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## IMPROVEMENT OF LAW-MAKING POWERS OF EXECUTIVE AUTHORITIES IN THE CONDITIONS OF ADMINISTRATIVE REFORM

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The article deals with the considera-  
tion of federal executive authorities' pow-  
ers to issue legal acts, methods of their con-  
solidation and directions of development.  
Analysis of enforcement practice demon-  
strates the need for improvement of law-  
making activity.

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utive authorities.

By their legal nature legal acts of federal executive bodies are the most complex and diverse part of legislation. Because of their sectorial and functional orientation these legal acts are the most numerous. A large number of legal acts of federal executive bodies determines the relevance of a number of theoretical and practical researches on the issue.

Basic powers to issue legal acts by federal executive bodies are provided for by a Presidential Decree No. 314 from March 09, 2004 "On the System and Structure of Federal Executive Bodies" [2] (hereinafter the Presidential Decree No. 314).

Presidential Decree No. 314 determines that the federal ministry is a federal body of executive authority responsible for shaping public policy and normative-legal regulation in a field of activity established by the acts of the President of the Russian Federation and the Government of the Russian Federation. Federal services and federal agencies within their authority issue individual legal acts, and are not entitled to exercise normative-legal regulation in the established area, except in cases established by the decrees of the President of the Russian Federation or the decisions of the Government of the Russian Federation. Thus, federal ministries act as the main bodies of executive power, which are entitled to issue normative acts.

Legal acts of the federal ministries take a special place in the system of legislation. First of all, it is predetermined by the position of this body in the State machinery, as well as by the nature of its functions and tasks. Acts of ministries are numerous, as they are designed to implement more detailed regulation on operational issues. Especial position of the legal acts of the federal ministries is determined by the status and the extensive powers of this federal body for the formulation of state policy.

The decrees of the President of the Russian Federation empower federal services and federal agencies to issue normative legal acts, if the management of these bodies is implemented by the head of the state.

The problem of legal acts of the federal bodies of executive power is particularly relevant in connection with the changes that have taken place in the federal structure. Decree of the President of the Russian Federation No. 636 from May 21, 2012 [4] approved the current structure of federal bodies of executive power, which includes 79 federal bodies, 20 of which are Federal ministries, 37 Federal services and 25 Federal agencies.

An analysis of the provisions of the federal services and federal agencies shows that many of them are endowed with rule-making powers.

In particular, the following federal services have the powers of normative-legal regulation: Federal Service for Technical and Export Control; State Courier Service of the Russian Federation; Federal Security Service of the Russian Federation; Federal Service of the Russian Federation for the Control of Drug Trafficking; Federal Guard Service of the Russian Federation; Federal Service for Financial Monitoring; Federal Antimonopoly Service; Federal Intellectual Property Service; Federal Migration Service; Federal Service for Defense Contracts; Federal Service for Alcohol Market Regulation; Federal Customs Service; Federal Tariff Service; Federal Service for Financial Markets; Federal Service for Ecological, Technological and Nuclear Supervision.

Thus, of the 37 Federal services 15 (i.e. 40%) have the powers to issue normative legal acts. Some federal services in accordance with the provisions on them do not have the right to exercise the legal regulation.

Some federal services, in accordance with the provisions on them, do not have the right to exercise normative-legal regulation. However, separate decrees of the President of the RF or decisions of the Government of the RF stipulate such powers regarding them. For example, in accordance with paragraph 7 of the Provision [6], Federal Agency for Veterinary and Phytosanitary Supervision has no right to be engaged in normative-legal regulation in the established area, except

in cases established by decree of the President of the Russian Federation and the decisions of the Government of the Russian Federation, as well as in management of public property and provision of paid services. However, the Decision of the Government of the RF No. 1009 from December 14, 2009 “On the procedure for joint implementation by the Ministry of Health and Social Development of the Russian Federation and the Ministry of Agriculture of the Russian Federation of the functions of normative-legal regulation in the sphere of monitoring over the quality and safety of food products, and the functions of organization of such control” [8] stipulated that normative-legal regulation in the sphere of monitoring over the quality and safety of food products was implemented by the Federal Service for Veterinary and Phytosanitary Supervision in accordance with its powers. The same Decision provides rule-making powers to the Federal Service for Supervision in the Sphere of Consumer Rights Protection and Human Welfare.

Certain provisions on federal services, in addition to the mere granting of bodies with powers to issue normative-legal acts, provide them functions of state policy formulation. For example, such broad powers are provided to: Federal Service of the Russian Federation for the Control of Drug Trafficking; Federal Service for Financial Monitoring; Federal Service for Alcohol Market Regulation; Federal Customs Service; Federal Service for Financial Markets; Federal Service for Ecological, Technological and Nuclear Supervision.

Separate federal agencies also carry out the functions of the formulation and implementation of state policy and normative-legal regulation: Federal Agency for Forestry Affairs; Federal Agency for Fishery; Federal Space Agency; Federal Agency for the Development of the State Border of the Russian Federation.

In accordance with the Presidential Decree No. 314, such powers are provided for in respect of the federal ministries, since the development of state policy is the most important function of public administration. Although, there is no a direct ban for federal services and federal agencies regarding implementation the function of formulation state policy in the Presidential Decree No. 314, it appears that it is the prerogative of federal ministries.

Endowing federal services and federal agencies with the functions of state policy formulation in a particular area can lead to various kinds of collisions. Many legal acts do not use the name of a particular body of executive power and use the juridical structure of “federal executive body responsible for developing and implementing of state policy and normative-legal regulation in the field of...”. This reference to a federal body usually implies a Federal Ministry. In practice, however,

this body may be a federal service or federal agency. Often, it is not easy to sort out in these situations.

Compared to federal services, the number of federal agencies empowered with rule-making functions is significantly less. Out of 25 federal agencies, only 4 (16%) issue normative-legal acts.

Other provisions on federal services and federal agencies contain a direct reference to the fact that these bodies have not the right to engage normative-legal regulation in the established area of activity [5].

Thus, the analysis of existing provisions shows that about one-third of federal services and federal agencies initially on the basis of their provisions are endowed with rule-making functions, which, in accordance with the Presidential Decree No. 314, have not been intended for them. The practice of granting law-making powers to the federal bodies of executive power shows no efficiency of the mechanical delimitation of managerial functions.

The presence of law-making powers of executive authorities requires clarification, as it is often interpreted as discretion in the use of a granted right. Meanwhile, bodies of executive power that have public powers of authority at the same time are endowed with the duties of their implementation. The public sphere of their activity involves the connectedness of rights and duties as a legal duty, which must be implemented in public interest.

Thus, based on the fact that the right to issue legal acts is both a duty, and taking into account the great importance of the system of legal acts, its impact not only on the legislation, but also on a huge range of public relations, it is necessary to develop a range of measures aimed at the increase in responsibility of executive authorities and their officials.

The first step in this direction could be the formation and legal enshrining of the grounds for the adoption of legal acts. In separate cases, the need to adopt legal acts is provided for by the law.

First, the duty of adopting legal acts is traced in the establishment of law-making powers of executive authorities. For example, in accordance with the provisions, federal bodies of executive power may issue normative-legal act: in a particular sphere or field ( i.e., federal body is actually limited by nothing other than its competence); on matters relating to any field of activity; according to a particular list of several general issues (e.g., the Federal service for Technical and Export Control exercises independent normative-legal regulation of the issues of: ensuring security of information; countering technical intelligence; technical protection of information; implementation of export control); based on the direct

list of specific acts that can be either of open nature (for example, the provision on the Ministry of Health of the Russian Federation contains a list of more than 200 legal acts, and the provision on the Ministry of Labor and Social Protection of the Russian Federation – a list of 168 legal acts) or closed nature (for example, the Decree of the Government of the Russian Federation No. 459 from July 26, 2006 “On the Federal customs Service” [7 ] contains an exhaustive enumeration of the normative-legal acts, which can be taken by the service).

Second, many federal laws contain a direct reference to the need to develop and adopt normative-legal acts in the development of their provisions. For example, the Federal Law No. 79-FL from July 27, 2004 “On Public Civil Service of the Russian Federation” provides for the issuance of a large number of legal acts of the President of the Russian Federation and the Government of the Russian Federation [1]. Separate subordinate legal acts have still not been adopted. In most cases, exactly the adoption of subordinate legal acts influence on not only the effectiveness of federal laws, but in general on their ability to operate and affect social relationships. The lack of legal acts of executive authorities often paralyzes activity of the higher statutory regulations.

Third, the reason for the issuing of legal acts may serve orders of higher public authorities, for example, of the President of the Russian Federation or the Government of the Russian Federation.

Thus, it is possible to find in the legislation the grounds that ensure obligation of issuing legal acts by the federal bodies of executive power.

Another way of improving law-making activity is the clarification of the types of issued normative-legal acts.

In the context of the carried out administrative reform, the improvement of law-making activity and classification of legal acts of federal executive authorities is of particular relevance.

The issue of unification of the types of legal acts in the Soviet times was not resolved. Filling the gap that preserved from the Soviet period, in the issue of legal regulation of the types of legal acts modern federal executive authorities developed and issued their own rules for the preparation of normative legal acts. Many of them repeat the provisions established in the Decree of the Government of the Russian Federation No. 1009 [8]. However, some federal executive bodies either selectively enshrined types of legal acts, which they were authorized to issue, or added the list of legal acts adopted by the RF Government Decree No. 1009. For example, the Ministry of Natural Resources and Ecology of the Russian Federation has the right to issue orders, decrees, rules, regulations, provisions, as well as acts

of advisory nature (directions, etc.) and technical acts. Normative legal acts of the Russian Ministry of Emergency Situations are issued in the form of orders, rules, regulations and provisions. The Ministry of Internal Affairs issues normative legal acts in the form of orders, directives, provisions, statutes, regulations, rules, directions and other normative legal acts [9]. A similar situation is observed in the Decree of the President of RF No. 1082 from August 16, 2004 "Issues of the Ministry of Defense of the Russian Federation" [3]. Russian Defense Minister issues orders, directives, provisions, directions, instructions, statutes and other normative (legal, normative-legal) acts.

Types of re normative-legal acts issued by the federal executive authorities, approved by the RF Government Decree № 1009, in practice do not reflect reality. Federal ministries, services and agencies deal with problems of law-making in their own way. Due to certain circumstances, they refuse from certain legal acts, or introduce their own types, which, in their opinion, better reflect the content of their activities.

Thus, our study shows that the powers of the federal executive authorities in the sphere of law-making need to be improved. The legislation should include specific types of legal acts, clearly define the executive authorities' powers to issue acts, enshrine deadlines and responsibility for the quality of performance of this state functions.

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