

**TRENDS IN DEVELOPING LAWMAKING ACTIVITIES IN THE RUSSIAN LEGAL SYSTEM DURING THE DIGITALIZATION OF PUBLIC RELATIONS**

**TENDÊNCIAS NO DESENVOLVIMENTO DE ATIVIDADES LEGISLATIVAS NO SISTEMA JURÍDICO RUSSO DURANTE A DIGITALIZAÇÃO DAS RELAÇÕES PÚBLICAS**

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**ABSTRACT**

**Objectives:** The objective of the study is to consider the urgent issues of developing lawmaking activities that form the Russian legislation. In general, these trends are conditioned by the values of a democratic, legal and social state with the republican form of government.

**Methodology:** Authors used sociological, comparative-legal, historical, logical methods.

**Results:** It is concluded that, the digitalization of public relations is another significant factor that determines new approaches to lawmaking, its form, and content. The article traces the modification of lawmaking activities under the influence of new information technologies.

**Contributions:** The 2020 Constitutional Amendments to a certain extent modified the Russian model of the separation of powers, emphasized the need to protect sovereignty, developed the provisions of a welfare state, and strengthened the cultural, historical, and patriotic aspects of the Russian statehood. The renewed Constitution of the Russian Federation introduced the term "public authority" and established the institution of



preliminary constitutional control. These provisions set new guidelines for lawmaking and legislative activities.

**Keyword:** Lawmaking; Legislative system; System of law; Structure; Law; Legal system; Technologies; Digitalization of law.

## RESUMO

**Objetivos:** O objetivo do estudo é considerar as questões urgentes do desenvolvimento de atividades legislativas que formam a legislação russa. Em geral, essas tendências são condicionadas pelos valores de um estado democrático, legal e social com a forma republicana de governo.

**Metodologia:** Os autores utilizaram métodos sociológicos, jurídico-comparativos, históricos, lógicos.

**Resultados:** Conclui-se que a digitalização das relações públicas é outro fator significativo que determina novas abordagens ao legislar, sua forma e conteúdo. O artigo traça a modificação das atividades legislativas sob a influência das novas tecnologias da informação.

**Contribuições:** As Emendas Constitucionais de 2020 modificaram em certa medida o modelo russo de separação de poderes, enfatizaram a necessidade de proteger a soberania, desenvolveram as disposições de um estado de bem-estar social e fortaleceram os aspectos culturais, históricos e patrióticos do estado russo. A Constituição renovada da Federação Russa introduziu o termo "autoridade pública" e estabeleceu a instituição de controle constitucional preliminar. Essas disposições estabelecem novas diretrizes para as atividades legislativas e legislativas.

**Palavra-chave:** Legislação; Sistema legislativo; Sistema de direito; Estrutura; Lei; Sistema legal; Tecnologias; Digitalização do direito.

## 1 INTRODUCTION

Over the past half century, society and its legal system have changed dramatically. Technological breakthroughs, the Third and Fourth Industrial Revolutions, and the globalization and digitalization of public relations affect both internal and external aspects of legal processes.

Trends in developing national legal systems are analyzed in the theory of state and law, constitutional law, and comparative jurisprudence. From the viewpoint of comparative studies, Russia's legal system can be attributed to Romano-Germanic law or regarded as an independent legal phenomenon. In any case, an important feature of a legal system is lawmaking, i.e., the creation of regulatory legal acts, primarily constitutions and laws, that determine the legal order of a state. In the Romano-Germanic legal system, such a regulatory legal act is recognized as the main source of law. It is important and relevant to



understand trends in developing lawmaking in the framework of national legal systems during the digitalization of public relations.

## 2 METHODS

In modern legal research, the positivist approaches are widely used, including the study of specific facts and the establishment of laws of objective reality. Based on this general philosophical approach, we utilized special methods: sociological, comparative-legal, historical, logical, etc. To solve lawmaking issues, it is necessary to use systemic and structural-functional approaches and formal dogmatic methods, which allow assessing the quality of regulatory legal acts and their drafts. While studying any legal system, we should focus on the economic analysis of law and the consideration of socio-economic factors in the development of legislation and law-making. We highlighted these facts in our previous articles (Kornev et al., 2020) and emphasized the methodological significance of the digitalization of public relations and all types of legal activity (Kornev et al., 2019).

## 3 RESULTS

The stages of lawmaking include the preparation of draft legal acts, their adoption, and enactment. This legal activity that forms the Russian legislation is generally predetermined by the ideas of sovereignty, democracy, a legal state, human rights, republicanism, the separation of powers, federalism, and constitutionalism. Among the principles of lawmaking, which characterize its formal and substantive aspects, are the ideas of justice, democracy, publicity, and scientific character.

The creation of legal rules governing various spheres of public relations is a complex activity that relies on legal sciences (Habrieva; Tihomirov, 2015) and the normative regulation of lawmaking (Habrieva; Tihomirov, 2019).

In the context of a legal state and democratic values, we should pay attention to the classification of legal acts under formation, the strict distinction between laws and by-laws, *the rule of law* as an act of representative democracy (adopted by the legislative branch), and the fundamental legal basis for the functioning of legal state and civil society (Clause 2 of Article 15, Clause 2 of Article 120 of the Constitution of the Russian Federation). Consequently, it is necessary to regard *the legislative process* as the most significant type of lawmaking.



Legislation and lawmaking activities that create it consider *the systematic nature* of legal regulation, the coherence and consistency of regulatory legal acts, and the minimization of legal conflicts. Numerous problems are caused by the correlation of national laws with international legal norms, as well as the federal structure of legislation.

Regulatory legal acts are adopted by rule-making bodies within their competence in a certain procedural order. At the stage of *preparing a draft legal act*, normative provisions should be formulated which will become laws. To create effective legislation, it is important to comply with the requirements of legal technology that determines the rules for developing legal norms (HAMPTON, 2014). The prepared draft legal act can be submitted for public and professional discussion, including mandatory procedures for the necessary approval, etc.

*The adoption* of a regulatory legal act, depending on the type of government body, can be a relatively simple or complex procedure (for example, a legislative process).

The final stage of lawmaking is *the enactment* of a regulatory legal act, which can be associated with the obligatory official publication of such an act. There is a special institute for the state registration of regulatory legal acts issued by federal executive bodies.

It is possible to make amendments and additions to regulatory legal acts, i.e., *additional* lawmaking. In this case, it is required to ensure the balance between stability and dynamism of legislation. On the one hand, legislation should be constantly improved to keep up with dynamically developing social relations. On the other, amendments to the current legislation should be made in a justified, thoughtful, and, if possible, consolidated manner, as often as may be necessary. Additional lawmaking is actively promoted by *the monitoring of law enforcement* that is currently developing in Russia. The annual reports of the Government of the Russian Federation on monitoring law enforcement contain a comprehensive analysis of information on the functioning of legal acts to ensure both basic and additional lawmaking.

The termination of some regulatory legal acts or their provisions is often called *negative* lawmaking. When the newly adopted legal acts are put into effect, a list of no longer valid documents is also provided. A revision of the Russian legislation is relevant for the cancellation of outdated, irrelevant, and inapplicable legal acts. In 2020, over 450 existing legal acts of the RSFSR and the USSR adopted in 1946-1991 were canceled (Decree of the Government of the Russian Federation No. 857, 2020).

In addition, there are institutions for canceling and suspending federal and regional



regulatory legal acts (for example, Clause 3 of Article 115, Clause 2 of Article 85 of the Constitution of the Russian Federation). Regulatory legal acts or their provisions might lose legal force due to decisions of constitutional justice bodies. In this connection, the Constitutional Court of the Russian Federation is sometimes called a negative legislator.

Regulatory legal acts can be declared invalid by a court decision. The institution of judicial challenging causes many substantive and procedural issues (the grounds, consequences of recognizing a legal act as invalid, specific judicial proceedings in these cases, the possibility or obligation of additional lawmaking, etc.).

In the most general form, the main trends in developing lawmaking activities in the Russian legal system are predetermined by constitutional provisions on a democratic, legal, social, federal state with the republican form of government and separation of powers. These provisions determine the content of lawmaking activities and the procedure for adopting laws and by-laws.

#### 4 DISCUSSION

The values underlying the Russian legal system were formed in the European civilization a long time ago. They reflect the humanistic nature of legal systems expressed in lawmaking.

Currently, the specific implementation of these values is reflected in the 2020 Constitutional Amendments (Law on amendment to the Russian Federation Constitution No. 1-FKZ, 2020). One should also consider the peculiarities of the modern world due to digitalization and the Industrial Revolution 4.0.

The 2020 Constitutional Amendments change the powers and procedures for the formation of state bodies, as well as modify the current mechanism of checks and balances in the Russian model of separation of powers. These amendments focus on the need to protect sovereignty, develop provisions on the welfare state, and strengthen the cultural, historical, and patriotic aspects of the Russian statehood.

The new constitutional priorities are being developed in the current legislation, while many legal acts have already been adopted. New trends in the development of lawmaking activities are conditioned by the construction of new legal institutions or the modification of the existing ones.

These amendments introduced the concept of "*public authority*" in relation to the organization of public authorities within federal territories (Part 1, Volume 67), the organization of public authorities under the jurisdiction of the Russian Federation (Clause



"d" of Article 71), the coordinated functioning and interaction of state bodies, included in the unified system of public authorities, provided by the President of the Russian Federation (Clause 2 of Article 80). For this purpose, the latter formed the State Council of the Russian Federation (Clause "e<sup>5</sup>" of Article 83). This term is also present in the title of the Law of the Russian Federation on amendments to the Constitution of the Russian Federation "On improving the regulation of certain issues of organization and functioning of public authority". Under Clause 3 of Article 132 of the Constitution of the Russian Federation, state authorities and local self-government bodies are included in a unified system of public authorities.

The term "public authority" is relatively new for Russian legal science but is widely used in foreign jurisprudence and constitutional practice. Thus, V.E. Chirkin (2016, p. 11) emphasized five models of public authority in the modern world: the sovereign authority of a state, state-like authority of a constituent entity of the federation, autonomous public authority, municipal public authority, and communal-clan authority of indigenous peoples. All this applies to Russia.

The question arises about legal aspects of the constitutional recognition of public authority. There is a three-tier system of lawmaking activities among bodies "included in the unified system of public authority" (the level of the Russian government, its constituent entities, and local self-government bodies).

The 2020 Constitutional Amendments clarify the jurisdiction of the Russian Federation (Article 71), subjects of joint jurisdiction of the Russian Federation, and its constituent entities (Article 72). Accordingly, they specify the directions of lawmaking activities of both federal and regional parliaments.

The 2020 Constitutional Amendments clarify the constitutional status and powers of the President of the Russian Federation in relation to the executive branch. In accordance with the new constitutional provisions, the President of the Russian Federation exercises the general leadership of the Government of the Russian Federation (Clause b of Article 83, Clause 1 of Article 110); approves the structure of federal executive bodies at the suggestion of the Chairman of the Government of the Russian Federation (Clause b<sup>1</sup> of Article 83); establishes personal responsibility for the Chairman of the Government of the Russian Federation for the exercise of the powers entrusted to the Government of the Russian Federation (Article 113). These provisions serve as new guidelines for lawmaking and define the status of regulatory legal acts of the President of the Russian Federation and the Government of the Russian Federation.



Within the framework of the above-mentioned amendments, the main *innovation of the legislative process* is the *institution of preliminary constitutional review* (Clause 3 of Article 107, Clause 2 of Article 108, Clause 5<sup>1</sup> of Article 125). It exists in more than 20 states and, on the whole, corresponds to the general trend of expanding the powers of constitutional justice bodies.

The Russian model of preliminary constitutional review has its typical features. It is optional (such models are also used in foreign countries) but is carried out upon request. The only inquirer is the President of the Russian Federation. This is a justified approach when introducing a new institution for the Russian legal system. Countries with both preliminary and subsequent constitutional reviewing need to correlate the first and second results if the same laws are under consideration. According to the experience of different states, a wider range of subjects might be envisaged, for example, certain subjects of legislative initiatives. The next feature of the Russian model of preliminary constitutional control is the suspension of the term for signing a law (in foreign models, the term for signing some law by the head of state might not be suspended). The objects of preliminary constitutional control comprise federal constitutional laws, federal laws before they are signed by the President of the Russian Federation (Subclause "a", Clause 5<sup>1</sup> of Article 125), draft federal laws (Subclause "a", Clause 5<sup>1</sup> of Article 125) and laws of the constituent entities of the Russian Federation prior to their promulgation by the highest official (the heads of the supreme executive bodies) of this constituent entity of the Russian Federation (Subclause "c", Clause 5<sup>1</sup> of Article 125). The inclusion of adopted but not promulgated laws of the constituent entities of the Russian Federation into the objects of preliminary constitutional control is conditioned by the complexity of federal relations and the need to develop the institution of federal intervention.

The 2020 Constitutional Amendments contain new provisions on *protecting the sovereignty* of the Russian Federation. They indicate that decisions of intergovernmental bodies adopted based on international treaties of the Russian Federation contrary to the Constitution of the Russian Federation are not subject to execution (Clause "b" of Article 79; Clause 5<sup>1</sup> of Article 125). These norms are directly related to lawmaking since certain legal acts are adopted to implement international obligations. For instance, Appendix 2 "The list of judgments of the European Court of Human Rights requiring amendments to the legislation of the Russian Federation" to the Report on the results of monitoring law enforcement in the Russian Federation in 2018 contains 24 clauses and is as large as the report itself. Each clause introduces amendments and additions to regulatory legal acts



(Report on the results of law enforcement monitoring in the Russian Federation for 2018, 2019). Such annual reports on the monitoring of law enforcement will be drawn up with due regard to possible decisions of the Constitutional Court of the Russian Federation.

While characterizing the current development of society, state and law, these amendments reveal the specifics of the existing legal system in the context of the *Fourth Industrial Revolution* and the *sixth technological order*, mention the *digitalization* of public relations, law, and state, programmed society, a network paradigm, a network state, a network paradigm of law, etc. (Le Sueur, 2016).

The *digitalization of the legal system* and its aspects important for lawmaking and the further improvement of legislation (ODSC – Open Data Science, 2019) are not actively used in the Russian constitutional tradition. The Constitution of the Russian Federation contains only some provisions concerning the digitalization of law. The 2020 Constitutional Amendments clarify that the Russian Federation is responsible for establishing the foundations of federal policies and federal programs in the field of scientific and technological development (Clause "e" of Article 71), developing information technology (Clause "i" of Article 71), ensuring the safety of an individual, society, and state in the application of information technologies, promoting the circulation of digital data (Clause "m" of Article 71). The new powers of the Government of the Russian Federation include the state support for the scientific and technological development of the Russian Federation (Subclause "v<sup>1</sup>", Clause 1 of Article 114).

Various aspects of the *digitalization of lawmaking activities* are reflected in laws, by-laws, and the Scientific and Technological Development Strategy of the Russian Federation. The latter has become one of the main strategic plans for forming Russian legislation.

First of all, the language of law underwent certain changes (Pashentsev; Zaloilo, 2019), new terms emerged (digital rights, etc.) and the requirements of legal technology evolved (Van Gog; Van Engers, 2001). The law itself "reconfigured" to solve the issues related to the digitalization of public relations (Habrieva, 2018). Digitalization affects the entire legal field and, consequently, has an impact on lawmaking as part of law (Dale, 2019). Digital technologies directly influence lawmaking, changing its formal and substantive features (Pashentsev, 2019).

New technologies are used at all the stages of lawmaking: the development of a draft legal act, the official publication of such an act, and granting access to adopted legal acts (Ashley; Brüninghaus, 2006).





When preparing a draft legal act, legislators use the information capabilities of the Internet, information and reference systems, and other computer technologies (for example, the System for ensuring legislative activity on the official website of the State Duma of the Federal Assembly of the Russian Federation). An independent legal institution is an electronic lawmaking initiative (for example, the official website "Russian Public Initiative").

Experience is being gained in the active use of electronic document management for conducting legal examinations, predicting the consequences of adopting some legal acts upon their approval (De Maat, 2021), and sending them to a lawmaking body. The publication of draft legal acts on the Internet and their public discussion using online resources becomes an almost mandatory element of public lawmaking (Bastick, 2017) (for example, the official website that contains information on the preparation of draft legal acts and the results of their public discussion, i.e., the federal portal of draft regulatory legal acts).

In addition, information technologies are used in the official publication of regulatory legal acts (for example, the official Internet portal of legal information). They allow presenting a regulatory legal act as an e-document within the digitalized form of legislation (registry or databank). Thanks to information technology, access to a regulatory legal act can be provided through information and reference systems or Internet resources (including the publication of adopted regulatory legal acts in unofficial information and reference systems, the websites of state bodies, or non-governmental organizations). They also enable the electronic systematization of legislation.

Modern scientific research notes that the digitalization of public relations results in "legal inflation" and changes the relationship between laws and by-laws. The regulatory role of laws decreases since their growing number reduces not only the quality but also their significance in the regulation of public relations. Legislative activity inevitably lags behind the development of social relations associated with digitalization and laws become outdated even at the moment of their adoption. However, these provisions should not be taken literally. Indeed, laws as acts of legislative power or representative democracy remain significant, and not all laws "become obsolete at the time of their adoption".

There are also ideas that legal changes under the influence of digitalization will affect the Russian legal tradition, its uniqueness and will contribute to its drift towards universalization. This position seems to be correct but the identity of the Russian legal system is also relevant.



## 5 CONCLUSION

Thus, the 2020 Constitutional Amendments laid the constitutional and doctrinal foundations of lawmaking and further developed the Russian legislation. Without undergoing any fundamental changes, these grounds become more complicated, establishing new institutions (the preliminary constitutional control of laws adopted by the federal and regional parliaments, etc.) and introducing new terms (public authority, etc.). The digital technologies that have developed in recent decades have a decisive impact on Russian lawmaking and legislation. It refers to new aspects of lawmaking and legislative activity. It is necessary to dwell on the adopted constitutional innovations and improve the concept of Russian lawmaking in connection with the development of digital technologies.

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