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Problems of Legal Regulation of Expert Review of Regulatory Legal Acts and Their Drafts in the Constituent Territories of the Russian Federation

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Abstract: This study examines peculiarities of expert review (ekspertiza) of laws and other regulatory legal acts and their drafts in the constituent territories (subjects) of the Russian Federation. It also analyses problems relating to: defining expert review performers, peculiarities of expert review objects, expert review goals and tasks, the quality of expert review and legal regulation of expert review and of the recording of its results. The issue related to carrying out of the anti-corruption expert review and the issue of recording of expert opinion results received special attention. The study discusses experience of normative regulation of expert review of laws and other regulatory legal acts and their drafts using examples of different constituent territories of the Russian Federation. Special attention has been devoted to the practice of expert review of regulatory legal acts in the constituent territories of the Russian Federation. The researchers use different methods of analysis and consolidation of legal material. A comparative legal method has been actively used. The results of research led to a conclusion that the constituent territories of the Russian Federation need further improvement of legislative regulation of exert reviews. It is suggested that the rights of independent experts to receive information on regulatory activity plans of public authorities should be extended that the rights of expert review performers and expert review objects should be detailed; that requirements applicable to independent experts should be higher; and that independent expert's liability for deliberate preparation of a false expert opinion and for abuse of rights in carrying out expert review should be set out in the legislation.

Key words: Expert review of laws, expert review of regulatory legal acts, anti-corruption expert review, public authorities, independent expert, constituent territories (subjects) of the Russian Federation

INTRODUCTION

It is the state anti-corruption policy declared in the constituent territories of the Russian Federation and in the Russian Federation generally that ultimately determines scientific interest to the mentioned range of problems. Fight against corruption is a complex, systematic and many-sided activity aimed at decreasing the level of corruption elements in the legal system and neutralizing them and at creation of legal barriers standing in the way of its development and expansion. Preventive and prophylactic measures play a special role in the fight against corruption and expert review is at the foundation of such measures. The task of anti-corruption expert review of laws and regulatory legal acts and their drafts is carried out within the framework of this policy. A required regulatory legal basis for carrying out expert reviews (including the anti-corruption review) of regulatory legal acts and their drafts isbeing actively formed at the level of the Russian constituent territories. Peculiarities of legal regulation of expert review of laws and other regulatory legal acts in the constituent territories of the Russian Federation and practice of its implementation are of scientific interest in the context of summarization, comparative analysis and formulation of practical recommendations.

This study is devoted to studying peculiarities of carrying out of anti-corruption expert review of laws and other regulatory legal acts and their drafts in the constituent territories of the Russian Federation through analysis of problems connected with the need of a clear and unambiguous determination of expert review

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performers and of the object of the expert review, expert review goals and tasks, the quality of expert review and legal regulation of procedures of receiving as well as recording and giving consideration to expert review opinions.

Data of the Ministry of Justice of the Republic of Mari El shows that in 2015, nearly 1,200 draft regulatory legal acts were subject to legal and anti-corruption expert review. The 2% of such acts did not conform to the legislation of the Russian Federation and of the Republic. In 2014, 10 drafts were identified as containing 20 corruptogenic factors while in 2015, only 7 drafts contained 8 corruptogenic factors. Upon legal expert review nineteen orders of republican executive authorities were held incompatible with the legislation of the Russian Federation and of the Republic of Mari El for which reason their state registration was denied. Ten orders (1.3% of the total number of orders submitted for state registration) were returned back to executive authorities as containing no legal rules. Twenty one corruptogenic factors were revealed in 15 orders of republican executive authorities upon their anti-corruption expert review. In 2015, the Ministry of Justice of the Republic of Mari El conducted expert review of 5,400 municipal regulatory legal acts. It was discovered that 170 of them (slightly over 3%) were incompatible with the legislation and with municipalities' charters. Moreover, it was revealed that 111 municipal regulatory acts contained 121 provisions which could facilitate corruption through their practical application and which could later become the immediate foundation for corruption or create conditions legitimizing corruption. The above statistical data of expert review of regulatory legal acts in a constituent territory of the Russian Federation points to the need and practicability of such activity which confirms the immediate relevance of analysis of the problem of legal regulation of expert review of regulatory legal acts and their drafts in the constituent territories of the Russian Federation.

LITERATURE REVIEW

In recent years, issues of expert review of regulatory legal acts in the constituent territories of the Russian Federation received attention in works of scholars and specialists dealing with theoretical and practical developments in this sphere. Among them are the works of V.V. Astanin, D.Yu. Goncharov, P.A. Kabanov, O.I. Korotkova, S.V. Matkovskiy, E.S. Polyanskaya, O.N. Rodionova, E.V. Talapina, Yu.A. Tikhomirov, E.D. Tret'yakova, T.Ya. Khabrieva and others.

METHODOLOGY

The systemic, legal comparative and formal juridical research methods as well as methods of logical analysis, synthesis, analogy and interpretation of legal rules form the methodological basis of this scientific study. Use of such methods allowed to reveal and analyze problematic issues relating to carrying out of anti-corruption expert review at the regional level. For instance in the course of working on this study it has been discovered that neither federal nor regional legislations contain a precise definition of the notion of expert review of laws and their drafts.

The systemic and legal comparative analyses in a number of Russian constituent territories showed that the anti-corruption expert review should be understood as activity of individuals and legal entities (experts and expert institutions) relating to examination of regulatory legal acts and/or of draft regulatory legal acts and other legal documents with the purpose of revealing corruptogenic factors in such acts and documents and provision of opinions or other documents by such persons embracing all required issues in the sphere of legislative regulation of corruption resistanceand the practice of implementation of the anti-corruption legislation and substatutory anti-corruption regulatory legal acts (Tret'yakova, 2013).

EXPERT REVIEW PERFORMERS

Examination of the issue of performers carrying out expert review of laws and their drafts in the constituent territoriesof the Russian Federation shows that in addition to regional authoritiessuch review is performed by federal state authoritiesas well (prosecution and justice authorities). Moreover, the process of emerging and development of the expert review performed by public organizations and independent experts takes place in the constituent territories of the Russian Federation (Sidorov *et al*, 2015).

Analysis of legislative regulation of expert review and the practice of its application in the constituent territories of the Russian Federation showed that relevant legal departments of executive authorities most often act as expert review performers. This is the way this issue wasaddressed in executive authorities of the Republic of Tatarstan, the Khabarovsk Krai, the Kabardino-Balkar Republic and some other constituent territories of the Russian Federation. Special structural expert review subdivisions (divisions, sectors, groups) are created within such legal departments. For example, there is a division of legislative work and legal expert review within

the Ministry of Justice of the Republic of Mari El which performs the anti-corruption expert review of regulatory legal acts of the RME and regulatory legal actsof executive authorities of the RME (and their drafts). A decree of the Head of the Republic of Mordovia provides that the anti-corruption expert review in the RM is to be carried out by structural subdivisions of state bodies: developers of draft regulatory legal acts, legal departments, specialists performing legal expert review of regulatory acts of state authorities within the time frame set out by the Rules of the Government of the Republic of Mordovia for consideration of draft regulatory legal acts and their approval with state bodies concerned. There by an undefined range of performers authorized to carry out the "intra-authority" anti-corruption expert review is indicated.

In some cases regional state authorities and municipal bodies, organizations and their officers establish structural subdivisions and identify persons authorized to carry out expert review of laws and their drafts by their internal legal acts or regulatory documents governing organization and performance of the expert review (Polyanskaya, 2013).

Apart from legal departments, some constituent territories of the Russian Federation assigned expert review of laws and draft regulatory legal actsto specialized performers. For example, a special Commission on Determination of Corruptogenicity of Regulatory Acts of the Autonomous Okrugunder the Governor of the Khanty-Mansi Autonomous Okrug-Yugra created as early as 2005 conducts the anti-corruption expert review in the Khanty-Mansi Autonomous Okrug Yugra. The Commission on Expert Review of Moscow Region Laws is vested with the task of expert review of Moscow Region laws in the Moscow Region while a special body the Expert Council of the Legislative Corruption Resistance Commission-performs anti-corruption expert reviews in the Karachay-Cherkess Republic. The Expert Committee of the Commission for Prevention of and Resistance to Corruption in the Leningrad Region acts as a specialized expert review performer in the Leningrad Region (Kabanov, 2014).

There is an ongoing process of involving public organizations in carrying out public expert reviews of laws and their drafts in the constituent territories of the Russian Federation, in addition to state experts and expert institutions. Public anti-corruption expert review of laws and their drafts in the constituent territories of the Russian Federation is performed by public experts and/or public expert institutions (commissions, committees, councils, etc.) operating within public organizations (Public Chambers, Public Councils, Chambers of Commerce and Industry, regional branches of political parties, etc.).

In most cases public experts are vested with the power to carry out anti-corruption expert reviews of laws and draft laws by local regulatory acts of public organizations which in turn are based on the federal or regional legislation. For instance, pursuant to a regional law on the Public Chamber of the Republic of Tatarstan, the Chamber is vested with the power to carry out public expert review of the most important draft laws as well as operating republican and municipal laws when monitoring their application. The task of the Public Chamber of the Republic of Mari El is to perform independent expert review of laws and their drafts.

The above shows the lack of consistency in approaches to defining the expert review performers which undoubtedly decreases the effectiveness and quality of the expert work. There is a more critical issue relating to mechanisms of interaction of different state, regional, municipal and public expert institutions dealing with expert review issues. Regional experience of the Republic of Tatarstan seems to be interesting. For instance, the Resolution of the Cabinet of Ministers of the Republic of Tatarstan of 24 December 2009 provides that when corruptogenic factors are identified in a reviewed object, a copy of an expert opinion shall be sent to the Prosecutor's Office of the Republic of Tatarstan. This provision was later reflected in the Order of the Russian Ministry of Justice regulating organization of work relating to expert review of laws of the constituent territories of the Russian Federation and charters of municipalities. However, these acts do not indicate those who can send (and within what terms and how) a copy of an expert opinion to the prosecution authorities and whether this provision applies to public and independent experts. Moreover, neither the federal legislator nor regional state authorities have provided for legal liability of experts for non-notification of the prosecution authorities on corruptogenic factors revealed in the reviewed objects.

EXPERT REVIEW OBJECTS

Since, legal regulation of expert review procedures both at the federal and the regional levels is not developed sufficiently enough in the modern Russia the issue of the object of such expert reviews becomes critical. According to the meaning of the anti-corruption legislation, it is laws and draft laws prepared by state authorities, institutions and organizations of different levels and their officers which are the objects of the expert review. However, the practice of legislative regulation of expert review procedures evidences that not only regulatory legal acts can be among the objects of the

expert review but also draft laws and other legal documents (multilateral treaties, agreements, technical documentation drafts, powers of attorney, specialist opinions, etc.). Scientific literature named these anti-corruption legal objects as 'additional (optional) expert review objects' (Tatishvili and Khidzev, 2013).

The largest number of such additional expert review objects can be found in laws of the Russian constituent territories. For example, drafts of concepts, agreements and technical assignments for development of draft laws of the Republic of Dagestan areidentified as additional objects of expert review of laws and their drafts in the Republic of Dagestan. Pursuant to Article 10 of the Law "On Resistance to Corruption in the Orenburg Region" contracts and agreements of regional state authorities are among additional expert review objects in the Orenburg Region. Draft orders of central state executive authorities of the Moscow Region and state authorities of the Moscow Region relating to human and citizens' rights, freedoms and duties and determining legal status of authorities and organizations or having inter-agency character as well as draft non-regulatory agreements (contracts) entered into by the Government of the Moscow Region are among additional expert review objects in the Moscow Region.

In some constituent territories of the Russian Federation additional objects include drafts of state services provision administrative rules and/or such administrative rulesthemselves approved by a head of a state authority, institution or enterprise.

According to the meaning of Federal Law No. 172-FZ dated 17 July 2009 "On Anti-corruption Expert Review of Regulatory Legal Acts and Draft Regulatory Legal Acts" the anti-corruption expert review is not performed only in relation to individual legal acts, i.e., legal acts concerning particular citizens or organizations or designated for one-time application (for example, orders on provision of land plots, resolutions approving transactions with minors' property adopted within the framework of transferred state custody and guardianship powers, etc.). Regulatory contracts concluded by local self-government authorities are not subject to the anti-corruption expert review as well.

The above approach of a regional legislator appears to be correct. The expert review should not have a limited object in reaching its objectives and tasks and should extend to any acts depending on public needs.

For instance, in 2015, a corruptogenic factor was identified in the Republic of Mari El in clause 2.1.3. of the Agreement on the Provision of a Grant of the Head of the Mari El Republic. First paragraph of clause 2.1.3. of the Agreement on the Provision of a Grant of the Head of the Mari El Republic in the field of internal and inbound tourism in the Republic of Mari El approved by Order of the Tourism Committee of the Republic of Mari El No. 47-P dated 31 August 2015 providing grounds for return of the grant was incompatible with the third paragraph of clause 2.1.3. of the Agreement relating to improper use of the grant. Ambiguity of these provisions on return of the grant was declared a corruptogenic factor upon the results of the expert review carried out by the Ministry of Justice of the Republic of Mari El which factor was expressed in the wideness of discretionary powers.

EXPERT REVIEW PROBLEMS

A special problem is a lack of a uniform approach to independent experts performing expert review at the level of the constituent territories of the Russian Federation. Analysis of the regional practice of legislative regulation of the independent expert review conducted by I.V. Shumanov shows that some Russian constituent territories made expert review participation requirements applicable to independent expert candidatesmore stringent. Other constituent territories adopted requirements in relation to independent experts in the field of regional laws similar to those adopted in relation to independent experts authorized to carry out expert review of federal laws and their drafts. A third group of constituent territories loosened requirements to independent experts authorized to carry out expert review of municipal laws and their drafts while the fourth group even has not formulated any such requirements with respect to independent experts thereby letting any regional resident to be an independent expert (Shumanov, 2014).

It appears that such requirements should exist and that uniformity should be achieved in relation to the most significant of them. Particularly, requirements as to education and work experience are required. For example, T.Ya. Khabrieva considers that a scientific or a practical specialization in the problems of economic analysis of legislation, off-the-books economy, corruption and fight against it should be among the eligibility criteria (holding academic degrees, ranks; experience in analysis of regulatory legal acts; passing a special eligibility test with analysis of legal acts from the point of view of their corruptogenicity; etc., Khabrieva (2009). In V.V. Astanin's opinion, potential expert candidates should satisfy special criteria such as possession of a certificate of an associate professor (dotsent) or a full professor (professor) in law as well as having at least five scientific works in the respective field of regulation of the reviewed draft regulatory legal document. O.G. D'yakonova suggests

developing certain criteria including inter alia, moral qualities of a certificate seeking candidate (D'yakonova, 2010).

Taking into account the need for recognizing the importance of creation of the system of independent expert review, certain specialists bring up questions on raising requirements applicable to independent expert candidates and on introducing special criteria which they should satisfy. Some Russian specialists believe that among such criteria can be) possession of a higher or postgraduate professional legal education) having at least five scientific works; and special training (Shaklein, 2014).

We believe that the issue of the mechanism of consideration of independent expert opinions is of importance. According to the requirements of the federal legislation when receiving an independent expert opinion on existence of corruptogenic factors in a regulatory legal act in force and on their elimination mechanism, officials who signed such an act or prepared a draft thereof must, within a 30 days period from the date of the opinion receipt, consider it and give a written substantiated answer on the results of such consideration (including the Republic of Mari El). However as S.V. Markiyanov and E.A. Egorycheva note in most constituent territories of the Russian Federation there is no legal regulation of the procedure of receipt, recording and consideration of expert opinions of independent experts having carried out expert review of provisions of regulatory legislative acts or their drafts from the point of view of their corruptogenicity (Markiyanov and Egorcheva, 2014).

CONCLUSION

Therefore, the lack of comprehensive and uniform approaches to organization and performance of the expert review of laws and other regulatory legal acts and their drafts in the constituent territories of the Russian Federation can become a significant obstacle for effective resistance to corruption in the country as a whole. This leads to a need of improvement of the existing legislation in this sphere of regional social relations.

Certain conclusions can be made based on the above. First of all, the process of creation of specialized performers of expert review of regulatory legal acts and their drafts is actively developing in the constituent territories of the Russian Federation. At the same time, the improvement of legal regulation of public and independent expert review of regulatory legal acts and their drafts is required and measures relating to improvement of this kind of expert activity are to be developed.

Second of all, a wide range of performers has a right to carry out the anti-corruption expert review. This allows to separate different kinds of expert review (internal, external and independent). An internal expert review of regulatory acts and their drafts is carried out by authorities and officials adopting (issuing) such acts. An external expert review is performed by prosecution and justice authorities. An independent (public) expert review is a kind of external expert review and is conducted by citizens and their associations.

Therefore, the constituent territories of the Russian Federation need legislative improvement of the expert review mechanism. It is suggested that the rights of independent experts to receive information on regulatory activity plans of public authorities should be extended; expert review objects should be detailed; requirements applicable to independent experts should be higher; independent expert liability for deliberate preparation of a false expert opinion and for abuse of rights in carrying out expert review should be legislatively laid down and that the procedures for use of independent expert review results should be specified.

REFERENCES

D'yakonova, O.G., 2010. Legal or Anti-Corruption Expert Review (Compiling Editor: E.R. Rossinskaya). Moscow Publishing House, Russia, Pages: 48.

Kabanov, P.A., 2014. Legal means securing the institutionalization of the state anti-corruption policy in the constituent territories of the Russian federation: Regional experience and prospects of development. Russian Law Actual Problems, 8: 36-47.

Khabrieva, T.Y., 2009. Forming legal basis for the anti-corruption expert review of regulatory legal acts. Russian Law J., 10: 5-13.

Markiyanov, S.V. and E.A. Egorycheva, 2014. Problems of carrying out of the independent expert review: Opinions and suggestions of independent expert. Monit. Enforcement, 1: 36-38.

Polyanskaya, E.S., 2013. The issue of types of legal expert review of draft laws of the constituent territories of the Russian federation. Legality Legal Order Mod. Soc., 3: 45-52.

Shaklein, S.V., 2014. Problems of development of the independent expert revie. Law Secur., 3: 84-93.

Shumanov, I.V., 2014. Independent anti-corruption expert review of regulatory legal acts as an efficient civil society's tool to influence public authorities. Lawyer-Legal Expert, 4: 16-20.

Sidorov, O.A., M.A. Mokoseeva and T.N. Mikheeva, 2015. Correlation between concepts of legal position and decision of body of the constitutional justice. Rev. Eur. Stud., 7: 221-226.

Tatishvili, T.M. and A.T. Khidzev, 2013. Comparing expert review methods established by the government of the Russian federation and adopted by authorities of the constituent territories of the Russian federation. Law Mod. State, 5: 65-74.

Tret'yakova, E.D., 2013. Anti-corruption expert review of regulatory legal acts of the constituent territories of the Russian federation: Problems and prospects. Mod. Jurisprudence Questions, 30: 18-25.