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TÍTULO: Realización de experiencia legal en proyectos de actos jurídicos reglamentarios en la Federación de Rusia.

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RESUMEN: El artículo analiza las características del examen legal de los proyectos de actos jurídicos reglamentarios en la Rusia moderna. Se considera como el principal medio legal para aumentar la calidad, efectividad e idoneidad de la previsibilidad de las consecuencias de su adopción. Los autores creen que un marco regulatorio único para el examen de los actos legales reguladores, y lo más importante, la consolidación de técnicas y métodos uniformes con base científica y probada en la práctica para su implementación generalmente contribuirá a la mejora de la legislación rusa.

PALABRAS CLAVES: ley, acto jurídico normativo, experiencia jurídica, proporcionalidad de la regulación legal.

TITLE: Conducting legal expertise of draft regulatory legal acts in the Russian Federation.

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ABSTRACT: The article discusses the features of the legal examination of draft regulatory legal acts in modern Russia. It is considered as the main legal means of increasing quality, effectiveness, and the appropriateness of the predictability of the consequences of their adoption. The authors believe that a single regulatory framework for the examination of regulatory legal acts, and most importantly, the consolidation of uniform scientifically-based and practice-tested techniques and methods for its implementation will generally contribute to the improvement of Russian legislation.

KEY WORDS: law, normative legal act, legal expertise, proportionality of legal regulation.

INTRODUCTION.

As you know, the most important tool for improving the quality of adopted regulatory legal acts is the implementation of their legal expertise at the design stage. The task of such an examination is, first of all, to identify the substantive legal flaws of the draft regulatory legal - the discrepancy of its concept or individual provisions with the requirements of regulatory legal acts that have great legal force, internal contradictions in the text of the regulatory legal act, the use of incorrect terminology, etc.

At the same time, legal expertise of the draft normative legal act can also solve such problems as assessing the state of legal regulation of the problem raised in the draft normative legal act and, accordingly, determining the feasibility of adopting such an act from a legal point of view, predicting the consequences of its implementation taking into account the existing law enforcement

practices, identification of possible corruption factors, bringing the draft regulatory legal act in accordance with the rules of legal technology, as well as a number of other tasks.

Without substituting specialized examinations, the implementation of which is in some cases an objective necessity, the conclusion on the basis of the legal expertise of a draft normative legal act can sufficiently determine its future fate, show its validity and the need for adoption, or, on the contrary, reveal the inconsistency of its concept and the inappropriateness of further work on him. It should be agreed with the opinion expressed in the legal literature that the significance of the examination of a bill cannot be reduced to a simple assessment of the quality of its form and content. An expert opinion can have social, scientific, prognostic or even propaganda value [1, p. 89].

DEVELOPMENT.

Research methodology.

Dialectical method of cognition allowed to ensure the objectivity and comprehensiveness of the researched phenomena, general scientific methods were used (system, structural-functional, concrete-historical, comparative-legal), general methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.) and private-science methods (comparative law, technical and legal analysis, concretization, interpretation, etc.) [Komarov (2019), p. 32-40].

Study results.

In the legal literature, it is rightly noted that the legal regulation of the examination of regulatory legal acts is important. The consolidation in the legislation of uniform scientifically substantiated and practice-tested methods and methods of conducting legal expertise, its subject, goals and objectives, subjects of conduct, requirements for an expert opinion would not only unify the various

approaches to conducting legal expertise of draft regulatory legal acts, but also ensure its implementation at a higher level, which, of course, will positively affect the quality of the formed regulatory framework.

If we turn to the analysis of federal legislative acts that have an independent subject of regulation, then mention of legal expertise in a particular context can be found only in seven of them [2, 3, 4, 5, 6, 7, 8]. Moreover, only in the Federal Law “On the anti-corruption expertise of regulatory legal acts and draft regulatory legal acts” the concept of “legal expertise” is used in relation to the expert assessment of draft regulatory legal acts [6].

In accordance with Part 3 of Article 3 of this Federal Law, conducting an anti-corruption examination of draft federal laws, draft decrees of the President of the Russian Federation and draft resolutions of the Government of the Russian Federation developed by federal executive bodies, other state bodies and organizations, draft amendments of the Government of the Russian Federation to draft federal laws, prepared by federal executive bodies, other state bodies and organizations, carried out by the federal executive body in the field of justice during the legal examination of these documents.

Article 1 of the Federal Law “On the anti-corruption examination of regulatory legal acts and draft regulatory legal acts” establishes the legal and organizational framework for the anti-corruption examination of regulatory legal acts and draft regulatory legal acts in order to identify corruption factors in them and their subsequent elimination. At the same time, it is legally determined what is meant by corruption-generating factors, the basic principles for organizing anti-corruption expertise, its subjects are established, and the methodology for conducting anti-corruption expertise is normatively defined [9].

The importance of enshrining these provisions in federal law is not in doubt. At the same time, a reasonable question arises as to why there are no such provisions in relation to the legal examination of draft regulatory legal acts, the conduct of which at the proper level of effectiveness is no less important than the conduct of an anti-corruption examination, which is also, as follows from the provisions of the aforementioned Federal law, part of a legal examination? [10].

Quite often, references to legal expertise of draft regulatory legal acts, including draft laws, can be found in the legislation of the constituent entities of the Russian Federation, many of which have laws that regulate the implementation of the legislative process as a whole or the procedure for developing and adopting their own laws. However, as the analysis of regional legislation shows, the issues of conducting a legal examination of draft regulatory legal acts in it are affected only superficially and fragmentarily, while the definitions of legal examination of draft regulatory legal acts in the laws of individual constituent entities of the Russian Federation are not consistent.

So, for example, article 14 of the Law of the city of Moscow dated July 8, 2009 No. 25 “On legal acts of the city of Moscow” stipulates that the legal examination of draft legal acts is a study aimed at determining the conformity of draft legal acts to generally recognized principles and norms of international law, international treaties of the Russian Federation, the Constitution of the Russian Federation, federal legislation, legal acts of higher legal force, the requirements of legal technology [11].

According to Article 10 of the Law of the Primorsky Territory of December 22, 2008 No. 373-KZ “On Legislative Activities in the Primorsky Territory”, the legal examination of the draft law of the Primorsky Territory consists in assessing the conformity of the draft law of the Primorsky Territory to federal legislation and the laws of the Primorsky Territory; the identification of corruptogenic factors in the draft law of the Primorsky Territory; identification of violations of the internal logic of the draft law of the Primorsky Territory and the existing contradictions of its structural parts; in

making recommendations on the elimination of contradictions, corruption-generating factors [12], which seems to be due to the lack of necessary unification in federal legislation.

Note that the absence in federal legislation of provisions related to the regulation of the legal examination of draft regulatory legal acts and, in particular, draft laws, is largely due to the absence of a legislative act regulating the implementation of the legislative process in the Russian Federation. The draft federal law has been repeatedly developed by teams of scientists on an initiative basis.

Regarding the legal regulation of the legal examination, attention should be paid to the Methodological recommendations for conducting the legal examination of regulatory legal acts of the constituent entities of the Russian Federation, approved by Order of the Ministry of Justice of the Russian Federation of May 31, 2012 No. 87, which today are actually the only document at the federal level containing the rules for conducting legal expertise and samples of expert opinions [14]. However, these recommendations are developed for use in the central office and territorial bodies of the Ministry of Justice of the Russian Federation when conducting a legal examination of regulatory legal acts of the constituent entities of the Russian Federation, and besides, due to the specifics of such a document, recommendations cannot be binding.

Particularly relevant is the detailed regulation of legal expertise in relation to legal expertise of bills. The effectiveness of normative regulation primarily depends on the quality of the legislative act, the errors of which cannot be corrected in the acts of the sub-legislative level adopted in accordance with it and require amendments to the existing law, which each time is associated with the need to “start” the legislative process, so with instability of law enforcement practice. In addition, frequent amendments to the legislation of the Russian Federation undermine the principle of maintaining confidence in the law and actions of the state.

In accordance with the Rules of Procedure of the Government of the Russian Federation, bills prepared in its Office are sent for legal examination and anti-corruption examination [13, p. 603] to the Ministry of Justice of the Russian Federation, the conclusion of which according to the results of the legal examination should contain the following information:

- The subject of regulation and its compliance with the subjects of competence of the Russian Federation or joint jurisdiction of the Russian Federation and the constituent entities of the Russian Federation established by the Constitution of the Russian Federation (with the articles).
- The state of normative regulation in this area, the necessity and sufficiency of the said draft law and the list of regulatory legal acts necessary for the implementation of the relevant federal law, for the settlement of affected public relations, taking into account the competence of the President of the Russian Federation, the Government and federal executive bodies.
- Assessment of the form of the bill (new federal law, amendments to the current federal law, etc.) and its text compliance with the rules of legal technology.
- Compliance of the content of the draft law with the norms of the Constitution of the Russian Federation, generally recognized principles and norms of international law, international treaties of the Russian Federation, federal constitutional laws and federal laws, as well as legal practice.
- Other legal features of the bill.
- The presence in the bill of corruptogenic factors and suggestions on how to eliminate them or the absence in the bill of corruptogenic factors [15].

Otherwise, the subject of legal expertise is defined in the Rules of Procedure of the State Duma of the Federal Assembly of the Russian Federation. According to this document, in conclusion, based on the results of a legal examination, answers to the following questions should be given:

- Does the bill comply with or do not comply with the Constitution of the Russian Federation, federal constitutional laws, federal laws, and main industry legislative acts? If the conclusion establishes the inconsistency of the bill of the Constitution of the Russian Federation, federal constitutional laws, federal laws, the main sectoral legislative acts; then, it must be indicated which act does not comply with the bill and what this inconsistency is expressed in.
- Is the internal logic of the bill violated? Are there any contradictions between the sections, chapters, articles, parts and paragraphs of the bill? If there are such contradictions, they should be named specifically, and it is also necessary to give recommendations on how to eliminate the contradictions;
- Whether the list of acts of federal legislation to be recognized as invalid, suspension, amendment or adoption in connection with the adoption of this bill is fully provided. If an incomplete list of acts is given, then acts that are not listed in this list should be indicated.

The differences in the content of the legal examination of the bill, conducted by the Ministry of Justice of the Russian Federation and the Legal Department of the State Duma apparatus, are quite obvious. The organization of expert work in each state body has its own specifics depending on the authority of a particular body and the solution of certain tasks during the examination.

At the same time, we believe, that the features of the organization of standard-setting work and its expert support available in a particular government body do not impede the development and consolidation of unified approaches to conducting legal expertise, which contribute to increasing the efficiency of its implementation.

With regard to the legal expertise of the draft law, it is extremely important to evaluate, during such an examination, its subject of legal regulation, the general concept, correlation of the goals and objectives that the draft law is aimed at with the legal regulation tools selected in it and determining the proportionality of these means to the set goal. The absence of a draft law, the adoption of which

will lead to the emergence of a new federal law that does not amend the legislative acts, as well as an independent subject of regulation, may be evidenced, in particular, by the regulation of the relations indicated therein in the sectoral legislative acts of the Russian Federation, the declarative, blank or informational nature of its provisions, which actually do not carry a legal burden.

Underestimation during the legal examination of such an essential aspect of the legal component of the draft law as the proportionality of the selected means of legal regulation of its stated goal in practice can lead to a disproportionate restriction of the rights of certain categories of citizens, which has repeatedly been the basis for recognizing the provisions of federal laws as incompatible with the Constitution of the Russian Federation by the Constitutional Court of the Russian Federation.

It should be noted that there are frequent cases when the regulation proposed by the draft law does not meet the goals of its adoption indicated in the explanatory note, since the authors of the draft law simply could not legally correctly “write” the proposed changes in its text.

When conducting a legal examination of bills, it is mandatory to take into account not only the provisions of the Constitution of the Russian Federation, generally recognized principles and norms of international law of the Russian Federation, ratified by the Russian Federation of international federal constitutional and federal laws, but also the legal positions of the Constitutional Court of the Russian Federation, compliance with which is mandatory both for law enforcement, and for the legislator.

In order to eliminate the existing gap in legal regulation by means of the so-called “increment” of regulatory material, the Constitutional Court of the Russian Federation explicitly specified in a number of its decisions how these relations should be regulated, and in many of its decisions the federal legislator was clearly ordered to introduce the necessary amendments to the legislation of the Russian Federation.

An assessment of the existing law enforcement practice on the subject of the draft law in the course of its legal examination helps not only to provide a general idea of the state of legal regulation in a particular area and the problems encountered in its application, but also to identify legal errors made by the authors of the draft law, which may be, for example, in the absence of the need for the proposed changes due to the fact that in law enforcement practice the problems posed in the bill have already been resolved, and often in the vein needed by its authors.

When improving the regulation of legal expertise, it is also necessary to pay attention to the principles of its conduct, the main of which, in our opinion, are the principles of professionalism of experts, the independence of expertise and the sufficiency of time to conduct it.

It should be noted that if, as a rule, there are no problems with the professionalism of experts in state bodies, the observance of the principles of independence and the sufficiency of time for conducting a legal examination is often called into question. The point here is not only the habitual rule-making rush, but also the direct subordination of the heads of legal departments of state bodies to their leaders.

It should agree with the opinion of V.Yu. Ragozin, who believes that state bodies due to their departmental affiliation are forced to conduct not legal (legal) examination, but legal (legal) support of the process of development and adoption of draft normative acts [16].

In this regard, it is advisable, in particular, to establish a direct prohibition on combining the functions of the developers of the bill and its experts, as well as to determine the minimum allowable period for legal examination of the bill.

The creation of additional mechanisms hindering the adoption of bills, for which there are pending legal comments, would also enhance the role of legal expertise of bills.

CONCLUSIONS.

Summing up the foregoing, it should be noted the need to clarify the subject of legal examination of draft regulatory legal acts, and first of all, draft laws, consolidating common approaches to its implementation in the legislation of the Russian Federation. In our opinion, such consolidation is possible both through the adoption of a separate federal law on the examination of draft regulatory legal acts, and through the adoption of a federal law on regulatory legal acts.

We believe that a meaningful and detailed regulation of the legal examination of draft regulatory legal acts in the legislation of the Russian Federation will also exclude a formal approach to its implementation, in which, for example, assessing the goals and objectives of the project is not included in the subject of expert research.

This decision will undoubtedly contribute to improving the quality and stability of normative legal regulation, the adoption of high-quality and effective regulatory legal acts, which are the main sources of law, both in the Soviet state [17] and in modern Russia.

Conflict of interest.

The authors confirm the absence of a conflict of interest.

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