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The constitutional duty of the Russian Federation's President to sign a law

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Abstract

The article examines the legislative powers of the President of the Russian Federation, including the President's obligation to sign and promulgate the law, as well as the right to veto it via comparative qualitative research methods. As a result, the topic of specifying the limits of state activity involves highlighting the various negative "undersides" of the state mechanism. In conclusion, in order to reduce the tendency of vetoed laws, the Federal Assembly should at all stages of the legislative process pay more attention to the President's position on each bill.

Keywords: Legislative, Constitutional duty, Federal law.

El deber constitucional del presidente de la Federación de Rusia de firmar una ley

Resumen

El artículo examina los poderes legislativos del Presidente de la Federación de Rusia, incluida la obligación del Presidente de firmar y promulgar la ley, así como el derecho a vetarla mediante métodos comparativos de investigación cualitativa. Como resultado, el tema de especificar los límites de la actividad estatal implica destacar los diversos "aspectos negativos" negativos del mecanismo estatal. En conclusión, para reducir la tendencia de las leyes vetadas, la Asamblea Federal debería prestar más atención a la posición del Presidente en cada proyecto de ley en todas las etapas del proceso legislativo.

Palabras clave: Legislativo, Deber constitucional, Ley federal.

1. INTRODUCTION

To suppose that a statute, an administrative rule or an executive proclamation could penalize a person's conduct when it was impossible for the person to know of the law raises an elementary issue of fairness. If a citizen cannot be tried and convicted without first being notified of the allegations against him, can he be convicted of an offense committed with no prior notice of the applicable law? If the due process provisions of the Constitution⁷ prohibit the former, would they permit the latter? (KELLEY & MARSHALL, 2009).

For example, the classical model of the separation of powers, as developed in the USA in the late-18th century, regards the president primarily as a chief executive officer. The president appoints and directs cabinet members, presides over the cabinet, commands the armed forces, conducts foreign relations, leads the administration and issues regulations to implement laws. Meanwhile, the power to make laws, including the power to approve budgets, is entrusted, along with other deliberative and oversight functions, to a separately elected legislature (a congress or parliament) (GROSECLOSE & MCCARTY, 2001).

In practice, however, executive presidents rarely if ever act as merely administrative chiefs whose duty is simply to execute (implement) the laws made by others. Executive presidents are above all democratic political leaders, with electoral promises to fulfill and

with the legitimacy, prestige and responsibility that come from a popular mandate (GARGARELLA, 2013).

All presidential and semi-presidential constitutions invest the president with some agenda-setting and legislative initiative powers. Newer presidential constitutions, especially those in Latin America, tend to give more explicit legislative initiative powers to presidents. Ceremonial presidents in parliamentary systems typically do not possess legislative or agenda-setting powers or possess them only to a very limited degree. This reflects the fact that prime ministers, rather than presidents, are expected to exercise policy leadership in such systems (ELGIE, 2012).

The Constitution of the Russian Federation (hereinafter - RF) in Part 1 of Art. 15 contains a key organizational provision according to which laws are subject to official publication. Unpublished laws do not apply. Any regulatory legal acts affecting the rights, freedoms, and duties of a person and a citizen cannot be applied if they are not published officially for the public. Thus, the constitutional legislator differentially approaches the mandatory publication of laws and other regulatory legal acts affecting the rights, freedoms and duties of a person and a citizen. For the laws, from the point of view of constitutional legal regulation, the official publication is mandatory, for other regulatory legal acts - initiative (although the latter might not be applied) (DROBOT, 2018).

As follows from Art. 107, 108 of RF's Constitution, the necessary element of the legislative process (in the broad sense) is the signing of federal laws and federal constitutional laws by the President. With respect to the federal law, a general rule is envisaged according to which RF's President signs and promulgates the federal law within fourteen days (CONLEY, 2007). At the same time, part 3 of article 107 of RF's Constitution makes this obligation of the President an alternative, allowing him/her not to sign and approve the federal law, but to reject it. The President is not able to reject the law, but must sign and make it public in the following cases:

- If the federal law is approved upon reconsideration by a qualified majority of members of Parliament's chambers (BROUARD & HÖNNIGE, 2017);
- Adoption of the federal constitutional law (part 2 of article 108 of RF's Constitution).

In relation to the duties described above, attention must be paid to the timing of their implementation. The constitution provides for various constructions regarding the determination of the relevant dates. As follows from part 2 of article 107 of RF's Constitution, the President must fulfill the obligation to sign and promulgate the law within fourteen days from the moment the federal law is received from the Parliament. A similar approach to determining such terms is provided for federal constitutional laws (part 2 of article 108). At the

same time, a different legal structure is used in relation to the time of signing and the official publication of the law (with the President's veto overridden). In accordance with Part 3 of Art. 107 of RF's Constitution, federal law shall be signed by RF's President within seven days and made public in the following case. Upon reconsideration, the federal law is approved by a majority of at least two-thirds of Federation Council's members and deputies of the State Duma. Having established only a deadline for signing the law, the Constitution, in this case, does not mention the deadline for the law's official publication (MURPHY, 1982; KORD ET AL., 2017).

A systematic interpretation of constitutional norms allows one to conclude the following. The constitutional obligation to officially publish a federal law (with overridden veto) should be carried out no later than within fourteen days (part 1 of article 107 of RF's Constitution). At the same time, the teleological interpretation of this rule suggests that the constitutional legislator proceeded from a shortened time-signature and public disclosure procedure in general, which should cover no more than seven days. In any case, in the authors' opinion, there is a certain imperfection of the legislative technique of Part 3 of Art. 107 of the Constitution. Namely, concerning formulating the deadline for fulfilling the obligation to sign and promulgate a federal law (CAMERON & CAMERON, 2000). Hence, the purpose of this article is to fully study the powers of RF's President to sign and promulgate the law.(MOOSAVINIA & BAJI, 2017).

2. METHODOLOGY

Turning to the interpretation of the constitutional provisions discussed above, RF's Constitutional Court directly qualifies the respective powers of the President as a legal obligation. In particular, the indicated body of constitutional control in clause 7 of Decision No. 10-P of April 22, 1996, notes the following. By virtue of part 2 of Article 107 of RF's Constitution, RF's President is obliged to sign the adopted federal law if, within fourteen days from the moment of receipt, the President does not decide to reject it. RF's President must sign the previously rejected (by him/her) federal law after its repeated approval by the State Duma and the Federation Council. The President must sign and promulgate the law within seven days from the date of receipt of Federal Assembly's decisions on approval of the law (clause "d" of the article 84, part 3 of article 107 of RF's Constitution) (KHACHANYAN, 2014). As IVANOVA (2015) notes, a similar position is reflected in the Decision of the Constitutional Court of the Pridnestrovian Moldavian Republic dated November 26, 2013, N 08-11/13. This author also draws attention to a similar position in France.

It follows from the considered Decision that the constitutional control body proceeds from the fact that the President has a constitutional obligation to declare the reasons for the law's rejection. For this case, RF's Constitution provides for a repeated consideration by the State Duma and the Federation Council of the rejected federal law (The Decision of RF's Constitutional Court, 1996). At the same

time, it is noteworthy that in the said Decision the Constitutional Court proceeds from the ascertaining (and not binding) nature of procedure violation. RF's President is entitled (by part 2 of article 80 and part 1 of article 107 of RF's Constitution) to return the law to the relevant Federal Assembly's chamber in the following case. Namely, if a violation of the law adoption procedure has been detected. Moreover, such a law cannot be considered as adopted federal law in a sense of part 1 of article 107 of RF's Constitution.

3. RESULT

The law's return to the chambers of the Federal Assembly cannot be considered as a rejection in a sense of part 3 of article 107 of RF's Constitution. Since the requirements for the adoption of the federal law and the conditions and procedures are unconditional and cannot be changed at the discretion of participants in the legislative process. Disputes between the subjects of the legislative process in connection with the law adopting procedure (and if subjects fail to reach an agreement) may be transferred for consideration to RF's Constitutional Court. The latter is in accordance with Article 125 of RF's Constitution and the Federal Constitutional Law On RF's Constitutional Court. Non-observance of the procedure in which the law cannot be considered as adopted federal law necessitates not the right, but the constitutional obligation of RF's President neither sign nor promulgate this act as federal law (SOLLENBERGER, 2004).

It should be noted that an approach of the Constitutional Court, allowing the President to state non-compliance of adopted law with the procedure and return the law to the Parliament, was largely disavowed KRASNOV (2016) by the Decision of RF's Constitutional Court as of April 6, 1998, N 11-P (The decision of RF's Constitutional Court, 1998). The Constitutional Court in its decision on the case under review indicated the following. Since the parties did not reach an agreement in this dispute, they could not unilaterally decide whether there was a violation of the law adoption procedure (established by RF's Constitution). Thus, the Constitutional Court actually refused both the President and the chambers of the Federal Assembly to proceed in the dispute unless they reach an agreement. The Court also put forward the only condition for the President to return the federal law (which he/she did not consider adopted). The condition was about the existence of an agreement between the dispute parties.

In view of the above, there is no definite understanding of the content of this constitutional obligation in the logic of the Constitutional Court. The Court was considering the request of the Federation Council and the State Duma to resolve a dispute between these entities and RF's President on the issue of the constitutionality of the President's actions. Namely, the President's refusal to sign the Federal Law On Cultural Values Inherited by the USSR from World War II and which are present in the Russian Federation. The Court decided to confirm the obligation of RF's President to sign and promulgate the adopted Federal Law On Cultural Values Inherited by

the USSR from World War II and which are present in the Russian Federation. Such President's obligation is in accordance with Article 107 (part 3) of RF's Constitution. RF's President might also apply to the Court with a request to verify whether the aforementioned Federal Law complies with RF's Constitution (incl. on law adoption procedure) (KRASNOV, 2016). That is, the Court jurisdictionally ordered RF's President to take appropriate action.

However, an analysis of the Constitutional Court's position does not show the lack of an alternative. The Constitution does not indicate the possibility to submit a requirement to the President to sign the law and officially publish it. Official publication is not declared by the Constitution as a function but is within the competence of the President. The submission of a requirement to the President on the official publication of the law is also not a special power of the Parliament. It is not provided in the Constitution that such disputes can be considered by the Constitutional Court. Thus, when resolving such disputes, those norms are applied, which are not on the merits of the resolution of competence disputes. At the same time, there is no need to speak of a competence dispute in the proper sense in this situation (MIKHAILOV, 2015).

RF's Constitutional Court did not call the relevant dispute as a dispute on competence since the signing (and publication) of the Federal Law undoubtedly falls within the competence of the President. However, the case was considered based on the Articles 92–95 of the

Federal Constitutional Law On RF's Constitutional Court. The mentioned Articles establish the particularities of the consideration of competence disputes (MAZUROV, 2006). Accordingly, the identification and determination of the constitutional obligation by the body of constitutional control alone can affect the enforcement of this obligation. There is a positive influence, as a legal certainty increases within the framework of these legal relations. The fulfillment of the constitutional obligation, in this case, is ensured by circumstances of positive responsibility. The possibility of losing legitimacy also stimulates fulfillment. Since not committing actions (that are not sufficiently defined in the norm) is not identical to the following situation, namely, when a constitutionally obligated person ignores the obligation that has been revealed by the competent body of constitutional justice (MCGRATH, ROGOWSKI & RYAN, 2018).

Concerning the requirement to officially publish the law, it is doubtful whether such a requirement can be justified in terms of protecting the rights and freedoms of human and citizen. This is due to the fact that the legislation does not provide for a citizen to have the right to officially publish a normative legal act, just as the subjective right of a citizen to adopt certain laws or other regulatory legal acts is not provided for. If a citizen has any subjective right that arises from the Constitution or the law, then he/she is given the opportunity to demand its execution. If the right is only proclaimed, but the corresponding norm is not of a direct nature, and the right exists in the

legal sense in another legal action, then there is the incompleteness of the process of securing such a right, and not its violation.

There is a situation when an unpublished normative legal act contains legal opportunities for a citizen, but such opportunities do not apply in connection with the non-publication of an act. In this situation, such legal opportunities (rights) for a citizen are absent prior to official publication. Thus, before publication, there is no possibility to apply this regulatory legal act, and, therefore, such rights cannot be protected. In general, the mechanism for enforcing the constitutional obligation under consideration has certain development potential. However, the provision and settlement of such legal opportunities:

- Can change the balance of power in the system of public authorities;

- Can politicize the judiciary;

- Have objective effectiveness limitations. In any case, the subject of the claim acts as an agent of public interest, expressed in fixing the constitutional obligation to sign and officially publish the act. It should also be noted that the mechanism for ensuring the official publication is also related to the mechanism of signing the law. In constitutional practice, there are the following alternatives to the constitutional obligation to official publication:

- The right (obligation) of signing with the transfer of authority to both signing and official publication;

- The transfer of authority to official publication in case of loss of relevance of the signing authority;

- Legal recognition of the consequences similar to the default signature.

4. CONCLUSIONS

In general, the powers of RF's President are not wider than the powers of presidents in other countries with a democratic form of government, for example, France, the United States. The presidents of these states, like RF's President are among the strong. The strong positions of RF's President are balanced by the following:

- Principle of separation of powers;

- A system of checks and balances;

- The responsibility of the government to the Federal Assembly;

- The increased role of the government itself;

- The ability to challenge the regulatory decrees of RF's President in the Constitutional Court.

Analyzing Russian practice and the constitutional and legal approaches of other countries, it should be noted that RF's Constitutional Court has formed an approach to the content and powers of the President to sign and promulgate the law. Such an approach provides for a certain balance between the following aspects:

- Requirements for the legislative process to be effective;
- Inadmissibility of legislative process's arbitrary blocking;
- Ensuring the constitutionality of legislative activity through constitutional control procedures.

However, in order to reduce the tendency of vetoed laws, the Federal Assembly should at all stages of the legislative process pay more attention to the President's position on each bill. The chambers are also obliged to thoroughly study each bill so that the President will be more willing to sign it.

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