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EFFICIENCY OF THE LEGISLATION: THEORY AND PRACTICE

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Abstract

The paper is devoted to a complex theoretical problem of the national legal system. The study is focused on the legal system of the society as a key factor of proper existence of any state ensuring successful functioning of all institutes and as result, qualitative aspect of life of this state. The concept of the national legal system alongside with a set of legal norms is formed based on the analysis of scientific approaches of domestic and foreign doctrine. It is noted that the federalism as the principle of the state system leads to two-level legislation – the legislation of federation and the legislation of subject, which undoubtedly entitles territorial subjects of the federation for own lawmaking and adoption of laws aimed at efficient regulation of public relations in the territory of the corresponding region. The analysis of typical disadvantages related to the adoption of laws is carried out. It is concluded that the legislative efficiency strongly depends on correct understanding of its importance by the legislators. The possibility for Russia to borrow a positive legal experience of the European countries is considered. The author suggests some measures to define the subject of legal regulation within the regulatory legal act, its accurate correlation with other regulations, as well as measures to prevent legislative mistakes. It may be concluded from the content of the legal groundwork that creation and continuous improvement of accurate, developed and consistent regulatory framework is based on the principles of democracy and the constitutional state.

Keywords: Democracy, principle of separation of powers, legislative authorities, federalism, legislative process, state structure.

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1. Introduction

The relevance of the study is caused by the fact that the state system defines not only the form of public authorities, nature of relationship between central and local government, but also the content and structure of the corresponding legislation. The uniform centralized system of legislation is typical for unitary states. This is quite logical since the unitary state is characterized by its political unity, and the legislation in it is created by only one public authority. The administrative and territorial units existing in the state do not have their own legislation, therefore the unitary states do not face the problem of creating a uniform legal space. The development of a uniform legal system in federal states is much more complicated, even in its classical form. The unity of a legal space is the key factor ensuring successful functioning of all its institutes and as result, qualitative aspect of life of this state.

2. Problem Statement

The study led to the conclusion that there is a need to formulate and prove theoretical provisions and practical recommendations on the modernization of the current legislation of Russia and law-enforcement practice within the legislative process. The scientific results may be used in research work, in education when teaching constitutional law (federal legislative process) and in other disciplines.

3. Research Questions

The paper presents the integrated study of the institutional aspect within the lawmaking in the modern state; elaborates separate suggestions on the improvement of forms of interaction of federal public authorities and public authorities of the territorial subjects of the Russian Federation within lawmaking; provides a complex study of the best practices, main directions and trends of lawmaking in modern Russian federal state; justifies the concept of legal regulation and understanding of lawmaking in the modern state of foreign countries, legislative features in the federal state.

4. Purpose of the Study

The purpose of the study is to analyze educational, scientific and publicistic legislative literature. The proposed approaches include, first, the analysis of the modern legislative base of the Russian Federation and its subjects; second, the study of scientific and publicistic literature in foreign countries; third, the correlation between the legislative base and the actual state of things.

5. Research Methods

The solution of the specified tasks predetermines a wide use of such scientific methods as dialectic and legal-logical method necessary to define and analyze the legal norms governing public relations; comparative-legal method used to compare the stages of legislative processes; structural-functional method disclosing the interdependence and interference of the structure of representative bodies and their legislative function; analytical method that allows processing data on the legislative activity of the parliament for the

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purpose of obtaining new knowledge; statistical method used to systematize numerical information and reflect data on qualitative characteristics of the phenomenon.

6. Findings

It is known that the development of fundamental democratic principles mainly dates back to the early modern period (17-19th centuries). "The state is a uniform entity (one person), which responsibility for actions is stipulated in the mutual contract between many people …". Hobbes (1845) triggered the theory of "public contract", gave rise to its understanding by the European society and its further democratic development in the philosophy of law (p. 147). Developing his theoretical views, the followers of the Hobbes's theory proved those basic principles of democratic society, which the modern civilization is based on: the principle of separation of powers (Locke, 1960), the principle of legislative framework of the check-and-balance system between branches of government, the principle of supremacy of legislature (Montesquieu, 1955), the principle of people's sovereignty based on the national will. All these postulates are fixed in the structure of the modern Russian state.

To what extent is it possible to use traditions and experience of predecessors to create the modern democratic state in Russia? Perhaps, extensively if we refer to economic reforms upon the transition to market principles since at the beginning of the 1900s the Russian Empire was one of the most dynamically developing states on the planet (Petrova & Shovkhalov, 2016). However, this is not the case with the planned economy of the Soviet state since its uprising was caused by quite different factors. Nevertheless, we cannot ignore the fact that although inconsistently but the process of democratization was still present, and provincial meetings of deputies of the imperial Russia under the influence of politics turned into regional councils of deputies, and today – into legislative (representative) public authorities of territorial subjects of the Russian Federation (Inalkaeva, 2018).

Under the principle of separation of powers, the legislative bodies gain weight within the system of public authorities. But are the legislative bodies considered parliamentary institutions in every sense of the word?

Parliamentarism as a political and legal phenomenon, which originated in Western Europe and subsequently gained stimulus to its further development in North America, has centuries-old history. In this respect, Russia was less lucky though the ideas of parliamentarism and a parliamentary spirit occasionally provoked the society and even fragmentary appeared in practice during the reign of Alexander II and Nicholas II when the first parliamentary institute – the State Duma – was established. In the Soviet state the idea of parliamentarism was not welcomed mainly due to ideological reasons. Even in 1984 the last 3rd edition of the Soviet Encyclopedic Dictionary defined parliamentarism as "the system of state management of a society by the bourgeoisie with clear functions of legislative and executive powers considering the privileged position of the parliament. Under parliamentarism the government is formed by the parliament from among the party members dominating the parliament and being responsible before it". The counterbalance to "bourgeois" parliamentarism were the councils of deputies (deputies of labor as stipulated in the USSR Constitution of 1936, people's deputies – in the USSR Constitution of 1977) featuring the system of representative bodies performing legislative and executive functions of the

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government. This could be regarded as a step towards direct democracy, but in the conditions of the Soviet system this idea could only be realized formally.

From this perspective it shall be noted that the supremacy of the statute law, autonomy and independence of legislative, executive and judicial branches of the government give reasons to endorse the reality that the state construction of the Russian Federation began and still continues following the principles of parliamentarism in spite of the fact that in the Constitution of the Russian Federation the term "parliamentarism" is not used, however, the Russian scientists study and compare its content and imply the application and embodiment of its principles in the Russian reality. Parliamentarism as a state regime failed to develop in Russia, however the independence of regulatory authorities, their functions and jurisdiction allow claiming the parliamentary importance of such bodies, including regional authorities.

It shall be noted that the Russian regions play an invaluable role in the creation of the state and legal system of modern Russia. It is worth reminding that the appeal to parliamentarism amid the political crisis of 1993 in Russia and during the subsequent transition of the federal legislative representative public bodies were largely triggered by the Constitution and the regions of Russia, which signed the Federal Treaty of 1992 and where the creation of similar public authorities was well under way.

Finally, let us refer to another circumstance. Decentralization of power by transferring some authoritative federal powers to power structures of territorial subjects of the Russian Federation, first, raises their political-legal status, second, forms the module concerning municipal and public structures, and sets the new vector of development aimed at the civil society, and the role of territorial subjects of the Russian Federation in this process is quite essential (Nurutdinova, 2013).

Thus, in modern Russia all fundamental principles of the state and society – supremacy of statute law, separation of powers, decentralization of state powers – take place either in theory or in practice. According to the principle of separation of powers the legislative branch of the power does not only acquire autonomous and independent position but has a potential opportunity to play the leading role in the policy of the new Russian state system following the principles of parliamentarism.

Similar to the legislative activity, the legislation in the Russian Federation is recently characterized by expansion and deepening of its democratic nature. Considering the federal nature of our state, this happens at two levels: at the federal level and at the level of territorial subjects of the Russian Federation. The size and scope, as well as the legal effect of laws are stipulated in Article 15 of the Constitutional Law, which says: "The constitution of the Russian Federation has the highest legal effect, direct action, and is applied nationwide. Laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution of the Russian Federation" (Inalkaeva, Tepsuev, & Matyeva, 2017, p. 1381). Thus, this constitutional norm defines the legal nature of federal laws.

There are certain scientific practices related to the subject of the given study that consider the above problem. It seems useful to make a synopsis. In literature the problem of differentiation of norm-setting competence was raised long before the middle of the 1990s. However today there are still disputes on the place and role of the regional legislation in the uniform legal system of the Russian Federation. In particular, researchers note that the regional laws shall be adopted based on the real needs for legal regulation of any public relations not stipulated by federal laws or not fully settled by them. Besides, the problem is that the legislation of territorial subjects of the Russian Federation as a special type of creative activity was in fact

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the creativity free from any primitive mechanical rewriting of federal law standards, blind copying or thoughtless imitation of legislative activity of authorities of the neighboring regions.

The discussion also covers the issues of legislative techniques. Thus, Solovyov (2004) opposes the adoption of laws by similar federal subjects. He emphasizes the unsystematic character of legislative activity in territorial subjects of the Russian Federation, adoption of acts contradicting the Constitution of the Russian Federation and the federal laws by public authorities of territorial subjects of the Russian Federation (Solovyov, 2004). According to him, about 30% of all normative legal acts of territorial subjects of the Russian Federation annually reviewed by the Ministry of Justice do not correspond to the Constitution of the Russian Federation and the federal legislation. Public authorities of some territorial subjects of the Russian Federation do not send or send irregularly their regulations to the Ministry of Justice of the Russian Federation. Scientific results of public prosecution officers concerning contradictions of the federal and the regional legislation are quite interesting. Since any legislative mistake is perceived as the violation of either rule of the legislative technique, then its classification shall be in direct dependence on classification of such rules.

Let us address the most frequent legal mistakes. There are the following types of mistakes: mistakes in the mechanism of legal regulation, gaps, excess normalization, poor form, collision between certain laws, factual mistakes. Thus, special legal means play the main role in the mechanism of legal regulation: permissibility, bans, authorities of public bodies, organizations and officials, incentives, sanctions, rights and duties of citizens, without which the implementation of legal instructions is impossible. Taking into account specific historical conditions, a bill shall include legal means neutralizing such factors as low level of legal culture, legal nihilism, insufficient activity of representatives of executive, regulatory and law enforcement agencies. Otherwise these factors will "outbalance" legal means, and the objectives of the law will not be achieved. The unique feature of such mistakes is that they do not follow directly from the statutory wording. These mistakes are hardly provable and appear through execution or application of the law; they are impossible to be neutralized even at the development stage of a bill since they are based on hypotheses of the legislator and are not supported with due empirical base (Ignatenko, 2012). To avoid such mistakes there is a need to submit the bill for scientific review, to hold parliamentary hearings, to implement, whenever possible, local experiments, to apply sociological methods to forecast its need (Strashun, 2000). For example, the deputies of the State Duma of the first convocation brought up a question on the urgent need to develop the law on the protection of the Russian language. The original versions of this bill appealed to protect the purity of the Russian language as the greatest spiritual value but had no subject of legal regulation. This means that not all social values or defects can be protected or, respectively, eliminated by the force of law. The declarative norm that fails to be embodied in certain relations is a typical and widespread legal mistake. The legislative technique needs deeper regulation of the corresponding sphere of public relations, definition of all norms regarding the subject of legal regulation. Where there is a gap, the system links between legal norms are broken thus disrupting the situation when, for example, the subjective right is granted by the law. Thus, according to the invalid Law of RSFSR *On Property in RSFSR*, each victim of crime could recover the inflicted damage from the state. However, in reality no one managed to do it since the current legislation had no procedure on the enjoyment of this right, it was not supported economically. In recent years such negative trend as depreciation of legal norms has been largely

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intensified. Most brightly it is expressed within the norms of legal responsibility. The legislator almost always stipulates a special norm establishing responsibility for violation of provisions of the adopted law. However most often this is limited to a mere repetition of the accepted truth that "offenders bear responsibility according to the legislation of the Russian Federation". The legislation of the Chechen Republic also has similar mistakes. For example, Paragraph 3, Part 2, Article 5 of the Law of the Chechen Republic *On museums and museum affairs in the Chechen Republic* introduces a new concept of memorial estates depending on specialization of museums in the Chechen Republic. The specified law shall correspond to the Federal Law *On museum fund of the Russian Federation and museums in the Russian Federation*, which does not contain such list of primary activities in the definition of museums. Therefore, the *memorial estate* does not correspond to the concept of a museum given by the Federal Law *On museum fund of the Russian Federation and museums in the Russian Federation* and thus the memorial estate cannot be considered a museum. Meanwhile, according to the Federal Law *On objects of cultural heritage (historical and cultural monuments) of the people of the Russian Federation*, the concept of the object of cultural heritage fits within the definition of memorial estate. To implement this federal law, the republic utilizes the Law of the Chechen Republic *On preservation, use and state protection of objects of cultural heritage (historical and cultural monuments) of the people of the Chechen Republic*, which may reflect all provisions concerning the objects of cultural heritage. Considering the above, there is a need to exclude Part 2, Article 5 of the Law of the Chechen Republic *On museums and museum affairs in the Chechen Republic*. Duplication of regulatory directions violates one of the key principles of the legislative technique – maximum economy of norms of regulatory directions, prevention of their repetition. Any deviation from it only leads to the increased number of laws thus making it difficult for executors of law and those promoting legal nihilism. Being an official document of the state, the law shall be written in a certain style intended to ensure accurate and clear will of the state in the form of obligatory imperious commands and instructions. The legislative text "does not prove, does not explain, does not convince, but imperiously prescribes certain behavior, formulates requirements, obligatory instructions to legal entities". Such property as normativity is most fully expressed through a triad of legal institutes – "authorized", "required", "forbidden" – forms the basis and the importance of legislative instructions (Chirkin, 2008). At the same time the style of the law is not a simple selection and arrangement of words forming imperious instructions. It shall be self-explanatory, laconic, avoid ambiguity and polysemy of concepts and terms. Statutory provision shall not be streamlined. The style of the law is a concentrated, accurate and unambiguously expressed will of the legislator to permit or prohibit either action of a legal entity. Violations of style are revealed through careful study of the text of the bill by the corresponding experts, lawyers and linguists.

Thus, at present during the preparation of bills and demand for adopted laws the federal legislation does not settle the issues of interaction of regional legislative bodies of public authorities and federal executive authorities, their territorial bodies. In this regard the appeal to experience and explanation of the corresponding parliamentary practice of the European countries becomes ever more important (Popadyuk, 2011). Austria, Belgium, Germany, Switzerland belong to the federal states of Western Europe. The legislative practice of the specified countries, which offers an opportunity for primary preparliamentary review of the bill by competent public authorities participating in legislative process, its preliminary consideration, survey of opinions and views of concerned public authorities, on the one hand, drags out the

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process of lawmaking in time, but, on the other hand, allows bringing a detailed, discussed, carefully considered and studied bill to the parliament (Torop, 2006; Constitution of Belgium, 1831).

It is obvious that the prevention of legislative mistakes is impossible without concerted and coordinated actions of all bodies and persons somehow concerned with lawmaking both at technological and procedural stages.

7. Conclusion

Any bill is preceded by the idea of its appearance in public consciousness. There is a need to increase the value of the legislative idea as a preventive measure. Its task within the considered situation is to prevent disagreements, which are negatively affecting the results of legislative activity. There is an opportunity to discuss a future law prior to the preparation of its original draft (bill) within round tables, parliamentary hearings, and scientific conferences thus engaging the representatives of various political and social groups, scientific community to this matter. The specified opportunity provides open public exchange of views and development of coordinated measures on the main controversial issues of the bill, allows foreseeing legal consequences of thus adopted law, probable contradictions of its norms, thinking in advance over ways of their prevention. Currently there are several directions in the study of lawmaking problems. The thesis research on the constitutional law consider the results of legislative activity of territorial subjects of the Russian Federation from various perspectives; generalize the legislative practice on the example of certain types of territorial subjects of the Russian Federation (republics, areas) or within certain federal districts. Thus, the degree of development of this topic in modern domestic science remains obviously insufficient and is characterized by the lack of complex system study.

The end result of the law shall be the document on advantages or disadvantages of administrative functions, such as transparent consultations with all concerned persons (considering whether the questions are correct, the time is right, the order is correct) by transferring this information for decision-making authorities and the public upon coordination of this project with all concerned persons. To adopt the necessary laws, it would be expedient to apply some experience of the European legislators when developing a bill.

References

Chirkin, V. E. (2008). *Constitutional law of foreign countries*. Moscow: Yurist.

Constitution of Belgium. (1831). *Retrieved from: www.urzona.com/index.php. Accepted at the National Congress on 7 February 1831*. Retrieved from: www.urzona.com/index.php.

Hobbes, T. (1845). *The English works, ed. by W. Molesworth*. London.

Ignatenko, G. V. (2012*). International and domestic law: problems of associativity and interaction*. *Collection of scientific publications*. Moscow.

Inalkaeva, K. S. (2018). Feature and procedure of activity related to the development of national legal system. *Issues of Russian and international law, 8*(5A), 17–23.

Inalkaeva, K. S., Tepsuev, M. S., & Matyeva, A. R. (2017). Regional electoral committees as a direct democracy institution. *Journal Home Archives, 9*(2S), 1375–1387.

Locke, J. (1960). *Selected philosophical works, vol. II*. Moscow.

Montesquieu, Ch. (1955). *Selected works, in 2 volumes, vol. 1*. Moscow: Gospolitizdat.

Nurutdinova, R. I. (2013). *Institute of inter-parliamentary cooperation of territorial subjects of the Russian Federation: constitutional and legal study* (Doctoral Dissertation). Kazan.

Petrova, A. T., & Shovkhalov, Sh. A. (2016). Growth Prospects for Market of Muslim goods in Russia. *Indian Journal of Science and Technology*, *9*(46), 435–441.

Popadyuk, O. A. (2011). *Formation and development of a constitutional and legal system in some foreign states* (Doctoral Dissertation). Moscow.

Solovyov, Yu. B. (2004). *Realization of the constitutional principle of separation of powers in territorial subjects of the Russian Federation: on the example of the Far Eastern Federal District* (Doctoral Dissertation). Khabarovsk.

Strashun, B. A. (2000). *Constitutional (state) law of foreign countries*, 3rd ed. Moscow: BEK.

Torop, Yu. V. (2006). *Legislative process in federal states of Western Europe: Austria, Belgium*.