

3.2. Status and prospects of legislation and legal enforcement monitoring

The ongoing multiple reform process affecting the modern Russia is accompanied by such an intensification of lawmaking activity that it becoming hard to plan the priorities of the legislative and other lawmaking activities. As a result, the implementation of political and legal resolutions is performed in an isolated, inefficient manner, and the declared goals are not always achieved. Legislation's instability causes heavy damage to society. Under conditions of constantly changing legislation, neither the citizens of Russia nor the business community are able to plan their lives, even over the short-term. This undermines the trust of society in authorities, engenders a feeling of uncertainty in the future, and forces everyone to solve only the momentary tasks, without taking care of future generations.

Today, it is already understood that the rights and freedoms provided in the Constitution of the Russian Federation represent a system of humanitarian values. They are interrelated and interdependent. It is the system of values, and not just its separate rights and freedoms, which should be protected by the state irrespective of the priorities existing in this or that historical period. The state should insure the steady development of the country through legal stability, on the basis of a system of humanitarian values. It is the state's obligation to the people, who vested it with public authority. Human rights and civil freedoms determine the meaning, content and application of laws, the activity of legislative and executive powers, and of local self-government, and are implemented by the due process of the law. Recognition, observance and protection of civil rights and liberties are an obligation of the state.

Today, at all levels of authority and in the society, a perception has grown that approved legislation is an extremely complicated, incomplete, inconsistent, and unsystematic mass of normative laws that fail to fully correspond to either the plans of legislators and their legal enforcers, or, which is of greatest importance, to citizens' expectations. In this connection, there arises an objective need for the country to create of a comprehensive mechanism for evaluating the current system of legislation, and its conformity to the tasks of society and the state.

In order to minimize the imbalance existing between mechanisms of approving and implementing politic and legal resolutions, a system of monitoring legislation and the legal enforcement practice (an alternative to the term legal monitoring) may be employed. It is essential both as an instrument for appraising the efficiency of reforms implemented in the system of constitutional values, and as a mechanism for ensuring timely responses to legal regulation deficiencies and legal enforcement practice problems.

Strategically motivated, deliberate lawmaking activity is impossible without the performance a national comprehensive analysis of all the spheres of public relations, normative legal acts, and the practice of their enforcement. The strategic goal of a conception for creating a system of legislative and legal enforcement monitoring in the Russian Federation (herewith — conception) is defined by its very name. The conception determines the basic principles and primary directions used in creating and developing a system of legal monitoring, and is an essential instrument in improving the quality of legislative decisions, which is adopted on the basis of an objective appraisal of lawmaking efficiency.

The conception was developed on the basis of provisions of the Constitution of the Russian Federation, taking into account the system of priorities of domestic and foreign policies of Russia, as defined by the President of the Russian Federation in his annual addresses to the Federal Assembly of the Russian Federation. The conception was developed by taking into account experiences of the constituent entities of the Russian Federation (Moscow and Novgorod oblasts, Stavropol kray, etc) where legal monitoring centers have already functioned for several years, conclusions and recommendations of reports of the Council of Federation for 2004-2006, and the ideas of participants of the 2002-2006 All-Russia Scientific Practical Conferences on the «Legal Space and Legal Enforcement Practice Monitoring».

Conception for creating a system of monitoring legislation and legal enforcement practice in the Russian Federation (for 2008-2012)

The conception determines the strategy for creating a system of monitoring the legal space and legal enforcement practice as the main instrument of legislative decision-making in modern Russia, built on the basis of objective criteria of legislative and legal enforcement efficiency. A legal monitoring system may be created in accordance with the present conception, which provides a program-based approach to achieving this task.

The conception's goals are:

1. Securing the main elements and mechanism involved in creating a system of legal monitoring, as well as the goals, tasks, and subjects of legal monitoring.

2. Initiating a dialogue between the bodies of constitutional partnership, authorities and society on a system of legislative quality analysis and enforcement practice forecasting, which appraises the implementation of public powers now offered by the state to civil society — systems of legal monitoring.

3. For achieving conception goals: the modern state of the quality of legislative analysis and legal enforcement efficiency (legal monitoring) is assessed; a system of legal frameworks for monitoring the legal space and legal enforcement practice (legal monitoring) is proposed; mechanisms for performing legal monitoring by the state, with participation and (or) on instructions from institutions of civil society are proposed; draft programs providing for the stage-by-stage creation of a system of legislative and legal enforcement monitoring (legal monitoring) in the Russian Federation are introduced.

Expected results from the introduction of a legal monitoring system

1. Strengthening the legal foundations of the Russian state, ensuring legal space unity and creating a balanced system of legislation according to the country's actual development needs.

2. Identifying work needed to create a legal monitoring and legal enforcement system (legal monitoring) as an independent stage of administrative reform in the Russian Federation, and as its legal components.

3. Improving the quality of adopted political and administrative decisions, the openness of lawmaking activity, the legal awareness of the citizens of Russia, reducing the level of legislative contradictions, raising authorities' responsibility for adopted decisions, bringing order to legislative activity on federal and regional levels.

4. Obtaining positive practical results from lawmaking and legal enforcement activities, meeting citizens' expectations.

Current state of social and political means available to appraise the quality of legislation and efficiency of legal enforcement

Current Russian Federation approaches to appraising the results of state bodies' performance of their lawmaking and legal enforcement functions have been reduced to fragmentary analyses performed by the state bodies themselves, as well as by civil society institutions and the mass media. The appraisal must focus on the Russian Federation's legislative system and its most acute problems in meeting the requirements of relevance, harmony and effectiveness of development forecasts, taking into account the dynamics of the country's changing needs and the generally accepted principles and norms of international law.

Currently, legislative and legal enforcement practice monitoring (legal monitoring) does not exist as an independent, systematic state activity of national scale. Federal bodies of executive power, within their framework of competence, implement laws and normative legal acts of their areas of responsibility while being able to only weakly analyze and control their results.

At the same time, a comprehensive monitoring of legislation is not being performed. On the whole, activities of state institutions in this sphere are uncoordinated, not mandatory, and performed

without a methodological basis. As a consequence, these fail to provide reliable results so essential to legislative activity planning and determining a strategy for systematic development. They also fail to affect legal enforcement results.

The most acute problems of federalism, issues of improving the separation of power according to a power vertical, the delineation of authorities between bodies of state power of the Russian Federation, the constituent entities of the Russian Federation and local self-government, and the most complicated reforms in the sphere of administrative control of state affairs, could all be better resolved if they were regularly and systematically analyzed according to uniform criteria and parameters, and also on the basis of development forecasts of the legislative and legal enforcement practice.

1. Lawmaking bodies, legal entities of legislative initiative

The system of legal monitoring should quickly provide the lawmaking body and the legal entity of legislative initiative with relevant, authentic and objective information on: the existing theoretical models for regulation public relations; truly functioning, approved models of regulating public relations; the global (European) tendencies of legislative development directions; the drawbacks of existing national legislation regulating public relations in the present historical period; the mechanisms and timeframes for implementing the main directions of state policy as determined in the annual addresses of the President of the Russian Federation to the Federal Assembly; the political consequences of changes to existing regulation of public relations.

2. Civil society institutes, society

The system of legal monitoring should quickly provide citizens, civil society institutes and society with relevant, authentic and objective information on: the mechanisms and timeframes for implementing the main directions of state policy as determined in the annual addresses of the President of the Russian Federation to the Federal Assembly; changes to normative legal acts and implementation timeframes planned by lawmaking bodies; normative legal acts' implementation practice; the judiciary practice of resolving legal disputes; the rulings of the European Court of Human Rights and results of their execution by the Russian Federation.

The legal monitoring system should support the implementation of lawmaking initiatives from citizens and public associations.

Stages of implementing a program for creating a legal monitoring system

First stage: preparing a legal monitoring experiment (implementation period: two years)

Stage goals

1. Develop a theoretical framework for legal monitoring in modern Russia.
2. Begin work on appraising monitoring theory in the system of agencies included in the legal experiment (the Council of Federation, the Council of Legislators, individual bodies of executive power, and pilot regions).
3. Create experimental monitoring centers in the federal center, the federal district, and the pilot constituent entities of the Russian Federation.
4. Develop regulations on the operation of the federal center of monitoring, the federal district of monitoring, and constituent entities of the Russian Federation monitoring.
5. Introduce the provision of uniform normative legal acts (a file of a normative legal act) to the practice of lawmaking bodies taking part in the legal experiment the .
6. Develop forms, types and periods of cooperation concerning the exchange of information between the federal center of monitoring, the federal district center of monitoring, and the center of monitoring of the constituent entity of the Russian Federation.

Stage enforcement efforts

1. Research monitoring theory and practice.
2. Research problems facing the implementation of the conception for creating a system of legal and law enforcement monitoring.

3. Approve federal and regional regulations for implementing a legal monitoring experiment in a separate okrug (constituent entity) of the Russian Federation (herewith — pilot region).

4. Develop uniform supporting normative legal acts.

5. Develop uniform efficiency criteria for the subject of monitoring.

6. Appraise the need to introduce additional systems of monitoring.

7. Introduce uniform supportive normative legal acts to the existing systems of monitoring (the Ministry of Justice of Russia, etc).

8. Organize the available information resources into a uniform information network and organize access to it for a limited number of users.

The second stage: legal experiment performance. Adjusting the legal monitoring system. (implementation period: three years)

Stage goals

1. Complete research and development work on monitoring theory in modern Russia.

2. Implement monitoring theory into the system of agencies included in the legal experiment (the Council of Federation, the Council of Legislators, individual bodies of executive power, pilot regions).

3. Spread the experience of monitoring performed in a separate constituent entity of the Russian Federation to all federal districts.

4. Ensure the systematic financing of monitoring in the Russian Federation from corresponding budget resources and other sources.

Stage enforcement efforts

1. Synthesis of first stage results.

2. Implement research and development results.

3. Research problems of monitoring theory and practice.

4. Adjust monitoring theory and practice to account for the legal experiment's current results.

5. Appraise the theoretical monitoring system organization models, and their individual elements.

6. Adopt monitoring laws in all constituent entities of the Russian Federation.

7. Adopt federal and regional subprograms providing for the continuation of the legal experiment of separate okrug monitoring (constituent entity) in the Russian Federation, in terms of expanding the legal experiment to include at least one constituent entity of the Russian Federation from each federal district into the subprogram.

8. Implement an expanded legal experiment, accumulating practical material.

9. Organize an exchange of pilot regions' experiences.

The third stage: Introduce the legal monitoring system to the entire territory of the Russian Federation (implementation period: five years)

Stage goals

1. Complete implementation of program for creating a legal monitoring system.

2. Achieve conception and program goals.

3. Provision and operation of a uniform system of legal space and legal enforcement practice monitoring in the Russian Federation, covering all of the constituent entities of the Russian Federation.

Stage enforcement efforts

1. Adjust the theory and practice of monitoring, taking the extended legal experiment's results into account.

2. Approve federal and regional programs to providing constant operation and improvement of the legal monitoring system.

3. Provide conditions for a constant exchange of legal monitoring experience between the subjects of monitoring in constituent entities of the Russian Federation.

4. Create federal and regional agencies to provide and perform constant legal monitoring.

Methodological approaches to legal monitoring performance and organization

I. General issues

1. A scientific synthesis helps define the concept of legal monitoring as a system of data observations that help analyze and appraise: 1) the results of law drafting activity (the lawmaking process); 2) the quality of normative legal acts approved by various lawmaking bodies, according to their lawmaking competence; 3) the efficiency of their practical operation and implementation (the legal enforcement process).²⁰

2. The methodology of monitoring legislative acts and legal enforcement practice represents a set of ways, methods and means for providing the rational and efficient organization of monitoring by its subjects, as they perform inventory, forecast, and appraise the efficiency and effectiveness of legislative acts and legal enforcement practice.²¹

3. The objective of legal monitoring is to provide the lawmaking entity with objective information on: the existing models regulating public relations; the global experience on developing directions of improvement to legislation regulating public relations; the time-tested and proven models for regulating public relations; the organization of joint cooperation between all branches of government, and with the bodies of local self-government; the deficiencies of national legislation regulating public relations at the present historical period; the political consequences of changes (improvements) to the current system regulating public relations.

4. The main goals of legal monitoring include: systematization of current legislation; bringing regional legislation in line with federal legislation; overcoming and filling legal loopholes and contradictions, eliminating outdated and ineffective regulations; creating a constantly operating system of feedback between the federal (regional) legislator and the legal enforcer; preparing legislative improvement proposals. The end goal of monitoring is the creation of an efficient legislative process that reflects public needs.

5. Due to the current absence of normative regulations for the performance of legal monitoring in the Russian Federation, this activity is de facto performed by the subjects of legal monitoring, which may be classified into constitutional and initiative ones.²² The first group includes: the President of the Russian Federation; the Government of the Russian Federation and federal bodies of executive power; the Federal Assembly of the Russian Federation; the Accounts Chamber of the Russian Federation; judicial power bodies; bodies of the Prosecutor General of the Russian Federation; bodies of state power in the constituent entities of the Russian Federation; bodies of local self-government; and the Commissioner for Human Rights of the Russian Federation.

The initiative subjects may include: public institutions and organizations; specialized federal and regional legal monitoring centers; advisory councils with higher bodies of state power; scientific organizations and associations; political parties, etc.

6. The types of legal monitoring are classified according to the following parameters: the subject of monitoring: state (performed by bodies of state power) and public (performed by public institutions and organizations); the level of authority of the subject of monitoring: federal (at the level of the Russian Federation), regional (at the level of constituent entities of the Russian Federation), municipal (at the level of municipal districts); time of performance: permanent (performed continuously), temporary (performed for a defined period of time), operative (performed for the urgent resolution of issues arising during the implementation of normative legal acts), targeted (performed for a specific normative legal act); based on term of validity of legislative

²⁰ This material is based on the analytical report «Legal Monitoring: conception and mechanism of implementation», prepared by the staff of the Institute of Legislation and Comparative Legal Science under the Government of the Russian Federation, whose publication is planned for 2007.

²¹ Dictionary of main terms determining the general conception of legal space and the legal enforcement monitoring, as developed by the Interdepartmental Working Group of the Council of Federation and adjusted by participants of the Second All-Russian Scientific and Practical Conference «Legal Space and Legal Enforcement Monitoring», held on June 20, 2004

²² See: S. Mironov. Theory and Practice of Monitoring the Legal Space and Legal Enforcement Practices: results and the prospects // The Bulletin of the Council of Federation. Monitoring of Law in the Russian Federation. 2006. No. 4-5. pg. 8.

acts subject to monitoring: retrospective (analysis and appraisal of previously effective normative legal acts, taking into account the positive and negative aspects of their implementation), current (analysis and appraisal of the currently operational normative legal acts), forecasting (appraising social tendencies and expediency of approving corresponding normative legal acts in the future).

The monitoring may also be expert, aimed at analyzing and appraising the social efficiency of implementing legislative acts and developing proposals for their amendment, and identifying legislative loopholes. Taking into account the proposed classification system, a specific case of legal monitoring may be characterized by several parameters at once, being, for example, of state, federal, constant, and current varieties.

The methodology involved in performing legal monitoring involves the following stages:

1. Determination and precise definition of the purpose of the legal monitoring and, accordingly, a selection of its type. The methodology of its implementation is adjusted to fit the purpose and type of legal monitoring.

2. Definition of the object of legal monitoring. Taking into account the specific definition of its purpose, the object of legal monitoring may either be a normative legal act or its structural part; separate articles of a normative legal act; a package of normative legal acts regulating a specific sphere of public relations; or relations associated with the implementation of normative legal acts.

At this stage, it is important to generate the entire normative massif relating to the selected object of legal monitoring, including bylaws and departmental acts, as well as the normative legal acts of the constituent entities of the Russian Federation.

Of great importance is information concerning legal enforcement practice (including statistical information) in the area determined as the subject of legal monitoring, and also the sociological information gathered from the results of sociological research, both illustrating public opinion and the levels of legal awareness.

The main bodies of information collected and analyzed during the performance of legal monitoring, are: statistical, sociological, sector-related and legal.

3. Determination of the range of subjects of legal monitoring, their jurisdiction to, and responsibilities during, the performance of legal monitoring; determination of the range of individuals responsible for its performance.

4. Development of a program and plan for legal monitoring performance.

5. Monitoring supervision, analysis and appraisal.

Observation is an involved analysis of what is of interest and may be directly perceived. Information received from these observations is classified separately.

Analysis of observation data involves detailed study of what the observations discovered. An attorney will analyze the legislative act from the legal point of view, the linguist — from the linguistic, the sociologist — from the sociological standpoint, etc. The main requirements in analytical work are: objectivity, absence of bias, impartiality, professional accuracy, and depth of understanding.

The monitoring appraisal of these observations and analysis is comprehensive in nature and presents a full picture of the received data's quality and importance. Synthesis always follows analysis, leading to new knowledge about the object under observation and opening the way to certain forecasts.

At this stage, it is important to perform an «inventory» of federal and (or) regional legislation depending on the selected subject of legal monitoring. The conclusion of legal monitoring includes the preparation of a report on the results of its performance. This document should contain proposals on improving legislation, the grounds for amending current legislation and appraisals of the need to approve new normative legal acts; the grounds for changing the authority exercised by state and municipal bodies of power, as well as officials. The principle of open-

ness should apply to legal monitoring results, which should be openly publishing then and made available to the general public.

An analysis of foreign states' experience in the sphere of legal monitoring performance helps classify ways to organize the latter into centralized, decentralized and mixed types. In the first case, appraisal of a country's legislative efficiency is performed by a specially authorized body, organization or state structure. In the second, legal monitoring is not someone's specific prerogative, and any concerned subject (state bodies and departments, scientific organizations, specialized institutes, etc) is entitled to perform this activity, within defined frameworks and on their own initiative. A mixed organization of legal monitoring assumes that responsibility for conducting legal monitoring is assigned to certain subjects (bodies of state power, institutions, organizations, etc) on a permanent basis, with monitoring also potentially performed by other bodies, institutions or commissions at the request of the above-mentioned bodies, or within the frameworks of their own competence to do so.

In Russia's case, we believe it expedient to analyze several types of legal monitoring organization. The decentralized method of legal monitoring organization is considered inexpedient because it appears to be an extremely inconvenient way for presenting a general, uniform characterization to the state of legislation; this method also fails to provide assurances that a department's own interests will not affect how legal monitoring is performed. The results of a decentralized method of organizing the legal monitoring system may, at best, have a positive influence on individual institutions and sectors of legislation, and not on the system as a whole.

For a centralized type of legal monitoring, it a Federal Center of Legal Monitoring may be proposed with local branches in the constituent entities of the Russian Federation. There powers may include the performance of certain monitoring activities, including conceptual and methodological framework development and proposals on legislative improvements to areas under study.

We believe the best option is to organize the legal monitoring system into a mixed type. It would grant the Federal Center of Legal Monitoring the exclusive function of developing the conceptual and methodological grounds for legal monitoring work, and of coordinating its performance by the previously mentioned constitutional and initiative subjects of monitoring.

In this form of legal monitoring organization, the Federal Center of Monitoring is responsible for joining the efforts of state bodies, bodies of local self-government, scientific organizations, public associations and other civil society structures into a single organizational and conceptual entity responsible for resolving such tasks as: creating an integrated system of scientific support for legislative and legal enforcement activities in the Russian Federation; organizing a system of state quality control, and the efficiency of lawmaking and enforcement activities.

The legal basis for performing and organizing legal monitoring should be the federal laws «On Normative Legal Acts of the Russian Federation», «On the Procedure for Adopting Federal Constitutional Laws and Federal Laws», and also the corresponding decree of the President of the Russian Federation or resolution of the Government of the Russian Federation. The structure of the first federal law mentioned should be appended with a separate chapter on the «Monitoring of Normative Legal Acts», whose articles should identify such normative legal monitoring frameworks as: the conception, types, purposes, principles, subjects and objects of monitoring. Individual (special) issues of legal monitoring may be a subject of regulation for the second federal laws mentioned, while the direct organization of legal monitoring and its performance procedure may be determined at the level of bylaws of corresponding normative legal acts of the President of the Russian Federation or the Government of the Russian Federation.

Financing the organization and performance of legal monitoring in the Russian Federation may be performed with budget funds allocated to support the state administration, using municipal resources, through self-financing with the help of the Federal Center of Legal Monitoring, or through mixed types of financing: from both budget and non-state sources of financing.

In order to perform its functions, the Federal Center of Legal Monitoring should be granted the status of an independent non-governmental organization. For the center's incorporation purposes, it is necessary to select one of the forms stipulated by the Federal Law «On Non-Governmental Organizations», which allows for state budget resources to be used for building the center's material and financial base. Support may also be sought from domestic businesses that interested in legal reforms and the consolidation of legal principles and rules of behavior in the country, equal for all subjects of economic and political activity. The creation of a Federal Center of Legal Monitoring as a noncommercial organization follows in line with a policy of developing structures of civil society that are focused on the intensification of interaction between society and the state.

In the course of 2006, the Council of Federation completed work on accepting into its organization a new publication, the Legal Monitoring in the Russian Federation magazine. This magazine is planned for national publication. The State Duma of the Federal Assembly of the Russian Federation, the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, the Chamber of Commerce and Industry of the Russian Federation, other bodies of power of the Russian Federation, and also the Council of Legislators uniting the legislative bodies of power of the constituent entities of the Russian Federation, have agreed to act as magazine co-founders. It is envisioned that this publication will serve as the organizational and legal, scientific and practical, as well as the creative focus of a legal monitoring center.

The 2005 report, within the framework of discussion on specific mechanisms for performing legislative and legal enforcement monitoring, attempted to suggest the model of «a file of a law» as one of such instrument. Since that time, the idea of «a file of a law» was developed in various ways and applied by various state and public institutions, and information-reference systems.

3.3. Prospects of improving legislation and legal enforcement

The quick pace of events, and acceleration in the rate of in social life development, complicate the performance of all types of state power activities, including legislative ones. The burden on the State Duma and the Council of Federation of the Federal Assembly of the Russian Federation is enormous. In 2006, 1,109 draft laws awaited State Duma consideration, 277 of which were approved. In all in 2006, 73 new laws, 12 budget and 195 amendment laws were approved. These comprise 70 percent of all approved laws.

Calculations show that only an insignificant number of laws are aimed at regulating relations demanding immediate attention from the legislator, and that two-thirds of the laws approved by the State Duma consisted on removing prior claims on these types of «products». There were cases when changes were being approved to laws that had not yet come into force. It is these factors that force us to address the issues of methodology and legislative (legal) technique during the preparation of draft laws, and in their approval.²³

In the legal doctrine, in the theory of law, methodology has rarely been singled out as a separate subject, or better put, it has not received its due attention. But this aspect is of great importance for conducting monitoring and appraising the state of legislation. It appears that methodology, in this case, has at least two aspects. The first concerns the development of rules and principles of work with a draft law, or the law itself. In this part, attorneys' efforts have been unsuccessful until now, since no law on preparing drafts of normative legal acts, including laws, has been approved. Certainly, there are regulations in each chamber of the Federal Assembly that contain certain requirements on preparing and approving normative acts. But these are not enough.

²³ This paragraph was prepared using materials provided by the law information departments of the Institute of the State and the Law of the Russian Academy of Sciences.