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Research Article

Correlation between delegated and framework regulation in Russia and foreign countries

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Abstract. The article is aimed at studying the relationship between delegated and framework regulation based on the analysis of legal doctrine and legislation. The analysis of modern legislation indicates the modernization of the traditional foundations of legal regulation that previously existed in the state. The dynamics of social relations encourages the legislator to search for new ways of effective legal regulation. Such forms of regulation that are designed for repeated use are becoming relevant. It is determined that the main form of interaction between framework and delegated regulation is the framework legislation. The features of each type of legal regulation designate the content of its forms (sources); within the framework of delegated regulation, framework legislation acts as its element, ensuring the transfer of legislative powers. The features of “framework legislation” and its place in the system of sources of delegated regulation are in the focus.

Key words: legal regulation, delegated regulation, framework regulation, concretization, legislation, law-making process

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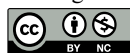
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Соотношение делегированного и рамочного правового регулирования в России и зарубежных странах

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Аннотация. Исследование направлено на изучение соотношения делегированного и рамочного регулирования на основе анализа юридической доктрины и законодательства. Анализ современного законодательства свидетельствует о модернизации традиционных основ правового регулирования, существующих ранее в государстве. Динамика общественных отношений становится для законодателя поводом поиска новых способов эффективного правового регулирования. Актуальными становятся такие формы регулирования, которые рассчитаны на многократное применение. Определено, что основной формой взаимодействия рамочного и делегированного регулирования является рамочное законодательство. Особенности каждого вида правового регулирования определяют содержание его форм (источников), в рамках делегированного регулирования рамочное законодательство выступает его элементом, на основе которого осуществляется деятельность по передаче законодательных полномочий. Исследованы признаки «рамочного законодательства» и его место в системе источников делегированного регулирования.

Ключевые слова: правовое регулирование, делегированное регулирование, рамочное регулирование, конкретизация, законодательство, правотворчество

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Introduction

The rule of law, the protection of fundamental rights and freedoms of citizens, and the building of a law-governed state are becoming more essential in the conditions of modern life. Globalization, integration processes, new information technologies, and tough epidemiological situation urge to revise the scope of legal relations, the nature of law, so the capacity of law-making and law enforcement activities is expanding. One of the functions of the state is legal regulation aimed at a stable and effective legal order (Syrykh, 2008:191).

The study of legal regulation theory is one of the basic areas of research in legal science. The category of *legal regulation* is in constant dynamics; in different time periods scholars heavily contributed to its development both at the theoretical and

sectoral levels. The analysis of the legal regulation issue depends on the approach used by the author, as well as chosen methodology.

Pre-revolutionary scholars investigated certain issues of the theory of legal regulation implementation. For example, N.A. Gredeskul studied its process, constituent parts, correlation with other regulators (Gredeskul, 1900). S.A. Muromtsev examined legal regulation from the point of view of sociological theory of law (Muromtsev, 1893).

L.I. Petrazhitsky analyzed legal regulation through the subjective side in the light of psychological school development (Petrazhitsky, 1900; Petrazhitsky, 2000). Later, N.G. Aleksandrov, S.S. Alekseev, V.M. Gorshenev, V.D. Perevalov, V.M. Syrykh, A.F. Cherdantsev, L.S. Yavitch and others also looked at legal regulation issues.

V.S. Nersesyants proposed to reveal the concept of legal regulation through the regulatory functions of law, its statics and dynamics. S. S. Alekseev described legal regulation as a kind of social regulation (“purposeful, organized, effective character”), but having a system of special means and tools (“normative-institutional formations”, “regulators”) (Maltsev, 2007; Alekseev, 1999).

The theory of legal regulation is closely connected with the theory of lawmaking. In fact, V.M. Syrykh, A.F. Cherdantsev, S.S. Alekseev considered legal regulation as the first stage of lawmaking that creates the basis for further legal research (Syrykh, 2008; Cherdancev, 1974; Alekseev, 1999).

According to the explanatory dictionary by S.I. Ozhegov *to regulate* means to bring into a certain system, “to ensure normal and correct functioning”¹. In the legal doctrine, legal regulation is understood as a kind of social regulation; it also suggests activities of authorized entities carried out by special legal means to streamline social relations.

Analyzing modern legal regulation in the context of legal systems, scholars distinguish legal regulation in the Romano-Germanic, Anglo-Saxon, religious, socialist legal systems, as well as the legal system of customary law (Berezina, 2020: 107). According to I. Yu. Bogdanovskaya, each legal system has its own characteristics, including in the legal regulation field (Bogdanovskaya, 2013). However, one cannot deny the processes of unification (Bezborodov, 2011), harmonization and other factors of influence (Marochkin, 2011) resulting in several models of national regulation within the framework of one legal system.

E.N. Trikoz notes the existence of a “new comparative phenomenon” described as mixed legal systems (Trikoz, 2017), where mutual influence occurs not only on “religious-ethical and ethno-geographical”, but also on technical and legal grounds of law. To the negative tendencies of such a process, Yu.A. Tikhomirov refers the “mix of legal regulation forms”, which provokes the decline of the role of the law (Tikhomirov, 2008:30). For example, in case of a delegated regulation in the Romano-Germanic legal system, the law is replaced by an act of the executive authority. Uneven development of industries, continuous stream of amendments and additions,

¹ Ozhegov, S.I. (2020) The dictionary of the Russian language. Moscow, ACT Publ. (in Russian).

"mechanical copying of foreign law texts" cause difficulties in law enforcement (Tihomirov, 2008:30).

The legislator must understand the systemic nature of legal regulation. Regardless of the form of the state, including the form of state-territorial structure, each legal system undergoes continuous development; in this regard, legal regulation as a function of the state requires more scrutiny.

Experts note expansion of legislative powers of the executive authorities (Strelnikova, 2018) through horizontal implementation of delegated regulation practice, from central legislative authorities to executive bodies. The practice of vertical delegation of legislative powers (mainly in federations) is also actively used; powers are delegated from the central legislative bodies to the legislative authorities of the constituents (constituents of the federation, lands, states, etc.).

The relevance of this study is determined by the analysis and generalization of existing knowledge regarding the content of delegated and framework regulation, including the range of lawmakers and forms (sources) of regulation. The research methodology is determined by its subject-matter. The use of formal legal and comparative legal research methods contributes to analyzing the data.

Framework regulation in the system of legal regulation

The theory of framework regulation is addressed mainly by constitutional law specialists in the context of joint jurisdiction of the Russian Federation and its constituents. A.V. Bezrukov argues that due to the "lack of limits of legislative regulation on the subjects of joint jurisdiction", a number of problems arise in the field of legal regulation; in this regard, a special role is assigned to framework regulation at the federal level" (Bezrukov, 2010:20). The *framework model of legal regulation* established by the Constitution of the Russian Federation "ensures its permanence and stability" (Gadzhiev & Kovalenko, 2012).

Despite the existence of direct regulation, the federation can implement "framework regulation in the relevant areas of public relations", and federal constituent entity "adopts its own act, in which it develops and supplements the norms of federal legislation without changing their fundamental meaning" (Avakyan, 2014:128). According to N. M. Dobrynin, "the development of a new federalism and formation of regions of a new type must be carried out on the basis of new legislation". The foundation of legal regulation should consist of "a package of framework federal constitutional laws that define the foundations of the legal status of federal constituents", precisely dividing the competence of the main branches of government. In the future, creation of the integral state system will require adopting profile legislation (Dobrynin, 2004).

In the second half of the 1960s, framework legal regulation as a mechanism for delineating competence was enshrined in the fundamental laws of Germany and Austria. As a result of the mutual influence of legal systems, changes also occurred in legal regulation; "cooperative" federalism created a balance of federal relations,

excluded subordination, and was based on a coordination and competence approach (Nawiasky, 1956).

According to Article 75 of the Constitution of the Federal Republic of Germany, the federation accomplishes framework regulation, and the role of the lands is to fill the general prescriptions (“frame law”) with their “own laws” (Nevinsky, 1986:100). Under par. 2, Article 72 of the Constitution of the Federal Republic of Germany, a similar method of legal regulation is applied when 1) it is impossible to effectively regulate at the land level, 2) there is a risk of violating the rights of other lands and the federation, 3) there is the need for a single legal or economic space. However, subsequently, as a result of the constitutional reform in Germany, the Law of August 28, 2006 abolished the framework regulation.

The Austrian model of federalism is similar to that of the Federal Republic of Germany; it divides the competence of subjects of jurisdiction vertically and horizontally. Framework regulation assumes that legislative powers belong to both the federation and the Länder within the limits set by the federation, while executive powers belong to the Länder (Likholetova, 2004).

In the countries of the European Union (hereinafter referred to as the EU), unification processes gave rise to the emergence of a two-level regulatory system — supra-European (mainly based on framework regulation) and national (national regulation). S.A. Glotov points to the importance of the Treaty Establishing the European Economic Community (EEC Treaty) in the process of harmonization of the European framework regulation (Glotov, 2010:42), which “fixed the principles of economic integration” and the conditions for further development of the EU countries. The EEC Treaty is a “framework” document, the main meaning of which is the establishment of a political organization endowed with broad powers to pursue common policy, create legal foundations for common market functioning” (Glotov, 2010:42).

Investigation of framework regulation by specialists in the field of constitutional law is quite justified. First of all, the normative nature of framework regulation is based on its norms, enshrined in the relevant legal acts. Since constitutional and legal norms contain such a means of legal regulation as uncertainty, such studies in the field of constitutional and international law are predictable. The smallest amount of legal certainty is noted among the constitutional and legal norms; this is predetermined by the sphere of legal relations. The uncertainty of the legal norm, according to D.S. Velieva, M.V. Presnyakov, contributes to applicability in case of any changes (Velieva & Presnyakov, 2021:210). Legal norms created as a result of framework legal regulation are defined as “mandatory requirements of a high degree of normative generalization” “and constituting a *reservoir* for law enforcement decisions in specific situations” (Panchenko, 2012:35).

In terms of content, framework regulation includes “silence of the lawmaker (legislator)”, common in partial and qualified forms (V.Yu. Panchenko). The first form is characterized by general rules aimed at regulating certain types of legal relations (Panchenko, 2012). The second form exists in two or more normative acts with general and special acts standing apart (Panchenko, 2012). General legal acts consist of

relatively specific means and norms, while special legal acts consist of absolutely definite norms-rules that regulate in detail the behavior of the parties (Panchenko, 2012).

I.P. Kozhokar notes that “silence of the legislator” in conjunction with other means are often used in legal regulation (Kozhokar, 2020:149). V.M. Baranov looks at the content of the “qualified silence of the legislator” through correlation of theories of legal consciousness, law-making process, interpretation, and implementation of law (Baranov, 2008). L.A. Morozova supposes that the open nature of the norm, which is specified by the law enforcer, is characteristic of such silence by the legislator and qualified as deliberate (Morozova, 2002:332).

Framework regulation, as well as delegated regulation, is described in the literature through its form (source) as framework legislation. Most dictionaries define "framework law" as a source containing general principles of regulation. Framework legislation created as a result of framework regulation in the form of framework directives, framework conventions and other sources is often used by the legislator to harmonize the legal system of an individual state or at the international level (Bezborodov, 2003). “For example, in framework conventions that do not contain specific model norms (a specific legal model), the level of modeling is general, conceptual, abstract. The framework character will mean here the general nature of the provisions of the document, allowing flexibility in their use” (Bezborodov, 2003:162).

Model, typical framework regulation testifies to the high level of legal culture of the state (Bezborodov, 2002). The importance of framework regulation is also significant in the economic sphere. I.P. Vorobieva emphasizes that “the state determines the *framework* conditions for economic activity... Excessive regulation does not allow to reveal entrepreneurial activity to its full extent. Under these circumstances, determination of the framework conditions for functioning of market entities becomes an important strategy for the authorities. The state determines the main parameters of activity, establishes the main restrictions and prohibitions, leaving the solution of other issues to the discretion of individuals and legal entities” (Vorobieva, 2014:29).

The doctrine does not dispute the fact that the subjects of framework regulation are legislative bodies that do not delegate their powers to the executive branch, president or other bodies, but directly accomplish legal regulation.

The limits of the framework legal regulation imply the delimitation of powers at several levels: vertically and horizontally. An example of the latter is delegated regulation.

Correlation between delegated and framework regulation

The institution of delegated regulation has been known since the 16th century, it first appeared in England and in subsequent centuries it was actively used to implement legal regulation. In the late 19th and early 20th centuries, with the active development of scientific and technological progress, this institution became the

main type of legal regulation in European countries. The transfer of legislative functions to the highest body of executive power (France, Italy, Spain and others), or to the head of state (Belarus, Kazakhstan, Kyrgyzstan) on behalf of the highest authority of the legislative power contributed, on the one hand, to strengthening of executive bodies, and on the other hand, to power centralization of the head of state (Sukharev, Krutskikh & Sukhareva, 2003). The basis for the transfer of these functions is enshrined in the fundamental law of the state (constitution), a special law, or agreements and treaties; otherwise there is no such consolidation.

Baglai M.V., Mishin A.A., Chirkin V.E., Maklakov V.V., Marchenko M.N., Strelnikova N.A. and others investigate the institution of delegated regulation in the light of issuing regulations by the highest executive authorities on behalf of the highest legislative bodies; such regulations acquire legal force (Baglai, 2022; Maklakov, 2012; Marchenko, 2009; Marchenko, 2019; Mishin, 1972; Chirkin, 2013; Strelnikova, 2016; Strelnikova, 2018). For example, Federal Law No. 102-FZ of April 1, 2020 “On Amendments to Parts One and Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation” (hereinafter Federal Law No. 102) delegated additional powers to executive authorities in the field of tax legal relations determining the conditions and terms of such powers. The specification of this Federal Law was further carried out by the Government and the heads of the constituent entities of the Russian Federation.

However, in certain cases, delegated regulation may be forced by certain circumstances, such as state of emergency or martial law, whereby legislatures cannot exercise their powers. For example, Kuzmin A.V., Groshkov N.N. note that the Decree of the Presidium of the Supreme Soviet of the USSR of June 22, 1941 “On Martial Law”, which introduced such legal regime in connection with the invasion of the territory of the Soviet Union by troops of Nazi Germany and its allies, delegated “full power in areas under martial law, from civilian authorities to military councils and high command of military formations (where there are no military councils), granting them the broadest powers” (Kuzmin & Groshkov, 2021:18).

The lack of unified definition of executive powers authorized to adopt a specifying normative act creates difficulties in identifying the subjects of delegated regulation. These include executive authorities, governments, heads of state (Strelnikova, 2016), and/or officials (Oksamytny, 2004). The specificity is manifested

in the implementation of legislative functions by the subject, for whom the issuance of a normative act is not the main authority. Foreign legislation (for example, in the UK) allows for the existence of delegated regulation when the highest executive authorities transfer their powers to the level of territorial units (Sukharev, Krutskikh & Sukhareva, 2003; Karakchiev, 2007) in the form of devolution (Sukharev, Krutskikh & Sukhareva, 2003).

The target direction is determined by the adoption of special sources of law (framework law) by the legislature. The special nature of this act is determined by the choice of special technical and legal means, including uncertainty as a method of legal

regulation. Since detailed regulation involves considering a specific situation (Vlasenko, 2014:96), the specification is carried out by the executive authority, without which the implementation and application of framework legislation does not seem to be effective. Many issues are not regulated deliberately, since this competence is transferred to other bodies (Cherdancev, 1974).

Law of the Republic of Korea No. 17347 “Framework Law on Science and Technology”², as amended and supplemented, contains a number of provisions on delegating powers to the Government of the country to develop the scientific and technological process. The law is built clearly and concisely (the goal, purpose, tasks, general law philosophy, relationship with other laws, obligations of the state, etc. are only defined), however, some articles may be criticized for redundancy. In fact, they regulate in detail the actions of the Government, other bodies, and/or officials.

On the one hand, from the point of view of law enforcement, all positions can be positively assessed in a single normative act. On the other hand, the law loses its quality since the content of the regulated norms “inflates” the normative act as these provisions could well be included into provisions of the relevant bodies. The construction of the norms seems rather interesting: there is no sanction, there are rare hypotheses, and disposition obviously prevails. The nature of the norms is exclusively imperative, freedom of choice of actions is not provided; such form, as an example, can be borrowed into the system of legislation of the Russian Federation in some areas of legal regulation.

The law of the Republic of Korea No. 17347 also contains evaluative concepts. For example, it does not specify the promotion of internationalization of science and technology, scientific and technical exchange, and cooperation between South and North Korea, promotion of scientific and technical culture, scientific and technical innovations in private sector, etc. It is stipulated that the detailed regulation of issues will be carried out by the authorized body.

The norms adopted within the framework of delegated regulation under certain circumstances are mainly issued by executive authorities outside their competence on behalf of the legislative authority (Sukharev, Krutskikh & Sukhareva, 2003; Oksamytny, 2004; Chistyakov, 2010). Ordinances (France, Romania) can also be a form of delegated regulation, including actions that are limited in time and require the approval of the legislative body (Marchenko, 2019:464). Legislative decrees adopted by executive authorities (Italy, Spain) in the manner of delegated regulation also gain the legal force of law (Sukharev, Krutskikh & Sukhareva, 2003).

From the above practices and analysis of legal doctrine, it follows that the main form of delegated regulation is delegated legislation, which is a special legally enforced normative legal act. The question arises, what acts can be identified as delegated. Do they include acts (framework laws) of legislative bodies, or the latter are the legal facts of the delegated regulation?

² Framework Law of the Republic of Korea No. 17347 dated June 9, 2021 on Science and Technology. Available at: <https://www.law.go.kr/LSW/lInfoP.do?lsiSeq=231649#0000> [Accessed 13th April 2022], at Kor. lang.

N.A. Strelnikova asserts that the mechanism of delegated regulation includes adoption of a framework normative act, which contains a condition for transfer of legislative functions on the relevant subject of regulation to the executive authority who specifies this normative act (Strelnikova, 2016; Fiorina, 1982; Heritier, Moury, Bischoff & Bergström, 2013). The features of the forms of delegated regulation include the legal force of the law and its adoption by another body, i.e., not a legislative authority (Strelnikova, 2016:39).

The existing substitution of concepts in determining which normative act (framework or delegated) is adopted for the delegation of powers creates difficulties in characterizing the sources of legal regulation. Ambiguity persists in dictionaries as well. Thus, Big Law Dictionary defines a framework law (law-frame) as “*a special form of legislative acts adopted by the parliament in France and a number of states (former French colonies); establishes only general principles of regulation of any sphere. After that, appropriate acts of the regulatory authorities are adopted*” (Sukharev, Krutskikh & Sukhareva, 2003).

In the Belarusian legal encyclopedia D.A. Lagun defines a frame law as “*a special type of laws adopted by parliament and establishing only general rules for regulating a certain area of social relations. As a rule, these laws do not have direct effect and require the issuance of regulatory legal acts by executive authorities in their development. Framework laws can also include laws of a referential nature. Therefore, parliament often uses this form of law-making to delegate its powers to the government; it provides for concretizing and detailing the framework law, thereby filling in the deliberate gaps in legal regulation made by the legislator*” (Lagun, 2007).

It seems reasonable to define a normative act that contains provisions on delegating powers as a framework, which is of a general normative and binding nature. By form legal norms can be referential, with relatively definite norms.

The body authorized to issue such a framework law is the central legislature. A framework law contains general information about the circumstances, conditions, time, and actualities of transfer of part of the legislative powers to the executive branch of government. In turn, the authorized body with delegated powers issues a delegated legal act (delegated legislation).

Conclusion

A number of Western authors note the trend of interpenetration of legislative and executive authorities, “the emergence of the legislating executive)” (Strelnikova, 2018:26) and emphasize that the law-making process suggests merging and unifying executive power and legislature (Alder, 2013:128). The scholars claim that the powers of the executive and legislative branches of government “constantly and inevitably overlap” (Alder, 2013:129). It is natural to unite and combine the elements of legal regulation.

However, the difference between framework and delegated regulation can be identified in the following.

Firstly, the relevant legal regulation is carried out by different branches of government, different bodies, and/or officials.

Secondly, the subject of framework regulation can be various spheres of public relations, not only those affecting issues of public authority and transfer of powers.

Thirdly, framework regulation is mainly enshrined in the basic law (constitution) in the field of delimitation of competence, while the issues of delegation may not be spelled out in legislation.

Fourthly, delegated regulation is characterized by speed and efficiency in the adoption of legal acts.

Finally, the quality of legal technique is higher in acts of legislative bodies, i.e., framework regulation.

The maxim of the study comes to the following: the main form of interaction between framework and delegated regulation is framework legislation. The features of each type of legal regulation determine the content of its forms (sources), hence, framework legislation within the framework of delegated regulation is its element. However, this does not preclude the existence of framework regulation within normative or individual regulation. It seems that the purpose of framework regulation is to create conditions for establishing, changing, or terminating the legal rights and obligations of subjects of law in order to further specify social relations at subsequent levels of legal regulation.

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