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REPORT

"LEGISLATIVE EVALUATION – THE RUSSIAN EXPERIENCE AND PRACTICE"

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Socrat: Is the law good or evil for the state?
Gippiy: In my opinion, the law is adopted for the good, but it may be evil it is set up badly.

From the second half of the twentieth century on the role of the legislation has strengthened in countries with different legal traditions. In Russia as a result of the legal reform the number of acts has increased. The problem of the evaluation is important and actual. The term legislation has different meanings. As a rule it means acts of parliament (primary legislation) and the acts of other governmental bodies (subordinate, secondary legislation). But for the present meeting I will speak mainly on legislation in the narrow sense as only acts of parliament.

Evaluation of legislation Russia: first attempt

The first attempt of elaborating the methods of evaluation of efficiency was taken up in Russia in 1970- 80s. The efficiency of the legal norms was determined as correlation between law enforcement practice and the aims for which an act was adopted. The law in general was interpreted as the instrument of the social government, which is used for achieving social aims. Such a definition corresponded to a bigger extent to the western sociological jurisprudence than to the Marxist definition of law which dominated in Soviet legal science. But the matter was in the definition of aims. And in this case the aim of the law was traditionally determined as wide – as not only legal aims but political, economic, administrative ones.

Evaluation of legislation in Russia: modern time

At present time the attitude to the law has changed. Efficiency is interpreted as the result of concordance of different social interests. These interests have law-forming character and the legislator needs taking into account these interests. The social interest becomes apparent in the law-making process but the legislator must take decisions in the interest of all people and not of one or another social group. The practice of adoption of such legislation is known. But it cannot secure stability of social development.

Efficiency is going to be understood not from the position of correlation of the results and aims, but of legal aims. The efficiency is determined from the point of view of legal development of the society, human rights, i.e. the aim must be understood as mainly a legal aim. The definition of the efficiency also has changed. At present efficiency is determined as a degree of correlation between level of conflict of social relations regulated by law and optimal level of conflicts in a certain sphere.

Methods of evaluation

For the evaluation of legislation different methods are used, including the methods of other social sciences – politology, sociology, conflictology. Social methods:

- Evaluation method. It analyses legal norms as programmes. The negative side is that the legal aspect is often not taken into account;

- Experiment. This method is useful for the legislator (method of ex post factor) when the relations are analysed before and after adoption of the legislation. This method is useful for comparative analysis of the legal systems of post-Soviet countries (for example privatisation, tax legislation and their results);

- Expert analysis. The example is so called “anti-corruption expertise”.

The Centre of Strategic Studies prepared a working paper on methods of anti-corruption actions. The method was used in the analysis of several bills including the Forest Code.

According to it an expert pays attention to the following aspects in the bill: multiplicity; conflicts of law; using in the bill many articles with the formula “has the right” (concerning public servants); articles which establish wide discretion any powers; absence in the bill of due administrative procedures; difficult conditions for the implementation of the future act; civil servants’ responsibility; absence of a control mechanism in the bill; gaps in legislation; content of the articles on liability of the governmental bodies and the civil servants.

- Monitoring. Monitoring is the systematic accounting, evaluation and prognosis of legislation. The results of monitoring permit to clear and evaluate a degree of correlation between the legal system and social results of its functioning.

The aims and tasks of monitoring include:

- Elaboration of dynamics of each act (from moment of adoption to repeal);

- Elaboration of an evaluation system of each bill from the point of view of its correspondence to the Constitution and adequacy to the social development strategy;

- Expert evaluation of efficiency of each act and of the legislation in general.

Criteria of monitoring. Three groups of criteria

The first group concerns evaluation of efficiency of the system of legal norms and of separate branches of law. These criteria give opportunity to evaluate the systematisation of development of legislation, the position of the newly created norms in legislation, their conformity to the Constitution. This group of criteria contains evaluation of such parameters of newly adopted acts as theirs completeness, validity, correspondence to the competence of the governmental body.

A second group of criteria includes evaluations of legal practice from the point of view of social results (social results may be sufficient, minimal or negative). These criteria are necessary for the definition of the social meaning of legal regulation.

The third group of criteria is used in the system of law-enforcement bodies. These criteria are aimed on analysis of mechanisms of law-enforcement practice using such parameters as discovering threats in proper time, efficiency of legal practice, system of liability.

Who must make monitoring? Currently monitoring is held fragmentarily, selectively. According to the opinion of the Council of Federation the monitoring must be held by all legislative bodies – federal and regional – for improving quality of the legislation. It is suggested to organise a monitoring centre at the administration of the president and at the executive bodies of the regional level. The Centre could resolve another problem – to organise a permanent public channel system of collecting public opinion.

Results of monitoring. At the present time in Russia there are more than 500 000 federal and regional acts. The part of the federal legislation is becoming small and fell from 15 to 10 %, while the part of the regional legislation enlarges. At regional level, the number of acts adopted by the executive bodies also enlarged. 120 000 and the number continues to increase. At regional level – there are 20 000 acts of the legislative bodies (regional parliaments).

The number of acts of the federal parliament regularly corresponds to about 3.5-4% of the federal legislation. The State Duma adopts annually about 200-300 acts. In 2006 about 65% of all acts amended current legislation. It is interesting that some of these acts amended acts which in turn amend other acts (amendment acts) and partly amend acts which did not come into force.

About half of the amendment acts amend codes and in the three codes on administrative offences – there were 26 amendments (29,31%), Tax Code – 28 amendments, Civil Code – 15 amendments. About 41,4 % of the amendments are initiated by the President.

How to make laws more efficient: preliminary conclusions. It is necessary to make laws more adequate to social reality, to make prognosis, to make programmes more adequate to reality:

- It is necessary to systematise laws. The legislation is in fact made up of masses of isolated acts on narrow subjects. Adoption of narrow acts results in many acts containing provisions which contradict each other, rising the number of acts. One act may contain amendments to several acts. The acts contain many references to other acts and subordinate acts.

- The problem of the quality of the prepared legislation (of legislative technique, of the legislative style). The Council of Federation has created a data bank of legal definitions contained in the legislation. It contains more than 9 000 of definitions.

- The rise of the number of acts creates the problem of systematisation.

Proposals to be discussed. The suggestions elaborated by the Council of Federation are debatable. It suggests to adopt several acts for regulation of the law-making process (on normative acts, on the Federal assembly). The question is how to find a balance between legal regulation of the law-making process and the freedom of the game of the political and other social interests.