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**The essence of the Institute of  
delegation of legislative powers  
and questions of his development**

In article the essence of institute of delegation of legislative powers is revealed, the condition of legal regulation of this institute in the legislation of the country is considered, and also questions of his development are investigated. In article authors having carried out the comparative analysis of a condition of legal regulation of institute of delegation of legislative powers in the Republic of Kazakhstan and in some foreign countries, have offered ways of his improvement. At full and effective regulation of this institute it is possible to prove need of its application.

**Key words:** delegation of legislative powers, head of state, legislature, legislative activity, law, executive body, legislative process.

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**Заң шығару өкілеттігін беру  
институтының мәні және оны  
дамыту мәселелері**

Мақалада заң шығару өкілеттігін беру институтының мәні ашылып, оның ҚР заңнамасында құқықтық реттелу жағдайы қарастырылды және оны дамыту мәселелері зерттелді. Авторлар мақалада заң шығару өкілеттігін беру институтының Қазақстан Республикасында және бірқатар шет елдерде құқықтық реттелуіне салыстырмалы талдау жасап, оны жетілдіру жолдарын ұсынды. Тиісті ұсыныстардың негізінде аталмыш институт толық және тиімді реттелген жағдайда оны қолданудың қажеттігі негізделді.

**Түйін сөздер:** заң шығару өкілеттігін беру, мемлекет басшысы, заң шығарушы орган, заң шығару қызметі, заң, атқарушы орган, заң шығару процесі.

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**Суть института делегирования  
законодательных полномочий  
и вопросы его развития**

В статье раскрывается суть института делегирования законодательных полномочий, рассматривается состояние правового регулирования данного института в законодательстве страны, а также исследуются вопросы его развития. В статье авторы, проведя сравнительный анализ состояния правового регулирования института делегирования законодательных полномочий в Республике Казахстан и в некоторых зарубежных странах, предложили пути его совершенствования. При полном и эффективном регулировании данного института можно обосновать необходимость его применения.

**Ключевые слова:** делегирования законодательных полномочий, глава государства, законодательный орган, законодательная деятельность, закон, исполнительный орган, законодательный процесс.

## THE ESSENCE OF THE INSTITUTE OF DELEGATION OF LEGISLATIVE POWERS AND QUESTIONS OF HIS DEVELOPMENT

Phrases «delegation of legislative powers» means transfer of the right of adoption of laws to the public authorities or certain persons who don't have legislative powers. His feature consists that this power doesn't follow from direct obligations of a certain body, it acquires the right of lawmaking from Parliament.

According to the paragraph 3 of article 53 of the Constitution of the Republic of Kazakhstan the Parliament at a joint meeting of Chambers two thirds of voices of total number of deputies of each of Chambers at the initiative of the President has the right to delegate to him legislative powers for the term which isn't exceeding one year. In Kazakhstan the institute of delegation of legislative powers for the first time has been approved in the Constitution of the Republic of 1995. Nevertheless, delegation of legislative powers in other countries are used for a long time.

Traditionally it is considered that general norms have to be defined by the law, today theoretically it also so. However, at the present stage when the public relations have become complicated, and rate of his development has grown, and together with it the regulatory role of the state has increased, legislative body has new problems connected with legislative functions. Even considering the fact that there are also other ways of adoption of laws (referendum), quick response to changes of the public relations is required from Parliament, but not from other any body. As at the solution of the problems connected with legislative activity holding a referendum it isn't favorable, and it is impossible to hold every time a referendum for adoption of any law. Holding a referendum in solution of the problems connected with legislative activity isn't favorable, and it is impossible to hold every time a referendum for adoption of any law.

As legislative process includes procedures of preparation, adoption of the law which takes long time, Parliament can't provide quick and timely adoption of laws which regulates new public relations, and its problems. Also, considering the fact that to change one law it is necessary to acceptance new one, i.e. all process of change of any law delivers a lot of work for the Parliament. In this regard, the Parliament doesn't have time and resources for versatile, deep analysis and discussion of important legislative

projects. The most part of time of Parliament will go on acceptance of changes and additions to laws. For example, in legislative practice of Parliament of RK, in 2014 the Parliament of RK has adopted 105 laws, 42 of which are changes and additions to current laws, and 50 of them are accepted for ratification of interstate and international acts, the other 12 are accepted for full regulation of certain public relations (one them the law on the adoption of the republican budget) [1]. Besides, the Parliament apart from legislative activity has also other functions. All this leads to emergence of poor progress in legislative activity of Parliament.

Generally, in many countries multitasking of work of Parliament has led to emergence of institute of «delegation of legislative powers». In this regard, we think it is correct to stop on D. Garner's discussions concerning the reasons of delegation of legislative powers in Great Britain:

1) in the modern countries volume of regularity so wide that the Parliament in a flash doesn't have time and energy for full judgment of all his details;

2) sometimes problems has a narrow concept, i.e. professional character, in this regard the question on sessions of parliament has special character;

3) sometimes it is necessary to apply measures to unplanned events which weren't the basis for holding sessions of parliament;

4) the right of receiving «dependent on the law» leads to carrying out an experiment because in case of need it is possible to eliminate them [2, 98-100].

As it is possible to notice, the first situation based by D. Garner is a major factor of emergence of institute of delegation of legislative powers in view of development of society, and in this regard expansion of the sphere of legislative functions. The institute of delegation of legislative powers allows to notice new impulses of the changeable public relations and to react to them in time.

Institute of «delegation of legislative powers» are reflected in constitutions of various countries (Spain, France, Finland, Portugal, etc.). In article 82 of the Constitution of Spain it is told that «the main Cortes can give to the Government the right of adoption of the acts which will have validity». In the article 76 of the Constitution of Italy of 1947 it is told that legislative functions aren't transferred to the government until the basic principles and criteria are defined and that it can be transferred only to a certain period of time, and only on certain problems. One more country which recognizes the

right of delegation of legislative powers is France, in which the Government for implementation of the programs can ask from Parliament the right of adoption of laws for a certain time [3, 38 article]. And in the neighboring Russian Federation a situation is different. «In the Constitution of Russia there is no norm concerning delegation of legislative powers. Nevertheless, in practice there are cases of delegation by Parliament of the right of adoption of laws to the Government of the Russian Federation (in rare instances – to the Russian Federation President). The Parliament of the Russian Federation at adoption of laws can sometimes set tasks of additional regulation of certain problems for the Government of the Russian Federation and the Russian President» [4, 142].

The institute of delegation of legislative powers is widely applied in various countries. As a result the number of the adopted laws by means of delegation of legislative powers several times exceeds the number of the laws adopted by legislature. For example, according to the testimony of the Russian scientist V. E. Chirkin in Great Britain the number of such laws adopted for 1 year makes nearly 2000, and the laws adopted by legislature no more than 100 [4, 142].

Concerning that to whom legislative powers are delegated, practice in various countries shows that generally they are given to executive power, namely to the Government. Also, there is a practice of delegation of legislative powers to the President as in our country, and to some bodies to the subordinated Governments (to the ministries, the government of territorial subjects of the federation, other). In Italy there is a distinctive practice of delegation of legislative powers. Namely, the right of adoption of laws is given to the Government, however the III section of the basic law of the Republic of Italy says that the part of the Government are the following: a) council of ministers; b) public administration (as set of public servants); c) subsidiary bodies (State Council and chamber of the account, national economy and office of work). And other norm of the Constitution of Italy determines the government as a council of direct ministers [5, article 92].

As it has been specified earlier, in the world legislative function is generally delegated to executive power and in practice it is connected with the huge volume of work of Parliament. The Russian scientist V. E. Chirkin specifies that «When the Parliament doesn't manage to see and solve all problems of society, he can refer some matters of

the agenda of a session of parliament to the executive power» [4, 140], from this it is visible that delegation of powers is carried out by the Parliament. Powers of the Government are legislatively established in 38 article of the Constitution of France. In some countries (Spain, Italy, Germany) if the Parliament itself brings up a question of delegation of legislative powers, or on permission of the Government, in this case there is one version of the approval of the application of the Government on legislative power. In our country the Constitution establishes that the right of transfer of legislature is transferred at the initiative of the President. According to the paragraph 52 point of Regulations of Parliament from 5/20/1996 year the President's initiative of a specific question is brought to the chairman of Mazhilis in a joint meeting of chambers and the President has a right to determine terms of consideration of an initiative.

In foreign countries where delegation of legislative powers is authorized there is an opportunity in the shortest possible time to govern the public relations. When in our country there is a need of regulation of new relations, the parliamentary procedure takes a lot of time. The procedure of adoption of the act in many countries takes a lot of time. Therefore to watch the changes happening in society and quickly to react to them very difficult.

Generally in foreign countries delegation of legislative powers is carried out for the solution of a certain problem or for regulation of the relations of one group for the adoption of several acts, and it is given for a certain term. In Kazakhstan the law which regulates institute of delegation of legislative powers doesn't establish definition of specific problems in the President's initiative. In that case this defect gives the chance to accept to the President of laws on any problems collected in the 11th paragraph in a certain time which is a subject of legislative activity.

In the foreign states the decision on delegation of legislative powers is accepted by both chambers of Parliament. In our case the decision on transfer of legislative powers to the President is accepted in a joint session of parliament. From history it is known that adoption of this decision by only one chamber has led to recognition by the Supreme court of the USA invalid a number of laws.

Generally delegation of legislative powers is carried out with some restrictions. Usually, in constitutions of foreign countries it is defined that delegation of powers of rather basic rights and freedoms is forbidden to be delegated. For example,

according to the Constitution of the Republic of Turkey on November 7, 1982 the Grand National Assembly of Turkey at delegation to Council of ministers the right of adoption of laws obliges them to define the purpose, the contents, the concept, temporary chronology and possibility of acceptance of more than one act. And concerning a subject of the resolution of having validity the following is told: «except for emergency and adverse situations, such acts don't regulate the basic rights, the rights and duties of citizens defined in the first and in the second chapters of the second section, and also, the political rights defined in chapter 4 of the Constitution» [6, article 91]. In the following country in which delegation of legislative powers is authorized – in Spain, it is specified that the Main Cortes can delegate to the government of power of adoption of laws concerning the questions which aren't included in article 81 of the Constitution. In particular, to questions which aren't delegated belong are: laws on development of rights and freedoms, laws the claiming statutes concerning autonomous associations, laws concerning the right of vote, etc.

As a rule, at the subjects who have received legislative powers have no right to be beyond powers of executive bodies or have no right to break the term of use of such powers. He has to meet strictly conditions of delegation of legislative powers, in the return a case, such act will be invalid.

In Kazakhstan questions of institute of delegation of legislative powers are regulated by the Constitution of RK and regulations of Parliament of RK. The constitutional laws establishing status of Parliament and the President don't even consider this institute. The constitution of RK and regulations of Parliament of RK concerning delegation of legislative powers defines only the following:

- Delegation of powers is carried out from the President's initiative;
- They are given for the term of no more than one year;
- it is deligated by two thirds of voices of total number of deputies of each of Chambers at a joint meeting of Chambers;
- delegation of powers is carried out by adoption of laws;
- the initiative is given to the chairman of Mazhilis.

The President can determine the term of consideration of the initiative in Parliament.

As it is possible to notice, institute of delegation of legislative powers in the Republic of Kazakhstan

are regulated insufficiently. Also, limits of the legislative powers which are delegated to the President aren't defined cases of their delegation. One more question which isn't regulated in our legislation – the sphere of the relations which are regulated by laws published by the President, their volume, a form of the law conferring power, participation of deputies of Parliament at the edition of this laws, consideration of Parliament of the laws issued by the President on legislative power, etc.

In the countries where the institute of delegation of legislative powers is regulated, the Parliament regulates using of executive power of this power. The acts adopted on the basis of delegation of legislative powers can be included on the statement of Parliament, and can be included in library of Parliament for acquaintance. The approval by Parliament of the acts adopted by the Government on delegation of legislative powers is one of the main problems of a research of the international practice. Often the acts adopted by delegation of legislative powers are submitted for the approval and loss of force to Parliament or its lower house. For example, in the USA the Congress has the right of the legislative veto. The legislative veto is the ban of the Congress, his chambers or standing committee on adoption of the laws adopted by the President by delegation of legislative powers.

In foreign countries besides the adoption of the laws adopted by delegation of legislative powers there is also a form of establishment of control of him. For example, one easy way of control – submission of the acts adopted by the Government to Parliament. The parliament has to consider, estimate and make the decision concerning compliance of the adopted act to conditions of delegation of powers and laws. At discrepancy of the adopted laws Parliament has the right to eliminate this law. And in France if the Government doesn't submit at the scheduled time the act for consideration of the Government, then it delegation of powers will lose force. In some Parliaments there are the committees working by the subsidiary legislation. They exercise control of use of the delegated powers by executive power.

The next way of control – hearing of reports of ministers. On this way ministers have to show the list of the adopted laws by delegation of legislative powers in the reports, give the grounds

of adoption of these laws and show the mechanism of their action, etc. If parliamentarians notice any discrepancies and defects, then they can not accept or demand to eliminate them. Special poll, i.e. questions of rather adopted laws sent to the Government are also one of way of control [7, 91-492].

And in our country besides providing reports concerning the laws adopted by delegation of powers process of consideration by the Constitutional council of these laws isn't even regulated. Also as well as check of constitutionality of the laws adopted by the Parliament, accepted by the President of the law also have to be checked for constitutionality. As L. T. Zhanuzakova said, parliamentary control should suggest to bring process of consideration of reports on the adopted laws by delegation of legislative powers, to listen to reports of the President and his plenipotentiaries, Parliament and its chambers [8, 107].

By delegation of legislative powers the President of Kazakhstan two times had rights of adoption of laws: on December 12, 1993, when on the 12th convocation the Supreme council has dismissed itself and in March, 1995 on the basis of the decision of the Constitutional Council of RK to recognize unconstitutional powers of deputies of the Supreme Council. In that case, the premature termination of powers of two convocations of Parliament has led to the fact that some powers of the Supreme Council have been delegated to the President. At the beginning the President in connection with self-dissolution of the Supreme Council according to the law «About Temporary Delegation of Additional Powers to the President and Local Akims» has accepted 54 orders which are valid the law. It was an example of the fact that in cases of need delegation of legislative powers has led to continuous functioning of legislative powers, timely replenishment of the regulatory base. As the President of the Republic N. A. Nazarbayev has specified., «When there was no Parliament, it was necessary to meet lacks in the sphere of legal regulation by the orders which are valid the law to accept a package of necessary economic laws. As a result continuous economic activity has been provided with necessary legislative bases. Besides, for quick use of the constitutional norms, orders of the President have adopted a number of the constitutional laws» [9].

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