

## SCTMG 2020

### International Scientific Conference «Social and Cultural Transformations in the Context of Modern Globalism»

## CONCILIATION IN THE LEGISLATIVE PROCESS OF THE FEDERAL STATE

Kazban Samatovna Inalkaeva (a)\*

\*Corresponding author

(a) Department of Legal Disciplines, Chechen State Pedagogical University, Grozny, Russia Kazban1961@mail.ru

### *Abstract*

The paper considers the conciliation procedures in the legislative process of a federal state. It is noted that the efficiency of the legislative process in a federal state depends on its interests in general and its entities in particular. The working mechanisms for harmonizing the positions of the chambers of the Russian Parliament in the federal legislative process concerning joint joint competence of the Russian Federation and its constituent entities were studied. The author points out that in theoretical terms the problems of legislation are still not sufficiently developed and are characterized by the absence of a large number of comprehensive systemic studies on this issue, in particular the purpose of the Federation Council is to represent the interests of Russian entities in the adoption of legislative acts, to prevent insufficiently balanced decisions, to monitor the quality of legislative acts. A comparative analysis of the legislative process of the Republic of Germany and Belgium was. The author suggests drafting of a law that would approve the harmonization procedure for draft laws with constituent entities of the Russian Federation at the legislative level.

2357-1330 © 2020 Published by European Publisher.

**Keywords:** Formal signing of law, legislature, promulgation, media, federal legislation.



## 1. Introduction

In the context of the constantly developing constitutional regulation of legal foundations of federalism, the formation of civil society and the strengthening of democratic principles of its functioning, the problem of the formation and improvement of the legislation as an essential factor in the construction of the constitutional state and establishment of the law and order seems particularly relevant. Modern Russia is undergoing fundamental and dynamic changes affecting not only federal but also regional levels of public power.

The process of the modern legislative process in the Russian Federation took place in a difficult environment against the background of the economic crisis. This fact made it necessary to focus on some peculiarities of Russian legislative activity and its basic properties, principles, which, to some extent, do not correspond to the Western European and North American legislative process. The course chosen in connection with the deepening of political and economic reforms forced the legislator to attempt to quickly cover the legal norms of fundamentally new established social relations (Inalkaeva et al., 2017). The complication of parliamentary procedures and legislative activities in general urgently requires a significant increase in the level of professionalism both on the part of deputies of various types of representative bodies, authorities, and on the part of actual state authorities of the Russian Federation and its entities directly included into the legislative process. Many unnecessary laws are being created, including those not agreed with the public. Theoretical reflection of the legislative process in the constituent entities of the Russian Federation began in the mid-1990s. In general, methodological and informative works were published, which also summarized the legislative experience of the constituent entities of the Russian Federation. Due to the introduction of the Federal Law *On General Principles for Legislative (Representative) and Executive Bodies of State Power of the Constituent Entities of the Russian Federation* (hereinafter Federal Law No. 184-FZ), the study of the legislative activity of the constituent entities of the Russian Federation has become more systematic. With the adoption of the Constitution of the Russian Federation in 1993, the constituent entities of the Russian Federation have been given relatively broad powers in the field of legislation (Inalkaeva, 2017). This was expressed in the right of the regions to adopt their laws on the subjects of joint competence of Russia and its entities, including with regard to advance rule-making, as well as to implement legal regulations on issues not under the Constitution under the jurisdiction of the Russian Federation and under the joint jurisdiction of the Russian Federation and its entities.

## 2. Problem Statement

The legislative function of the state involves the development of the content and mechanism for the implementation of laws that contribute to the normal functioning of the society. This is not a simple matter, as it may seem at first glance, given that the laws are drafted, adopted and implemented by people who have recently lived in conditions that today, with the help of new laws, they have to change significantly (Borsova, 2008). This is hampered by stereotypes and the desire only to adjust, as well as the direct unwillingness to change at all – all this palette of feelings and aspirations cannot but be reflected in

new laws. Besides, a lot of things are constantly changing in the life of the society, so it is necessary to be able to anticipate possible trends in laws, exempt from attempts to indulge in wishful thinking.

Today the topic of legislation is more relevant than ever, when the state faces the task of strengthening its legal basis. Incompetence, haste of the legislator, disregard of scientific foundations of legislative work – all this can negatively affect the legal system.

### **3. Research Questions**

One of the important conditions for improving the legislation is the acquisition of the system of requirements for the process of creating laws.

It is necessary to study and formulate the goals and objectives of legislative activity, its principles, requirements, if necessary to propose changes to the legislation in force.

The increase in the volume and complexity of legislative activities in the constituent entities of Russia causes the need to deepen the specialization of the legal regulation process at various levels of public power, the stable separation of the subjects of competence and powers between them. However, in modern Russia there is a situation in which the volume of legislative competence is in a dynamic state, as a result of which the accumulated experience of the legislative process is not always in demand over time. The federal form of the state structure considers the participation of the constituent entities of the Russian Federation in the federal legislative process. Needless to say that at the regional level the most acute social issues are found quicker, disadvantages and defects of legislative regulation of public relations are revealed more productively. Therefore, the efficiency of the legislative process in a federal state depends on the interests of the state in general and its actors in particular. The comparative legislation helps developers of draft laws of different countries to take into account foreign experience. Hence, there is a need to study both positive and negative foreign legal experience.

It is thought that by studying the foreign experience, in particular the Republic of Belgium and Germany, it is possible to improve the national law, as well as to increase the efficiency of legislative activities.

Federalism in Germany is called cooperative federalism. In this country, the entities of the Federation – the lands have extensive rights, but only within the country. Unlike the Constitution of the Russian Federation, the Constitution of Germany distinguishes not the subjects of competence, but the subjects of legislative regulation of the Federation and the lands. Germany has the so-called framework legislation that reveals the legal framework adopted by the Federation; competing legislation – something like joint subjects of competence of the Federation and subjects (if the Federation does not fulfil its competence, the lands create competing legislation) (Popadyuk, 2011).

In the Russian Federation, the participation of regional parliaments in the federal legislative process is conditioned by the fact that they have the right of legislative initiative under the Constitution; participation in the consideration of draft federal laws on subjects of joint competence; proposals to the State Duma to revise, amend and change the Constitution; participation in the approval procedure of amendments to Chapters 3-8 of the Constitution after their consideration by the Chambers of the Federal Assembly; adoption of laws on the subjects of joint competence of the Russian Federation and its entities.

In accordance with Article 26.4 of the Federal Law No. 184-FZ, draft federal laws on subjects of joint competence are agreed with the legislative (representative) and higher executive bodies of the state authorities of the constituent entities of the Russian Federation (Inalkaeva, 2018).

Upon their submission to the State Duma draft federal laws on subjects of joint management are sent to legislative (representative) and supreme executive bodies of the state power of the constituent entities of the Russian Federation in order to submit the feedback on the above draft laws to the State Duma within 30 days. With regard to draft laws on matters falling within the competence of the federal authorities, the law does not contain any instructions. Thus, researchers consider it necessary to coordinate the Federation and its entities on each draft of the adopted federal law, because “even within the exclusive jurisdiction of the Federation, the constitutional norms defining this exclusive legal field operate on the territory of the subject... The exclusion of an entity of the Federation from any element of the legislation system deteriorates the efficiency of the adopted laws” (Petrova & Shovkhalov, 2016, p. 436).

Without denying this view, we believe that the basis for sending draft laws on the subjects of exclusive competence of the Federation is the direct interest of the constituent entities of the Russian Federation in their adoption. Article 26.4 of this Law also stipulates that if the legislative (representative) and supreme executive bodies of the State power of more than 1/3 of the constituent entities of the Russian Federation oppose the adoption of the relevant federal law, a conciliation commission shall be established by the decision of the State Duma.

#### **4. Purpose of the Study**

The review of state authorities of an entity of the Russian Federation to the draft federal law on subjects of joint cooperation is considered positive if the legislative (representative) and the supreme executive bodies of the state power of the constituent entity of the Russian Federation will speak in favor of the adoption of this draft federal law, and negative in case the legislative (representative) and the supreme executive bodies of the state power of the entity of the Russian Federation oppose the adoption of this draft federal law.

If the views of the legislative (representative) and supreme executive bodies of the State power of the entity of the Russian Federation are divided, it should be considered that the opinion of the State power bodies of the entity of the Russian Federation is not expressed. In our view, this is illogical. The opinion of the executive authority of the entity of the Russian Federation should be communicated to the State Duma and taken into account in the discussion of the draft law.

A 30-day period is implied prepare comments and proposals on the draft federal law, legislative (representative) and executive bodies of the state power of the entity of the Federation, both before and after discussion in the first reading. In our opinion, it is necessary to extend the period of work of legislative (representative) and executive bodies of the constituent entities of the Russian Federation on draft laws adopted in the first reading by the State Duma, which will allow the constituent entities of the Federation participating more effectively in the federal legislative process.

Until the expiry of the 30-day period, the draft law may not be considered in second reading. But taking into account the fact that in the second reading in the State Duma the committee responsible for the

draft law presents a table of amendments to the draft law grouped into two categories – recommended by the committee for adoption and not recommended for adoption, as a result of this comments of legislative (representative) and executive bodies of the state power of the constituent entities of the Russian Federation can be distorted. Therefore, working mechanisms are needed to coordinate the positions of the Chambers of the Russian Parliament in the federal legislative process on the subjects of joint competence of the Russian Federation and its entities. This requires the formation of a panel on conciliation parliamentary procedures of the Russian Parliament, the establishment of working groups on draft laws from among the deputies of the State Duma, members of the Federation Council, representatives of regional ones who will work with the draft law at all stages of the legislative process.

It is necessary to agree with the opinion of Abramova and Rakhmanina (2003), who consider it

*appropriate to extend the procedure of coordination of the draft law with the state authorities of the constituent entities of the Federation and to the stage of the second reading, since the coordination of the views of the Federation and its entities at the stage of approval of the conceptual provisions of the draft law may have a beneficial impact on its subsequent adoption in the State Duma, and at the stage of consideration of the draft law on the merits (second reading) will ensure a final balance of interests and contribute to a mutually acceptable solution. (p. 74)*

In our view, the important point here is that conciliation is not applied at the end of the legislative process, but at the beginning and throughout it.

The procedure for agreeing on the draft law with the subjects also exists abroad. According to Part 2 of Article 76 of the Basic Law of Germany, the Government may submit its draft laws to the Bundestag only through the Bundesrat, which is the link between the Länder and the Federation. The time limit for the Bundesrat to determine its position is six weeks (three weeks for particularly urgent draft laws). Such legislative procedures contribute to the identification of a balance of interests, whereby “the lands participate in the legislative and administrative activities of the Federation” (art. 50 of the German Basic Law) (Chirkin, 2008). The draft law, the justification for the position of the Bundesrat, are then submitted to the Bundestag for consideration. All laws adopted by the Bundestag return again to the Bundesrat, which checks whether the position of the first round has been taken into account and what changes the Bundestag has made. In case the Bundesrat does not agree with the wording of the law adopted by the Bundestag, it may apply within three weeks to the mediation commission, which consists of 16 members of the Bundesrat and 16 deputies of the Bundestag. Consequently, the Bundesrat considers the bills twice: before and after their transfer to the lower chamber, which allows the upper chamber to be not just a statistic body, but to actively influence the legislative process.

## **5. Research Methods**

Let us consider the legislative process of the Republic of Belgium. In the Belgian model, regions (states) can only influence federal decision-making on a very limited scale. Curiously, the legislator does not justify these three fundamental options to the detriment of participation. The reluctance of the constituent legislator to give the State Chamber more room for maneuver can be attributed to its

uncertainty about the functioning of the federal parliament, in which both chambers have different political majorities. This scenario is quite likely to happen, as the Chamber meets on the basis of direct elections, mostly on the basis of voting results in the parliaments of the regions (states).

The Federal Republic of Germany divides the body of laws into laws requiring the approval of the State Chamber and laws under which it is entitled only to consultation. It was also suggested that the Belgian Federation made such division in the fields of policy: the senate would be equal with the Chamber (House of Representatives) before the constitution and special laws. On other issues, the Senate will have the right to initiative and the right to repeal and amend, but the Chamber will retain the final decision.

In Russia, however, the identification and consideration of the interests of the constituent entities of the Federation when the Government of the Russian Federation prepares draft laws are provided only for in the subjects of joint competence of the Federation and its constituent entities specified in Article 72 of the Constitution. In the legislative process of Russian subjects, there are significant gaps and defects that require the utmost attention of legal science, federal state authorities and the public. On the one hand, this is caused by the specifics of the transition from a totalitarian to a democratic regime, the change in the ways and methods of realizing the needs and interests of citizens in parliamentary normative acts, the formation of a multi-party system. On the other hand, the insufficient quality of regional legislation was the result of the fragmented consideration of the theoretical foundations of the legal regulation of public relations, the weak elaboration of federal legislation and the practice of the Constitutional Court of the Russian Federation by regional parliamentarians. All these reasons could not but cause the desire of the state to organize the legislative process, in which the interests of the regions and Russia as a whole would be optimally taken into account.

Draft laws are often prepared and introduced hastily, without deep justification. Basic systemic laws have not been adopted for a long time. First of all, these include draft federal laws on normative legal acts, on federal executive bodies, on administrative justice and others. It is upsetting to underestimate the social side of the legislation: there are few public discussions, citizens are not fully explained the meaning of the new laws. This reduces the effect of perception and implementation of legal acts (Bulakov & Ryazantsev, 2007).

## **6. Findings**

The procedure for harmonizing draft federal laws with the entities of the Russian Federation is aimed at achieving a mutually acceptable solution by coordinating the interests of all its participants. This does not entail the unconditional obligation of the State Duma to satisfy the claims made by the subjects of the Russian Federation. This procedure involves the clarification and discussion of the views of the constituent entities of the Russian Federation in order to develop a more harmonized draft federal law, which will allow the constituent entities of the Russian Federation avoiding duplication of the federal legislation.

It is difficult to take into account the position of the regions when finalizing the draft law, as in many ways it is a formal procedure. There are 30 days to prepare comments and proposals on the draft law, which, in our view, is not enough. There is also no procedure defined under which regions should

work on the text of the draft law and formalize their decision. The Regulations of the State Duma do not pay sufficient attention to the procedures for harmonizing federal draft laws with the entities of the Russian Federation. For example, there are no consequences if draft laws on subjects of joint competence are not sent to the constituent entities of the Federation; no liability is established for persons who failed to comply with this procedure. Moreover, the comments and proposals of regional legislative bodies are not binding on the State Duma. The efficiency of such work would be improved if the federal parliament provided information to the proposing entity on what was accepted, taken into account and in what form it is reflected in a certain federal law.

A common provision is that the review of a subject of the Russian Federation is considered positive even if it is not presented at all. Conciliation is carried out through the establishment of a conciliation commission composed of the representatives of federal bodies and State authorities of the relevant entity of the Federation. But with regard to the conciliation commission, there is not an obligation, but only the possibility of its creation, if more than 1/3 of the constituent entities of the Russian Federation provided negative feedback on the draft law. It is very important to carefully regulate the types, procedures of conciliation procedures, to identify the subjects entitled to enter or apply for conciliation procedures, to establish the methods of decision-making. However, despite the fact that conciliation procedures are indeed very important in the legislative process, the functions of the conciliation commission and some other problematic issues have not yet been recorded at the legal level.

The regional legislator, in accordance with the Constitution, has the right to regulate matters not only falling under the jurisdiction of the entity of the Federation, but also essentially related to state-wide problems in cases where there is no relevant federal legislation. The regional legislator can also take legislative initiatives, thus proposing their extension throughout the country.

The federal structure of legislation not only offers great opportunities for scientific and comparative analysis of the legislation of the constituent entities of the Federation, but also requires such analysis for practical and applied purposes. In our view, before providing feedback on the draft law, it would be useful for the constituent entities of the Russian Federation to study the experience of other constituent entities of the Federation.

There are other problems with the mechanism for harmonizing the interests of the Russian Federation and its entities in the field of legislation. The process of harmonization of draft laws with the entities of the Russian Federation should contribute to greater certainty to general federal norms by taking into account the specifics of regional practice, as the regional level more accurately reflects pressing social problems, identifies disadvantages and gaps in the legal regulation of social relations. Proposals drawn up by the State authorities of the constituent entities of the Russian Federation are not always given due attention, although the Federal Law No. 184-FZ provides for their mandatory consideration. In our view, this is caused by insufficient regulatory framework, and the entities of the Russian Federation themselves do not fully exercise their right to participate in the federal legislation. Neither the Constitution nor the regulations of the Chambers of the Federal Assembly establish clear regulations on the procedure for the participation of the constituent entities of the Russian Federation in federal legislation. Therefore, the entities of the Russian Federation seek to issue their own laws on the subjects of joint competence of the Russian Federation and its entities. The Federal Law No. 184-FZ stipulates

that before the adoption of federal laws on issues assigned to the subjects of joint competence, the entities of the Federation have the right to carry out their own legal regulation, and after the adoption of the relevant federal law, the laws and other normative legal acts of the entities of the Federation are brought into line with the adopted federal law.

The multiplicity of regulatory rules of the federal legislative process, each subject of the law of the legislative initiative, calls for the adoption of a single legal act. The preparation and adoption of the Federal Law On the Procedure for the Adoption of Federal Constitutional Laws and Federal Laws, which would regulate the stages of the federal legislative process, ensure effective interaction of all participants in legislative work, remains relevant.

It should be noted that the established procedural rules are not sufficient to implement a holistic effective mechanism of the process of harmonization of legislation. For example, the Federal Law No. 184-FZ does not define the procedure for the formation, terms of work of the conciliation commission, which can be established by the decision of the State Duma, if the legislative (representative) and supreme executive bodies of the State authorities of more than 1/3 of the constituent entities of the Federation oppose the adoption of the draft federal law.

In practice, the form of conciliation proceedings, such as conciliation commissions, has not been sufficiently developed. One reason for this is the lack of a clear legal regulation of their status.

In our view, the activities of the conciliation commission should be clearly established, as they are part of the legislative process of the Parliament. At the normative and legal level, it is necessary to develop and establish the uniform rules, which will determine the sequence of consideration of federal laws and preparation of reviews to them.

It seems that the legal regulation of the issues under consideration and some other issues requires a special federal law defining the conditions and procedure for the harmonization of legislation on the subjects of joint competence. It should also reflect the role of the Federation Council in ensuring the efficiency of cooperation between the State Duma and the constituent entities of the Russian Federation in the process of agreeing on draft laws on the subjects of joint competence. It is necessary that the members of the Federation Council should be members of conciliation commissions established because of the rejection of draft laws by the constituent entities of the Russian Federation. The Federation Council could more actively hold parliamentary hearings on the discussion of the draft laws adopted, which, in turn, would contribute to enhancing its role in protecting the interests of the constituent entities of the Russian Federation. According to Kolesnikov and Pazhetnykh (2009), the purpose of the Federation Council is to ensure representation of the interests of Russian entities in the adoption of legislative acts, to prevent insufficiently balanced decisions, to monitor the quality of adopted legislative acts. The members of the Federation Council also have the right to organize discussion of the federal law in the constituent entities of the Russian Federation. This takes into account the interests of the Federation and its entities, but in practice this right is very rare. The members of the Federation Council should make greater use of the practice of discussing draft laws in their regions.

The solution of these problems predetermines the wide use of scientific methods, such as dialectical and legal-logical methods, necessary for the definition and analysis of legal norms governing social relations; comparative legal method to compare the stages of legislative processes; a structural and



functional method that reveals the interdependence and mutual relationship between the structure of representative bodies and their legislative function; an analytical method for processing legislative data of the Parliament in order to gain new knowledge.

## 7. Conclusion

On the basis of the above, it is advisable to propose the development of a law that would approve the procedure for the harmonization of draft laws with the entities of the Russian Federation at the legislative level. This would allow the following:

- establishing not only the right, but also the obligation of the Chambers of the Federal Assembly to inform the constituent entities of the Russian Federation in advance of the plans of work on federal law-making;
- sending conciliation documents to the constituent entities of the Russian Federation for timely issuance of the review;
- making mandatory the preparation of a review in order to stop the negative practice of the entity of the Russian Federation ignoring the federal draft law sent to him;
- extending the deadline for submitting a review to the draft federal law from 30 to 50 days;
- clearly fixing and regulating all procedures of coordination and representative participation of the entity of the Russian Federation at all stages of the draft law;
- granting the subjects of the Russian Federation the right to participate in the drafting of laws not only on the subjects of joint competence of the Federation and its entities, but also on all issues related to the interests of the entities of the Russian Federation (including the subjects of exclusive competence of the Russian Federation).

## References

- Abramova, A. I., & Rakhmanina, T. N. (2003). Harmonization procedures of legislation of the Russian Federation and its subjects. In *Correlation of the legislation of the Russian Federation and the legislation of the subjects of the Russian Federation*. Moscow.
- Borsova, Zh. P. (2008). Concept of law-making in the modern state. *Constitutional and municipal law*, 3.
- Bulakov, O. N., & Ryazantsev, I. N. (2007). *Parliamentary Law of Russia. Course of Lectures*. Yusticinform.
- Chirkin, V. E. (2008). *Constitutional Law of Foreign Countries*. Lawyer.
- Inalkaeva, K. S. (2017). Review of the regional law. *Law and pract.*, 2, 17–21.
- Inalkaeva, K. S. (2018). Some features of the adoption and revision of the basic laws of the constituent entities of the Russian Federation. *Law and state: theory and pract.*, 2(158), 40–44.
- Inalkaeva, K. S., Tepsuev, M. S., & Matyeva, A. R. (2017). Regional electoral committees as a direct democracy institution. *J. Home Arch.*, 9(2), 1375–1387.
- Kolesnikov, E. V., & Pazhetnykh, D. V. (2009) Participation of the Federation Council in the legislative process. *Constitut. and municipal law*, 11.
- Petrova, A. T., & Shovkhalov, Sh. A. (2016). Growth Prospects for Market of Muslimgoods in Russia. *Indian J. of Sci. and Technol.*, 9(46), 435–441.
- Popadyuk, O. A. (2011). *Formation and development of the constitutional and legal system of a number of foreign states* (Doctoral Dissertation). Moscow.