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TÍTULO: Temas de apoyo científico y experto de la actividad legislativa del parlamento (ejemplo de la Duma Estatal de la Asamblea Federal de la Federación Rusa).

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RESUMEN: El análisis de cualquier actividad, la identificación de sus características y características esenciales requieren la definición de sus temas y su clasificación. En el contexto de este estudio, la construcción de un modelo de la composición temática del apoyo científico y experto de la actividad legislativa de la Duma del Estado es necesaria para determinar el estado de las entidades relevantes, para diferenciar sus poderes y competencias en los temas. de este apoyo científico y experto, y también para identificar oportunidades potenciales para su mejora. Sobre estos aspectos se trata el artículo.

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

TITLE: Subjects of scientific and expert support of legislative activity of the parliament (on the example of the State Duma of the Federal Assembly of the Russian Federation)

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ABSTRACT: The analysis of any activity, the identification of its essential features and characteristics require the definition of its subjects and their classification. In the context of this study, the construction of a model of the subject composition of the scientific and expert support of the legislative activity of the State Duma is necessary to determine the status of the relevant entities, to differentiate their powers and competencies in the issues of this scientific and expert support, and also to identify potential opportunities for its improvement. On these aspects the article deals with.

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

INTRODUCTION.

Before proceeding to consider the circle of subjects of scientific and expert support of legislative activity in the “narrow” aspect of this concept, we should dwell on the analysis of such a concept as an “expert,” which is usually understood as a “specialist, expert, connoisseur” [Borytko N.M., Kuzibetskiy A.N. (1996)], “a qualified specialist in a certain field, involved in research, consultation, development of judgments, conclusions, proposals, examination” [Raizberg B.A., Lozovsky L.Sh., Starodubtseva E.B. (2011)] [2]. In other words, an expert is considered an individual who has the necessary knowledge that allows him to be involved in a specific expert work, for example, to conduct an examination.

In the State Duma Regulation, the term “expert” is used in the context of expert support for the activities of this chamber (Articles 26, 27, 37, 111, 129, 140), but there is no normative definition of it. In the absence of any normatively fixed procedure for acquiring the status of a subject of scientific and expert support of the State Duma by individuals, for example, through certification of relevant specialists, including an assessment of their professional suitability, solving the issue of whether the subject of scientific and expert support provides legislative activity of the State Duma -

an individual of the necessary scientific knowledge (scientific qualification) is of particular relevance.

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.

Given the specifics of the scientific and expert support of the legislative activity of the State Duma, which has as its main goal the integration of scientific knowledge into the content of legislative decisions and their validity, when determining the circle of experts of the relevant activity, we must take into account the provisions of the Federal Law of August 23, 1996. No. 127-Φ3 “On Science and the State Scientific and Technical Policy” [3], which regulates the implementation of scientific activities and establishes requirements Nia to her subjects.

From an analysis of the provisions of this legislative act, we can conclude that in relation to individuals, subjects of scientific activity are persons with the necessary scientific qualifications and professionally engaged in scientific activities. In this case, the assessment of the scientific qualifications of scientists and other persons engaged in scientific activities is provided by the state system of scientific certification (article 4 of the aforementioned Federal Law).

In this regard, it seems that persons who have passed the specified certification, designed to confirm the required level of their scientific knowledge, should be considered as potential experts - subjects of scientific and expert support of the legislative activity of the State Duma. The term "potential" means that the expert can be involved in the relevant activities in view of the confirmation of his scientific qualifications in the prescribed manner by decision of authorized persons.

Note that this is precisely the approach to the definition of specialists in the field of criminological expertise that was applied in the initiative draft of the federal law "On criminological expertise" prepared by prof. A.I. Debt. In accordance with Part 2 of Art. 2 of this bill, a specialist-criminologist means a person with special criminological knowledge, a diploma of a candidate or doctor of law in the specialty "criminology", or a certificate of a senior researcher, associate professor, professor in the same specialty, or engaged in criminological research or teaching criminology and certified in the relevant position with the participation of criminologists [4].

It seems that in order to ensure the objectivity of expert assessments, to exclude any bias from experts, as well as to attract the most competent specialists in their field as subjects of scientific and expert support for the legislative activity of the State Duma, additional regulatory legal regulation of issues of expert participation in committee meetings is necessary State Duma, other parliamentary events related to the implementation of legislative activities (pa hearings, round tables, etc.), the selection of specialists for inclusion in advisory and advisory bodies (scientific and expert councils, working groups, etc.) created under the Chairman of the State Duma, in its committees, in fractions in the State Duma.

We believe that the competitive selection mechanism, which is used in the formation of public councils under federal executive bodies, should also be applied when experts are involved in activities in the State Duma [5]. When institutionalizing the necessary normative regulation, it would be possible to take into account the experience of resolving relevant issues in the French

parliament, where not only the candidate's knowledge and experience, but also other factors are taken into account when choosing external experts: the membership in a political party, gender, etc. [6].

Individual and collective participation can be distinguished depending on the forms of participation of experts in the work on scientific and expert support for the legislative activities of the State Duma. In the latter case, the body of experts acts as a separate, independent subject of scientific and expert support for the specified activity, the powers and rights of which are not identical to the powers and rights of its constituent members. The form of collective participation of experts in the scientific and expert support of the legislative activities of the State Duma is the creation and activities in the State Duma of various advisory and advisory bodies under the Chairman of the State Duma, its committees and in fractions in the State Duma.

The work of scientific and expert councils created in parliament or structures similar to them (working groups, associations, etc.) is a widespread practice in the world of scientific and expert support for legislative activity, which allows organizing the interaction of the legislator and representatives of the scientific community in various structures of the legislative body - leadership of the parliament, its committees and commissions, factions of political parties or in deputy groups; for example, in the Finnish Parliament, there is the Association of Members of Parliament and Scientists (Tutkas), the purpose of which is to ensure constant contacts and exchange of information between the parliament and representatives of science. A special expert structure has been created in the French parliament for the same purpose - the Parliamentary Service for the Assessment of Scientific and Technological Choices (OPECST), in the European Parliament an official structure has been created that brings together external experts, research and scientific institutions, universities, laboratories with European Parliament committees and parliamentarians [7].

It is necessary to agree with the position of researchers who believe that the status of scientific expert bodies created in the State Duma, their tasks and forms of activity [Abramova A.I., Rakhmanina T.N. (2009), p. 9; Maksimov S.V., Ramse R., Kammerer O. (2005), p. 75]. It seems, first of all, it is important to determine the issues of competence of scientific and expert councils and the procedure for their formation on the basis of competitive selection of experts, to substantively link the activities of the councils to the legislative work of the State Duma committees, including the formation of priority plans for their legislative work, to provide for the conduct of scientific council members examination of bills, as well as the information transparency of the councils, and accordingly, the placement of transcripts of the relevant meetings and materials, including expert opinions on draft laws or concepts in the public domain on the Internet.

In an independent category of subjects of scientific and expert support of the legislative activity of the State Duma, it is necessary to single out legal entities, including scientific organizations and educational organizations of higher education.

One should join the position repeatedly expressed in the legal literature on the need to create at the Russian parliament its own (subordinate to it) organization carrying out scientific activities [10].

Under many federal government bodies, including higher ones, and federal state bodies, scientific or educational organizations have been created. Under the President of the Russian Federation, there is the Russian Academy of National Economy and Public Administration, the tasks of which are the organization and conduct of fundamental and applied research in the interests of the Administration of the President of the Russian Federation and the Government of the Russian Federation, as well as expert and scientific support for the activities of the Presidential Administration of the Russian Federation and the Government Office Russian Federation [11].

Under the Government of the Russian Federation, the Institute of Law and Comparative Law conducts its activities, the subject of which is the scientific and legal support of the activities of the Government of the Russian Federation. The Institute carries out fundamental and applied research on the development of legislation, its industries and institutions, participates in the preparation of legislative plans for the Government of the Russian Federation, conducts scientific legal expertise of draft federal laws under consideration by the Government of the Russian Federation, and their concepts [12].

The Academy of the General Prosecutor's Office of the Russian Federation provides scientific, educational and methodological support for the activities of prosecution authorities. Special scientific institutions for scientific and expert support of the legislative process and legislative activities have been created in a number of constituent entities of the Russian Federation. In 1996, the Ural Institute of Regional Law was established in the Sverdlovsk Region; the Institute of Lawmaking was established in 1999 as part of the Saratov State Law Academy.

These institutions carry out analysis of legislation, development of draft laws and their examination, monitoring of legislation and law enforcement practice, information, methodological and advisory activities on legal issues, including on appeals of deputies of legislative (representative) government bodies of the relevant constituent entities of the Russian Federation.

If we turn to foreign parliamentary experience, we can see that scientific organizations exist in the parliaments of many states; for example, in Spain, as a result of a cooperation agreement signed between the Congress of Deputies (Chamber of Deputies) and the Complutense University of Madrid, the Institute of Parliamentary Law was established in 1985.

In Finland, in 2006, a law was adopted on the Research Institute of International Relations and European Affairs, which until the adoption of the law was a private research institution, and after its adoption was transferred to the Finnish Parliament (Eduscunti). The institute is led by a council of

nine people appointed by Parliament with the assistance of advisory and scientific advisory councils [13].

Creation of a scientific organization under the Russian parliament, which in 1991 - 1993 was the Institute of Legislation and Comparative Law, which would ensure the full intellectual independence of the federal legislator from the executive authorities and solve a whole range of pressing problems associated with insufficient scientific and expert support of the legislative activity of the State Duma, including the organization and coordination of regular and applied scientific research on legislative issues, including before the development of the most important bills, the scientific examination of bills and their concepts, the provision of advisory support to the federal legislator, including assisting State Duma deputies in the preparation of bills, providing them with analytical, statistical and other information of interest to them, scientific and expert support for planning legislative activities of the State Duma and introducing into the practice of its work modern legal technologies, scientific and methodological support of active five chambers of the Federal Assembly of the Russian Federation.

It is advisable to classify the subjects of scientific and expert support for the legislative activity of the State Duma from the point of view of their participation in the relevant work as “external”, since they are involved by the federal legislator and are not included in the structure of the State Duma apparatus, the tasks of which include legal, organizational, documentary , analytical, informational and other support for the activities of the State Duma, its deputies, committees and commissions [14]. Accordingly, the “internal” subject of scientific and expert support for the legislative activity of the State Duma is its apparatus and its individual structural units, including the apparatus of committees of the State Duma.

Traditionally, in world parliamentary practice, the structural unit of the parliamentary apparatus, whose tasks are directly related to the scientific and expert support of legislative activity, is the analytical (research) service. The functions of the Analytical Department of the State Duma Apparatus include, in particular:

- Preparation on behalf of the leadership of the State Duma and its apparatus of expert opinions, analytical and reference materials on legislative activities.
- Organizational, methodological support of the formation and implementation of the research plan for the State Duma.
- Preparation of information and analytical bulletins, analytical bulletins, reviews and other information and analytical materials on relevant issues of the legislation of the Russian Federation.
- Collection of expert assessments and development of recommendations for improving the legislation of the Russian Federation.
- Monitoring of analytical studies, publications and publications.
- Preparation of analytical materials involving representatives of the scientific and expert community in order to develop recommendations on legislative activities of the State Duma.
- Organization and support of interaction of the State Duma with Russian and foreign scientific research and analytical organizations and their representatives, as well as a number of other functions related to scientific and expert support of legislative activities of the State Duma.

The legal department of the State Duma apparatus conducts mandatory legal due diligence of bills submitted to the State Duma before they are examined by the chamber in the first reading, and also before the consideration of the bill in the second reading, also linguistic and legal and technical expertise, provides legal assistance to deputies of the State Duma on the preparation of bills and accompanying materials to them. The conclusion of the Legal Department for the bill is an important expert document that helps to improve the quality of the adopted law and its validity.

The main expert work on preparing the bill for consideration by the State Duma, including the accumulation of expert materials received on it, is carried out in the apparatus of the State Duma committees and is reflected in the conclusion of the State Duma responsible committee for the bill, which, as a rule, is prepared taking into account the comments and suggestions received on the bill, including from subjects of scientific activity. Accounting for scientific knowledge is carried out by the staff of the State Duma committees also when they prepare various analytical materials on issues related to legislative activity, and some of them are prepared taking into account consultations with scientists, for example, in this order expert support is provided for the preparation of the draft annual state report Russian legislation [15].

Subjects of scientific and expert support of the legislative activity of the State Duma can be classified as public and private, depending on their membership in government bodies and other state structures. Accordingly, it is proposed that public entities include various state scientific organizations involved in the scientific and expert support of the legislative activities of the State Duma and experts representing these organizations, as well as the State Duma apparatus, which is a state body (Article 78 of the Rules of Procedure of the State Duma), while private entities should include various non-state public authorities and scientific and other organizations created without state participation anizatsii, their specialists, as well as experts involved in the scientific and expert support of the legislative activity of the State Duma as private individuals, i.e. not representing any expert structures.

Depending on the mandatory participation of subjects of scientific and expert support of the legislative activity of the State Duma in the relevant work, they can be divided into imputed, i.e. obligated to implement it, and expert documents which are required for consideration of the bill by the State Duma, as well as optional - subjects that can be involved in the scientific and expert

support of the legislative activity of the State Duma on the initiative of the federal legislator (or participate in this work on an initiative basis).

An analysis of the State Duma Regulations shows that the first category should include the “internal” subjects of scientific and expert support for legislative activity of the State Duma (the State Duma Office and its structural divisions) that we highlighted, since the mandatory nature of their participation in the expert support of the legislative activity of the chamber is normative, and to the second category - “external” entities, which can be brought in by the legislator on an optional basis and receive expert Document which are not required for passage of the bill through the stages of the legislative process. An exception to this rule is the cases established by the Rules of Procedure of the State Duma of the mandatory receipt of opinions on certain bills from certain state bodies [16].

It seems to us that the current situation requires change, and the number of imputed subjects of scientific and expert support for the legislative activity of the State Duma should include not only internal entities, but also a number of external ones. So, for example, one cannot but take into account the fact that, with respect to the leading subject of scientific activity - the Russian Academy of Sciences - the obligation to provide scientific and expert support for the legislative activities of the State Duma follows from one of the goals of the RAS, which is expert scientific support of the activities of state bodies [17].

The suggestion to supplement the State Duma Regulation with the provision that the information, expert and other support of the State Duma is carried out not only by state organizations providing the activity of both chambers of the Federal Assembly, but also non-governmental organizations on competitive terms is worthy of support [Maksimov SV, Ramse R., Kammerer O. (2005), p. 75-76].

Turning to the analysis of the subjects of scientific and expert support of the legislative activity of the State Duma from the standpoint of its understanding in the "broad" aspect as a process expressed in certain stages, it should be noted that with this approach, the number of subjects of scientific and expert support of legislative activity, in addition to the direct executors of the corresponding work should also include its initiators (customers) and entities that integrate the results of work on scientific and expert support of legislative activity of the State Duma in the content of its legislative decisions.

It should be noted that the initiation of work on the scientific and expert support of the legislative activity of the State Duma (with the exception of the "internal" scientific and expert support, which, as noted above, is mandatory in the implementation of the legislative activity of the State Duma), is the exclusive prerogative of the federal legislator himself.

An analysis of the State Duma Regulations shows that among the subjects of scientific and expert support for the legislative activity of the State Duma that belong to the category of its initiators (customers), one should include the Chairman of the State Duma, who is empowered to entrust the Scientific Council with lawmaking to conduct an examination of the bill being considered by the State Duma as well as solve issues of expert, scientific, advisory and other legislative support STI State Duma (Article 11), the Committee of the State Duma, which may decide to send the bill to the state authorities and other organizations to carry out scientific expertise (article 112), most of which were established scientific and expert advice. Among the initiators (customers) of work on scientific and expert support of legislative activity should also be attributed fractions in the State Duma, in which expert councils are created with the participation of scientists.

It is noteworthy, that in accordance with the Rules of Procedure of the State Duma and its other normative acts, deputies of the State Duma (with the exception of the Chairman of the State Duma and the chairmen of committees of the State Duma, which supervise the activities of scientific and

expert councils established under the corresponding committees of the chamber) are among the subjects that are the initiators (customers) of scientific and expert support for the legislative activity of the State Duma, since give authority to initiate scientific and expert work. Meanwhile, in the absence of advice and other scientific and expert assistance, State Duma deputies are not always able to adequately assess the strengths and weaknesses of a particular bill, sufficiently deeply analyze the problem situation that caused its development, and objectively formulate their position on the bill.

If we turn to foreign experience, then, for example, analysts at the US Congressional Research Service, which provides scientific and expert support for its activities, provide appropriate assistance to individual congressmen at their request at various stages of the legislative process. At the stage of preparation of the bill, it can be expressed in providing information on a specific issue so that the congressman can better understand the current situation, identify possible alternative solutions to the problem, after the bill is introduced, the US Congressional Research Service can help congressmen clarify the goals of the bill, objectively evaluate its merits, provide for those of them who are new to the bill, information that can be used by them in the discussion will help congressmen work more balanced view, reflecting the wide range of opinions and arguments [Gurinovich A.G., Kozlova N.V. (2007)].

It seems that the full intellectual independence of the parliament from other state bodies requires ensuring the possibility for each deputy of the State Duma to receive complete and objective information about the bill under consideration, including its scientific validity, due to the available (own) resources of scientific and expert support for legislative activity State Duma.

The opinion expressed in the scientific literature that it is advisable to abandon the desire that the legislator himself cope with ensuring the high quality of the laws adopted by him, in our opinion, cannot be supported [Tolmacheva N.N. (2006)]. At the same time, it should be recognized that the

position that the staff of the analytical service should be protected from excessive work on conducting extensive research in response to requests from individual deputies is justified. Otherwise, the priorities of this service may be violated, which will lead to an overall decrease in the quality of its work [Maksimov S.V, Ramse R., Kammerer O. (2005), p. 74].

CONCLUSIONS.

Ideally, it is necessary to find the optimal balance between internal and external scientific and expert support of the legislative activity of the State Duma, in which external scientific and expert support would organically supplement the internal, and not replace it.

The scientific and expert assistance necessary for the legislator in its activities should be provided primarily by the apparatus of the legislative body and the organizations created with it in order to ensure its activities (if such organizations are not included in the structure of the parliamentary apparatus).

As for external scientific and expert support, for all its feasibility as a source of professional independent scientific and expert support, which often avoids the monopoly of the state bureaucracy on providing information and expert assessments, as well as providing the legislator with the opportunity to receive a wide range of alternative solutions, external scientific expert support should, in our opinion, be recognized to a greater extent as an optional element of legislative activity than whether mandatory because otherwise the activity of the parliament is made dependent on external conditions; for example, in the Bundestag research service, external expert evaluation is not used often, but in many cases its results are of great value [Kozlov D.A. (2005)].

The subjects of scientific and expert support of the legislative activity of the State Duma, which integrate the results of the relevant work into the content of legislative decisions; in our opinion, should be referred to as deputies of the State Duma (it is taken into account that before the State Duma considers the bill, it is drafted and considered by the responsible committee of the chamber,

whose decision on the bill is usually supported by voting on it at a meeting of the State Duma), and the State Duma as a whole, since only it, through the implementation of the established procedures for the adoption of legislative acts, has the right to determine their content. In this regard, it seems extremely important to enshrine in the federal legislation and the Rules of Procedure of the State Duma a requirement on the scientific validity of legislative acts adopted by the State Duma.

Adequate regulatory institutionalization would not allow the legislator to ignore the content of existing expert documents on the draft law when adopting a legislative decision, and in case of such neglect would serve as a possible basis for the return of the federal law adopted by the State Duma by the President of the Russian Federation due to a violation of the established requirements for the adoption of federal laws, which according to the legal position of the Constitutional Court of the Russian Federation is not a deviation of the Federal law within the meaning of Part 3 of Article 107 of the Constitution [21].

Conflict of interest.

The authors confirm the absence of a conflict of interest.

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