SOME FEATURES OF THE MECHANISM OF THE LEGISLATIVE PROCESS IN THE FEDERAL STATE


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Abstract. The mechanism of legislative process is proposed to be considered through the legal institution of federalism. The purpose of this article is to define the principles of federalism as the factors of influence on the legislative methodology. The inadequate development of the practice of implementing the contract as an institution of federal relations and as a result of legislative drafting made it possible to identify the factors that impede the development of federal relations. The modern practice on the application of the Institute of Agreements of executive authorities is not ensured by the guarantee of their implementation and is accompanied by a reduction in the legislative drafting limits. We revealed the problems in the legislative process in the implementation of the principles of federalism. We offer to consolidate the competences as a basis for the methodology and practice of legislative drafting.

Key words: legislative drafting, federalism, legislative body, mechanism, delineation of competences, limits.

1. INTRODUCTION

The federal basis of any state means some guarantees for the exercise of power on two levels and the separation of power between state bodies. The problem of improving the federal relations between the federation and its parts from the point of view of contemporary socio-political conditions (Sautieva, 2015) is quite relevant in the modern legal science.

The idea of John Locke about the allocation of legislative power as the supreme among other state authorities is promising to research and development (Locke, 1924). The legislative power is an important branch of power, which is entrusted with the main activity on the formation of a regulatory framework for the regulation of federal relations. The legislative process is aimed at the development of mechanisms for regulating the social relations and is conditioned by the objective reality (Altunin, 2013).

The issue of multifunctionality by definition of the legislative "rules" should be called the main thesis on determining the relevance of research on the legislative topic (Vorivoshin, 2014). In this regard, the studies on the influence of law enforcement agencies on the legislative process are new (Boshno, 2015); we established the mechanisms of influence of government structures on the legislative activity of a deputy (Cherkewich, 2015), the conditional influence of political parties (William, 2015). The issues of legitimacy in legislative drafting (Gangl, 2003) will never exhaust their potential. It should be noted the ongoing studies on the impact of international law on the national legislative process. Such studies in the past decade pointed to the threat of impact of the international law as a factor in determining the limits and direction of the legislative drafting of national parliaments (Stephan, 2006).

The elements of internal mechanisms to ensure the legislative process are the most popular in the field of research of the legislative institution. The issue of the stages and procedures of the legislative process that ensure the effectiveness of legislative activity is actively investigated, for example: on the need to ensure the introduction of the public hearings procedure in legislative activities (Brasher, 2006); linguistic requirements for the law statement (on the application of linguistic traditions) (Gotti, 2014), etc.

2. METHODOLOGY

The use of general scientific methods of research made it possible to identify the factors that affect the legislative process in a federal state and formulate some conclusions on ensuring the legislative drafting limits. The especially legal methods enabled to investigate some practical aspects of the implementation of federalism principle in the legislative process, to assess the practice of the subjects of the Russian Federation in determining the legislative drafting limits and to identify the problems. In particular, the use of a comparative legal method enabled to implement the external processing of legal material, and the formal approach ensured the generalization and classification of legal sources of the subjects of the Russian Federation in regulating the legislative drafting limits. The most important sources of law were the laws of the subjects of the Russian Federation on the regulation of powers.

3. RESULTS

The federal basis of the Russian state ensures the establishment of a two-level system of law, where the right of the subjects of the Russian Federation to adopt their own legislation is proclaimed. This constitutional provision is a guarantee of the exercise of legislative power in the subjects of the Russian Federation. The principles of federalism ensure the legislative independence of regional legislative bodies within the framework of federal legislation.

The main mechanism of federal relations is a system of checks and balances. The independence of the subjects of the Russian Federation is manifested in the right to independently determine their internal state organization, i.e. structure, composition, functions and interaction of public authorities and management (Farukshin, 1998). The legislative drafting limits of the regional legislative body on establishing the names of public authorities are specified in Law No. 184-FZ (Federal Law dated October 6, 1999). The name is established in the Basic Law of the subject of the Russian Federation, which is the result of legislative drafting.

In practice, the name of the executive body of the subject of the Russian Federation in most of the subjects of the Russian Federation duplicates the name of the supreme executive body at the federal management level (the Government). There are some restrictions for the name of the legislative body on the possibility of duplication the word combinations forming the basis of the names of
federal public authorities in the names (Part 2, Article 4, No. 184-FZ). The possibility of duplicating the name of the highest officials of the subject of the Russian Federation (which contain the words and phrases "the President of the Russian Federation") is excluded.

The principle of federalism ensures the impossibility of interfering within the competence of the legislative branch in the executive branch and vice versa. The legislative drafting limits of regional parliaments establish the organizational basis for the functioning of the executive branch in the subjects of the Russian Federation. The traditional model of legislative drafting is the consolidation of powers to determine the structure of executive bodies by the highest government official of the subject of the Russian Federation (more than two thirds of the subjects of the Russian Federation).

The legislative drafting limits of regional legislators in the field of systematization of executive bodies are not limited. Thus, a multi-level model is established in the Moscow region, in the Novosibirsk region, in the Sverdlovsk region, in the Ryazan region, in the Nizhny Novgorod region, in the Ivanovo region, in the Republic of Sakha (Yakutia), in the Perm region: it was established the central, territorial, structural executive bodies of state power. The highest executive body of state power of the subject of the Russian Federation, the highest official of the subject of the Russian Federation, the executive bodies formed by the highest official of the subject of the Russian Federation or the supreme executive body of the subject of the Russian Federation are introduced in the system of executive bodies of the subject of the Russian Federation as the separate system components in Khabarovsk Krai, Primorsky Krai. The legislative practice of the Kemerovo region establishes a model, in which a unique managerial apparatus is built in: a board of the highest executive body, which includes deputies of the highest official of the subject of the Russian Federation.

Formation of the structure of the state executive bodies in accordance with the provision 4 of Article 17 of the Federal Law No. 184-FZ is the authority of the highest official of the subject of the Russian Federation. The term "structure" includes a "list" of specific bodies that are part of the system of executive authorities (Decision of the Constitutional Court of the Russian Federation dated January 27, 1999). However, in some subjects of the Russian Federation, the structure subject is established as the legislative power competence (in the Krasnodar Krai). Or the subjects of the Russian Federation adopt some laws on the system of executive bodies, in which the structure (in the Orenburg region) is determined at the same time. Such a distribution of powers contradicts the key principle of the mechanism of federal relations - the separation of power as the basis of a democratic society. The legislative (representative) authority of the subject of the Russian Federation should not interfere with the powers of the executive branch. Therefore, it is necessary to exclude the legislative regulation of the structure of executive power in the subjects of the Russian Federation from practice.

The delineation of the subjects of competence and powers is the most important aspect of federal relations (Kline, 1993). The legislative drafting limits are determined by the operating mechanism for implementing the constitutional provisions on the competence delimitation between the federation and its subjects. One of the ways of determining the competence subjects is the Constitution of the Russian Federation (Part 3, Article 11), which has determined the contract. The modern mechanism for concluding the agreements on delimitation of competences and powers stipulates the mandatory condition for approval by the federal law after its signing by the parties. Currently, only one agreement on delimitation of the competence subjects between the Russian Federation and the Republic of Tatarstan has been adopted and is in force. The practice of the contractual mechanism for regulating federal relations is carried out within the framework of the current constitutional model and is the subject of legislative drafting.

The practice of delineation of powers in Russia is complicated by the Institution of Agreements. The agreements in the modern mechanism of contractual regulation of federal relations should be referred to the transfer of limits of the existing competencies of the executive power from the federal bodies to the state authorities of the subject of the Russian Federation. Such agreements convey a broad list of powers: in the field of subsoil use, organization of measures to protect the population and territory, health, social welfare, culture and education, etc.

Some powers assume a permanent and all-Russian nature. Thus, the healthcare sphere for licensing the medical activities is quite widespread (agreements are concluded between the Ministry of Health and the Moscow region, the Udmurt Republic, the Sverdlovsk region, the Stavropol Krai, the Republic of Tatarstan, the Republic of Dagestan, the Smolensk region, the Khanty-Mansiysk
Autonomous District, etc.). The field of organizing and carrying out the emergency rescue and other urgent works in the emergency situations is very frequent in concluding the agreements. Following Article 26.8 of Federal Law No. 184-FZ, many of the powers transferred under the Agreements may take a legislative form.

It is necessary to distinguish the agreements from the contracts concluded between the subjects of the Russian Federation. When entering into a contractual relationship, one of the parties is under obligation on the non-performance of the contractual provisions. Any obligations are associated with the financing of activities. Therefore, in order to ensure control by the executive branch on the part of the legislature, most of the contracts of a public nature acquire a form of law in the subjects of the Russian Federation.

The legislative drafting limits should be delineated between the federal parliament and the regional legislative bodies. The problem of delimitation of subjects of joint competence is the absence of general legislative criteria for the limits of federal and regional regulation. The Constitution of the Russian Federation defines a model for implementing the principle of joint competence, fixing the list of subjects of joint competence of the Russian Federation and the subjects of the Russian Federation.

The freedom of legislative drafting is defined when regulating the list of its own exclusive competence, which should be established in the Basic Law of the subject of the Russian Federation (Part 1, Article 26.1 of the Federal Law No. 184-FZ). Such freedom of establishing the mechanism of legislative drafting limits on the subjects of own competence in the subjects of the Russian Federation is accompanied by a number of problems. Some subjects and constitutions do not have the list of subjects of exclusive competence of the subjects of the Russian Federation (in the Yaroslavl region, Bryansk region, the Republic of Dagestan, the Perm Krai, the Chechen Republic, the Republic of Kalmykia, the Jewish Autonomous Region, the Republic of Ingushetia, the Republic of Altai). The subjects of the Russian Federation often replace or combine the concepts of "subject of competence" and "authority" in the definition of the subjects of competence. The Basic Laws of the subjects of the Russian Federation include regulation of powers, but the subjects of exclusive competence of the subjects of the Russian Federation are not established or regulated in a template.

The establishment of the subjects of exclusive competence of the subjects of the Russian Federation is accompanied by insufficient clarity. In particular, the exercise of the right of legislative initiative in the State Duma of the Federal Assembly of the Russian Federation belongs only to the legislative (representative) state authority of the subject of the Russian Federation (Article 104 of the Constitution of the Russian Federation), and not to the entire subject of the Russian Federation.

All these and a number of other problems have a negative impact on the legislative practice in the regions and impede the effective implementation of legislative drafting.

4. SUMMARY

The legislative drafting limits in the subjects of the Russian Federation make it possible to create variative models of the executive power system, which characterizes the independence of the legislative drafting limits in this sphere. The legislative activity is limited by the principles of federalism. We offer to clarify the methodology of the legislative process by supplementing the conditions for the implementation of the legislative drafting of federal principles. We offer to clarify the competence spheres as an element of legislative drafting, with the simultaneous exclusion of the possibility of interference through legislative drafting in the sphere of competence of executive power as an independent link of power. Settlement of the place of the Institute of Agreements of executive bodies in the system of normative legal acts will presumably ensure the development of these areas of legal relations and the consolidation of these powers at the level of legislative powers.

The important factors for the development of the contractual method as a mechanism of the legislative process, taking into account the principles of federalism, are the absence of legislation in this sphere and the desire or aspiration of the subjects of the Russian Federation to conclude such agreements. The practice of developing a contractual mechanism for regulating federal relations does not indicate a delineation of the subjects of competence and power, but cooperation. Thus, the conclusion of contractual relations regarding the delineation of powers is a prerequisite for the emergence of a legislative process.
5. CONCLUSIONS

The implementation of the principles of federalism in the legislative process is accompanied by a number of unresolved problems. It is supposed to solve the practical problems of the federal state in the field of legislative drafting, to provide a methodology for implementing the principles of federalism in the legislative process of the Russian Federation.

The legislation of the subjects of the Russian Federation should contain clear legislative drafting limits. It is intended to reflect the specifics of the subjects of joint competence only to the extent that it is necessary to take into account the regional characteristics of this subject of the Russian Federation. The main regulatory burden should be contained in federal legislation, in accordance with which the subjects of the Russian Federation, if necessary, carry out the additional regional legal regulation of public relations. The implementation of this approach can provide the necessary degree of unity, unification, coherence and visibility of the legal system of the Russian Federation. At the same time, we offered the ideas for the development of a contractual way of developing federal relations built on the basis of legislative drafting.

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REFERENCES


