scientific literature are summarized, and it is argued that the principle of scientificity requires the development of normative-legal documents on the basis of scientific achievements, practical experience, the current social situation and expected social consequences. The article reveals the principle of scientificity in its inextricable connection with the principles of democracy and legality, and justifies the need to expand the participation of the scientific community at the planning stage of the process of creating normative-legal documents, prepare alternative projects and conduct an independent examination. In conclusion, it is emphasized that in order to increase the effectiveness of normative-legal creativity, it is an urgent task to further improve the principle of scientificity and develop mechanisms for its implementation.

Introduction

As a result of the continuous development of modern society, new social relations are being formed, and existing social relations are becoming more complex and constantly changing. These processes lead to the emergence of new vertical and horizontal connections in the system of social relations. Such



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changes widely cover the political, economic, social and other spheres of society.

In this context, the need for legal regulation of social relations is increasing. This requires a high level of scientific and professional training from legal entities engaged in norm-setting activities. Because norm-setting is currently becoming an intellectually complex, multifaceted and large-scale type of legal activity.

In this regard, it is timely to introduce the principle of science into the basic principles applicable in the field of norm-setting. The principle of science serves to ensure a scientific approach in norm-setting activities, to ensure the scientific validity of draft legislative acts, and to increase their real relevance to social relations. The issue of developing mechanisms for the effective implementation of this principle, clarifying its content and applying it in practice should be recognized as one of the current areas of scientific research.

In scientific literature, the content of the principle of scientificity in norm-setting is interpreted in various ways. For example, some scientists emphasize that in order for legal acts to serve to regulate relevant social relations, they must be based on scientific research, the opinions of the population and experts (L.P.Rasskazov¹, R.X.Makuyev²). In other approaches, the principle of scientificity is considered not only within the framework of legal science, but also in harmony with the achievements of economic, socio-political, natural and other sciences. (D.V.Chuxvichev³, V.S.Nersesyans⁴).

At the same time, some authors note that the content and form of regulatory legal acts should correspond to the results of scientific research, taking into account not only the “should be” situation, but also the current situation. (V.S.Afanasev⁵). As a practical expression of the scientific principle, the development of a strategy for legal creation, planning priority areas of documents, predicting the social consequences of new norms, and using national

¹ Рассказов Л.П. Теория государства и права: учеб. для вузов. – М.: РИОР: ИНФА-М, 2010. – 316 с.

² Макуев Р.Х. Теория государства и права: учеб. – М.: Норма: Инфра-М, 2010. – 396 с.

³ Чухвичев Д.В. Законодательная техника: учеб. пособие для студентов, обучающихся по направлению 030500 «Юриспруденция». – М.: ЮНИТИДАНА: Закон и право, 2006. – 73 с.

⁴ Нерсесянц В.С. Общая теория права и государства: учеб. – М.: Норма: Инфра-М, 2010. – 420 с.

⁵ Афанасьев В.С. Общая теория права и государства: учеб. / Под ред. В.В. Лазарева. – М.: Норма: Инфра-М, 2010. – 217 с.



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and foreign experience and achievements of world legal science are of particular importance. (L.A.Morozova⁶, A.V.Malko, A.Y.Salomatin⁷).

In addition, it is specifically recognized that the principle of scientificity should be applied even at the initial preparatory stage. In particular, observation of the object to be regulated in the future, analysis of the existing legal situation, and monitoring of law enforcement practice are indicated as necessary conditions for scientifically based lawmaking. (Y.G.Arzamasov⁸).

In general, summarizing the positions of scientists, it can be noted that the principle of scientificity requires that the content of documents be based on the achievements of science and practice, that the current situation and objective needs be taken into account, as well as a preliminary assessment of social consequences.

These scientific approaches are also gaining particular relevance in the Republic of Uzbekistan today. Because the introduction of mechanisms such as scientific expertise, legal monitoring and regulatory impact assessment in the Law “**On Normative and Legal Documents**”, Presidential Decrees and Government Resolutions adopted in recent years is developing precisely in accordance with these requirements of the principle of scientificity. In this sense, the complementarity of theoretical views and practical reforms in improving the national law-making system is of great importance.

It should be noted that, unlike a number of other basic principles of norm-making activity (democracy, legality), the principle of scientificity is not directly enshrined as a separate principle in the text of the Constitution of the Republic of Uzbekistan. At the same time, the essence of this principle is reflected in a number of articles of the Constitution, which determine the constitutional foundations of the principle of scientificity.

Firstly, **Article 51** guarantees the right of higher education institutions to academic freedom, self-government, freedom of research and teaching. This

⁶ Морозова Л.А. Теория государства и права: учеб. – М.: Норма: ИНФРА-М, 2014. – 283 с.

⁷ Малько А.В., Саломатин А.Ю. Теория государства и права: учеб. пособие / Предисл. акад. РАН А.Г. Лисицина-Светланова. – М.: РИОР: ИНФРА-М, 2014. – 133 с.

⁸ Арзамасов Ю.Г. Основы права: учебник для неюридических вузов и факультетов / Под ред. В.Б.Исакова. – М.: Норма: ИНФРА-М, 2015. – 130 с.



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norm creates the necessary conditions for the formation of scientific conclusions and recommendations in the process of lawmaking by ensuring the independence of scientific research activities.

Secondly, **Article 53** establishes the obligation of the state to care about the cultural, scientific and technical development of society. This, in turn, requires reliance on scientific validity in the development of regulatory legal acts. Because the state, while supporting scientific development, must also incorporate it into the mechanisms of legal regulation.

Third, **Article 115** obliges the Cabinet of Ministers to develop and ensure the implementation of programs for the development of science, education, culture, healthcare and other areas, along with implementing economic, social, tax and budgetary policies. This indicates the need for practical application of the scientific principle in the activities of the executive branch.

Thus, although the principle of scientificity is not mentioned as a separate term in the constitution, the above articles embody its main substantive aspects. Thus, the application of the principle of scientificity in the process of norm-making has constitutionally strengthened legal and institutional guarantees.

The application of the principle of scientificity in its integral harmony with the principle of legality determines its constitutional and legal essence. In other words, decision-making based on scientific research in the development of normative and legal documents, the broad involvement of the scientific community in the process increases the effectiveness of law-making. As a result, the stability of the legal order is strengthened, and legal mechanisms aimed at protecting the rights and freedoms of citizens and individuals begin to function more effectively.

The implementation of the principle of scientificity in its integral connection with the principle of democracy ensures the independence and impartiality of representatives of the scientific community involved in the law-making process; involves the involvement of civil society institutions in the law-making processes related to the implementation of the scientific principle; limiting the absolute influence of the state on the activities of the scientific field involved in the law-making process. At the same time, the interaction of science and the



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process of norm-making can be established on the basis of the following approaches:

- mandatory inclusion of representatives of the scientific community in the working group when developing draft regulatory legal acts or involving them as consultants;
- preparation of alternative draft regulatory legal acts on important and complex legal issues by representatives of the scientific community in parallel with the drafts being prepared by state authorities or institutions within their system;
- conducting a norm-making expertise and forecasting social consequences by representatives of the scientific community, who are formally and practically independent of the state body (institution) that developed the draft regulatory legal act.

It is these methods that serve to ensure the objectivity of scientific positions formed in the process of regulatory and legal activity, and objectivity is one of the basic principles of science. At the same time, the fact that Article 22 of the Law “On Regulatory and Legal Acts” provides for the possibility of participation in the working group of representatives of interested state bodies and other scientific and other organizations when a draft regulatory legal act is developed by a commission, and Article 71 of the Law on the Regulations of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan provides for the inclusion of qualified specialists from state bodies, scientific and educational institutions, non-governmental non-profit organizations with scientific experience in relevant fields, experience in the preparation of draft laws and (or) practical work in expert groups under the committees of the Legislative Chamber, in our opinion, serves to fully and effectively implement the principle of scientificity in practice. Article 22 also stipulates the possibility for the body authorized to adopt a regulatory legal act, if necessary, to transfer the project to “state bodies, scientific and other organizations” within the framework of its powers or to place an order with them on a contractual basis. The application of the scientific principle to the process of creating regulatory legal acts requires that this activity be carried out in close contact with science, and this requires a specific implementation mechanism. We will consider this



issue within the framework of individual stages of the process of creating regulatory legal acts.

1. Planning of normative-legal activities is one of the most science-intensive activities in the normative-legal process, since predicting the future needs of legal regulation, which precedes normative-legal activity, requires significant scientific developments. In this regard, the implementation of the principle of scientificity at the planning stage of normative-legal activities is an important condition for creating a high-quality system of regulatory legal acts. Here, the implementation of the principle of scientificity is manifested in the following forms:

2. Conceptual and subject-specific planning of normative-legal activities by various subjects of the scientific community (scientific institutions, higher educational institutions, scientific teams, individual scientists, etc.) both in the short term (current planning) and in the long term (prospective planning);

3. Submission of proposals by subjects of the scientific community to normative-legal bodies on the development of draft normative-legal acts; participation of subjects of the scientific community as consultants in the work of state bodies on the development of draft normative-legal acts.

4. Expert assessment by members of the scientific community of plans for the preparation of draft regulatory legal acts developed by state bodies⁹.

The need for a scientific approach to lawmaking is especially important today, that is, in the era of market relations, the formation of democratic values, ensuring the primacy of human rights, and the successful development of national, political, social and spiritual relations. In order to achieve a clear legal regulation of these relations, it is necessary to constantly improve the scientific basis of lawmaking. In this regard, it is worth noting that other forms of implementing the principle of scientificity should also be improved at the planning stage.

⁹ Соловьёв П.В. Нормотворческий принцип научности: конституционно-правовое содержание и реализация в республике Беларусь. Экономические и юридические науки. Юридические науки, № 12. -3 с.