

КОНСТИТУЦІЙНЕ ТА АДМІНІСТРАТИВНЕ ПРАВО

UDC 342.6

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LEGAL AND ORGANISATIONAL SPECIFICS OF EXECUTIVE AUTHORITY LAW-MAKING PLANNING ABROAD (THE CASE STUDY OF THE SOCIALIST REPUBLIC OF VIETNAM)

This article analyses the laws of the Socialistic Republic of Vietnam in the context of defining the specifics of the involvement of public administration bodies (namely, the central executive authorities) in the process of public law-making planning in general and departmental law-making planning in particular. It contains positive aspects of foreign experience, which should be realised in the Ukrainian law-making process.

Key words: law-making process, public administration bodies, central executive authorities, law-making planning.

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Правовые и организационные особенности планирования законотворческой деятельности органов исполнительной власти за рубежом (на примере Социалистической Республики Вьетнам)

В статье приведен анализ законодательства Социалистической Республики Вьетнам в контексте определения специфики участия органов публичной администрации (а именно, центральных органов исполнительной власти) в процессе планирования государственного законотворчества в целом и ведомственного законотворческого планирования в частности. Указаны положительные черты зарубежного опыта, заслуживающие внимания при внедрении в украинское законотворчество.

Ключевые слова: законотворческий процесс, органы публичной администрации, центральные органы исполнительной власти, законотворческое планирование.

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Правові та організаційні особливості планування законотворчої діяльності органів виконавчої влади за кордоном (на прикладі Соціалістичної Республіки В'єтнам)

У статті наведений аналіз законодавства Соціалістичної Республіки В'єтнам в контексті визначення специфіки участі органів публічної адміністрації (а саме, центральних органів виконавчої влади) в процесі планування державної законотворчості загалом, та відомчого законотворчого планування зокрема. Вказані позитивні риси зарубіжного досвіду, що заслуговують уваги та втілення в українську законотворчість.

Ключові слова: законотворчий процес, органи публічної адміністрації, центральні органи виконавчої влади, законотворче планування.

Problem definition. Law-making is a vital component of the state activities aiming at creating and improving the single and internally harmonised

system of legislative standards, which govern relationship in society and public administration. It is historically proven that it is possible to create legis-

lative framework for implementing state policy, which is approved by society and promotes social relationship development in various areas, provided that the true representative body of the legislative power functions, the legislative and executive branches of power actively cooperate with each other in the sphere of law-making, and appropriate legal mechanisms are available. Research into the theory and methodology of law-making process is underpinned by the need in creating mechanisms, which can contribute to drawing up and adopting socially adequate decisions in the sphere of legislative regulation of state policy. In its turn, in the context of improvement of Ukrainian law-making principles and approaches, it is impossible to create the effective system of such activities (at all levels) unless current law-making practice of authorised bodies abroad is deeply analysed.

Analysis of recent research and publications.

Scientists in general theory of law and sectoral legal sciences pay significant attention to law-making issues in Ukraine. The most valuable and fundamental works have been written by the following authors: V. S. Holubovska, V. P. Kryzhanovskiy, O. I. Yushchuk, V. F. Pohorylko, V. N. Shapoval, A. O. Tkachenko, S. V. Soroka, Z. A. Pohorelova, V. O. Zaichuk and others.

Formulation of objectives of the article.

Therefore, it is reasonable to analyse the legal and organisational specifics of general public procedure of law-making by public administration bodies in the Socialist Republic of Vietnam. And determining positive experience to be realised in the Ukrainian law-making process should be the principal outcome of this research.

Direct materials. The general legal doctrine of the Socialist Republic of Vietnam (hereinafter referred to as «Vietnam») considers law-making planning to be the competency of appropriate public authorities, civil organisations, as well as, when possible, individual parties to prepare and adopt plans with the titles of draft laws, which should be created, the names of chief implementors and co-implementors, terms for appropriate bodies and organisations to consider the draft laws, terms for the draft laws to be submitted to the parliament and other evidence. Law-making planning for the Vietnamese central executive authorities includes for-

ulating state policy, determining its priorities, and setting tasks for yourself and the bodies of the Vietnamese central executive authorities. Preparing the law-making plan for the National Assembly (hereinafter referred to as «the law-making plan») is the first stage of the involvement of the Vietnamese central executive authorities in the law-making process. The Vietnamese 2008 law states that the law-making plan includes the annual plan and the plan for the entire term of the National Assembly (5 years) [1].

In accordance with the effective Vietnamese laws, the ministerial agencies and Government agencies (hereinafter referred to as «the authorised initiative agencies») prepare and send draft law proposals to the Ministry of Justice, which the latter includes in the Government's law-making plan draft proposal. When preparing the law-making plan, the Government's plan proposal is based on the announcement of the Standing Committee on the suggested law-making plan (art. 8) [2]. It is worth noting that bodies, organisations and individual parties may send their draft law proposals to appropriate ministerial agencies or, if it is impossible to define a competent ministerial agency, to the Ministry of Justice in writing or via their official web-sites. It is the Vietnamese Ministry of Justice that is responsible for redirecting the proposals received to the appropriate ministerial agencies.

The legal departments of the ministerial agencies and the Government agencies collect and analyse the proposals provided by their units as well as bodies, organisations and individual parties.

Such public administration bodies as the Vietnamese Ministry of Finance and the Ministry of Internal Affairs have a very responsible role in the law-making process. So, the authorised initiative agencies must send the consolidated draft law proposals to the Vietnamese Ministry of Finance so it can estimate the rationality of the financial resources suggested, and to the Vietnamese Ministry of Internal Affairs so it can estimate the rationality of the human resources suggested (par. 3 art. 8) [3]. The legal departments of the authorised initiative agencies in coordination with their units finalize the consolidated proposals, which are then presented to the heads of the appropriate authorities for consideration and adoption.

The appropriate authorised initiative agencies send the consolidated draft law proposals for the entire term of the National Assembly or annual consolidated draft law proposals (including explanations to the draft law proposals; reports on preliminary estimation of draft law effects; detailed draft law theses; public hearing of bodies, organisations and individual parties; the Ministry of Finance opinion on the rationality of the financial resources suggested; the Ministry of Internal Affairs opinion on the rationality of the human resources suggested) to the Ministry of Justice and the latter collects and presents them to the Government (art. 2) [3]. The law stipulates that within three business days upon the receipt of all necessary documents, the Ministry of Justice must post the consolidated proposals on the official web-sites of the Ministry of Justice and the Government for at least 20 days to get public opinion (par. 2 art. 6) [3]. The Ministry of Justice may create the Advisory Council to assist the first in considering the consolidated proposals of the ministerial and Government agencies. Based on the consolidated proposals of the authorised initiative agencies, the results of Advisory Council assessments, and the opinions of bodies, organisations, and individual parties, the Ministry of Justice decides whether these proposals should be included in the Government's draft law-making plan proposal. This draft proposal must be posted on the web-sites of the Ministry of Justice and the Government for at least 20 days to get public opinion. Based on the latter (if available), the Ministry of Justice finalizes the draft proposal and submits it to the Government (art. 8) [3].

The Government must express its opinion on the proposals of other law-making initiative agencies, which have been sent to the Government for consideration, before they are submitted to the Standing Committee to be included in the law-making plan (par. 2 art. 23 and par. 2 art. 24) [1]. The Office of the Government is responsible for accepting and redirecting the proposals of the law-making initiative agencies to the Ministry of Justice, which is responsible for exploring and preparing the opinion of the Vietnamese Government on these proposals. The Ministry of Justice delivers the report to the Prime Minister and then the Minister of Justice – as instructed by the Prime Minister and on behalf of

the Government – presents the governmental opinion on the proposals to the Standing Committee (art. 55) [3].

The Vietnamese 2008 Law states that the Government's law-making plan proposal must contain the characteristics of each draft law and the grounds for adopting these draft laws; the subject and area of the law regulation; the essential ideology, policy and general content of the draft law; the human resources suggested and conditions of the assurance of draft law development; the report on preliminary assessment of the draft law effects; the suggested term for submitting it to the National Assembly for consideration and adoption. The Government's law-making plan proposal is considered and adopted at the meeting of the Government as follows: the representative of the Ministry of Justice presents the draft proposal; the representatives of bodies and organisations invited to the meeting express their opinions; the Government discusses and votes on the proposal (art. 23) [1]. Based on the results of the meeting, the Ministry of Justice upon agreement with the Office of the Government improves the Government's law-making plan proposal. The appropriate authorised initiative agencies also improve their consolidated draft law proposals. The Minister of Justice as instructed by the Prime Minister and on behalf of the Government reports the Standing Committee on the Government's proposal (art. 10) [1].

The next stage of the law-making process is as follows: after the chief implementator (the Committee on Laws) and implementators (the Nationality Council, the National Assembly's interested committees) have carried out the examination and have provided its results to the National Assembly, the Government's law-making plan proposal is considered and included by the Standing Committee in the National Assembly's draft law-making plan where the Minister of Justice acting as the representative of the Government is involved (art. 24-26) [1]. The Minister of Justice presents the Government's law-making plan proposal and answers questions, which may arise at the meeting of the Standing Committee.

The participation of the members of the Government who are not the members of the National Assembly in the sessions of the latter is another

specific aspect of the law-making process in Vietnam. They are invited to attend the sessions and must participate in the plenary meetings when issues, which are related to various sectors and areas of activities managed by the appropriate members of the Government, are discussed; to express, when required or agreed by the National Assembly, their opinions on the areas of activities managed by them (article 12 of the Internal Regulations of the National Assembly [4]; article 38 of the Vietnamese Law on Organisation of the Government [1]). From our perspective, such form of the Governmental involvement positively influences the efficiency of this process and the quality of the documents adopted.

In accordance with article 27 of the Vietnamese 2008 Law, at the session of the National Assembly, after all relevant issues have been discussed and the National Assembly's opinion on the draft law-making plan, including the Government's law-making plan proposal, has been made, the Ministry of Justice, the co-implementor, jointly with the Committee on Laws, the chief implementor, assists the Standing Committee in researching into and revising the National Assembly's draft resolution on the law-making plan and in preparing the Standing Committee's expository report on amendments to this draft resolution [1].

After the resolution on the law-making plan has been adopted by the National Assembly, the Standing Committee organises implementation of the plan, including appointment of persons or entities in charge for submitting certain draft laws to the National Assembly, preparation of the law drafting schedule and other supportive measures (article 28 [1]; article 12 [4]).

Based on the respective Standing Committee's order, the Ministry of Justice must: 1) upon agreement with the Office of the Government make and provide the Government with the plan for implementing the National Assembly's law-making plan; offer chief drafters and co-drafters of the respective governmental draft laws, approximate dates for submitting these draft laws to the Government, and dates for submitting these draft laws to the Standing Committee; 2) assist the Government in ensuring proper development of these draft laws.

Therefore, the analyses of the law-making mechanisms in Vietnam allowed identifying specifics of the organisation and preparation of the Government and other central executive authority law-making plan, namely:

the law-making in the Vietnamese Government is realised in accordance with the Government Law-Making Plan with a distinctive development and adoption procedure (the draft Government law-making plan must be, first, examined by the Committee on Laws with the Nationality Committee's representatives and/or the National Assembly's interested committees as its key experts; second, preliminary considered by the Standing Committee; and adopted by the National Assembly);

the Vietnamese Government significantly influences the law-making initiative agencies and their involvement in developing certain draft laws that facilitates the law-making process, including its early stages;

the determination of a date when the Government submit the draft law to the parliament is dependent. The Government has also no right to independently exclude draft laws from the Annual Law-Making Plan and the Law-Making Plan for the entire term of the National Assembly or change the date of submission thereof. Meanwhile, the Government is authorised to submit appropriate offers to the Standing Committee for consideration and presentation to the National Assembly. With regard to draft laws, which are not included in law-making plans, the Vietnamese Government may independently develop and initially submit them only to the Committee of Laws for examination and to the Standing Committee for amending the respective law-making plans. These plans with additional draft laws are provided to the National Assembly for consideration and adoption. After the National Assembly has agreed to include these draft laws in the respective law-making plans, they may be submitted to the National Assembly;

a special institute of interdepartmental interaction representatives ensures that the central executive authorities participate in the law-making process. In accordance with resolution of the Vietnamese Government No. 96/NQ-CP on the Government's Meeting in July 2013 dated 7 August 2013 [5], the Vietnamese Government requires that each

ministerial body appoint a representative, who will be directly responsible for the regulatory act plan (with draft laws included therein). Meanwhile, it is worth noting that the resolution of the Government's meeting is an enabling act rather than a regulatory act;

Vietnam has an advisory body that is involved in developing the law-making plan. Such a body known as the Advisory Council is created on the basis of the resolution of the Minister of Justice to assist him in assessing the law-making offers of the ministerial agencies. It consists of: the representative of the management board of the Ministry of Justice (the Chairman of the Council), experts and scientists who have knowledge and skills in the sphere related to the suggested draft laws. It is worth noting that the mechanism of work and the quantity of the members of the Advisory Council are not clearly defined, and its results are of advisory nature;

special attention should be paid to how public opinion is collected and heard when making draft law offers. Resolution of the Vietnamese Government No. 24/2009/NĐ-CP [3] stipulates that the draft law proposals addressed by bodies, organisations, and individual parties to the ministerial agencies are one of the bases for the latter to make their proposals, which are provided to the Vietnamese Ministry of Justice to be included in the Government's draft law-making plan proposal. The Proposals of the ministerial and Government agencies as well as the Government's draft law-making plan proposal must be posted on the web-sites of the ministerial agencies, the Government agencies, the Ministry of Justice and the Government respectively for at least 20 days to get public opinion. Therefore, the public opinion is taken into account at the stage when the draft law-making plan is being prepared. However, there is no public opinion feedback mechanism that affects the involvement of public in the central executive authority law-making planning;

the Vietnamese laws allow, when required, the Government to make changes to its law-making plan. Article 12 of resolution of the Government No. 24/2009/NĐ-CP [3] stipulates for 4 certain case groups and general procedure, based on which chief drafters – the ministries or departments – may initi-

ate changes to the Government Law-Making Plan. Based on the proposals of the chief drafters and the opinion of the Ministry of Justice, the Prime Minister makes a decision on changes to the Government Law-Making Plan and addresses the decision to the Standing Committee and the National Assembly for consideration and adoption;

the Ministry of Justice takes special place among the ministries and departments, which appear to be law-making planning entities in Vietnam. In addition to its involvement in law-making planning in its area of activity (where any ministry or department is engaged), the Ministry of Justice is also authorised to: 1) develop and provide the Government with the draft Government law-making plans as instructed by the latter; 2) coordinate the work of the ministries and departments with regard to the preparation of the proposals on the draft Government law-making plans; 3) control how the chief implementors implement the Government Law-Making Plan, and submit quarter reports thereon to the Government;

being involved in the preparation of the Government Law-Making Plan, the ministries and departments also have their own law-making plans. In Vietnam, departmental law-making plans are based on the Government Law-Making Plan;

responsibility for the preparation and implementation of the law-making plans is formal. Though the law-making obligations of the ministerial agencies and their heads are determined by regulatory acts, no responsibility for the preparation and implementation of the law-making plans is defined.

Conclusions. Summarizing this research, we may state as follows. In Vietnam, the involvement of the central executive authorities in the law-making process allows meeting such challenges: to determine the subject of legislative regulation and prove that issues must be settled through legislation; to prioritize tasks handled de jure, and respective measures to be taken; to classify tasks and create law packages, which ensure that the tasks are fulfilled; and to optimize the law-making process. In addition, it is evident that the entire law-making planning process depends on the Vietnamese Government as it estimates the proposals from other law-making initiative agencies before they are included in the draft Law-Making Plan, and these

proposals must take into account its opinion. In the framework of the state mechanism, it is the Government who knows better than any other state authorities how legislation enhances its policy and which changes to laws are required nowadays.

Meanwhile, it is worth stressing that the detailed law-making regulation does not solve all law-making problems, especially, significant bureaucratization in the law-making process and lobbying of department interests. However, serious planning intentions may reduce the number of accidental and ill-conceived acts adopted in the context of case and political expediency.

When comparing it with the Ukrainian law-making mechanism in general, it appears that Ukraine does not clearly regulate the planning process, and the law-making plans of the Cabinet of Ministers of Ukraine are not aligned with the plans of other law-making agencies, including the central executive authorities. Therefore, the Ukrainian parliament influences the law-making initiative agencies less than the Vietnamese National Assembly influences its agencies. The only advantage in Ukraine is that documents supporting a draft law include documents, which ensure its implementation (including cost estimates) and adaptation to the national system of law.

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