

THE NEW LAWS IN THE ORDER OF FORMATION OF THE FEDERATION COUNCIL OF THE FEDERAL ASSEMBLY OF THE RUSSIAN FEDERATION

AUTHORSHIP

Gyulnaz Eldarovna Adygezalova 

Kuban State University, Krasnodar, Russia.

ORCID: <https://orcid.org/0000-0003-3682-2121>

E-mail: gyulnaz_2000@mail.ru

Olga Andreevna Kovtun 

Kuban State University, Krasnodar, Russia.

ORCID: <https://orcid.org/0000-0002-7557-5656>

E-mail: olga.a.kovtun@bk.ru

Natalia Dmitrievna Tereshchenko 

Kuban State University, Krasnodar, Russia.

ORCID: <https://orcid.org/0000-0002-7009-9136>

E-mail: nataliya.d.tereshchenko@mail.ru

Ruslan Mukharbekovich Dzidzoev 

Kuban State University, Krasnodar, Russia.

ORCID: <https://orcid.org/0000-0002-1627-4511>

E-mail: rdzidzoyev@list.ru

Irina Valerievna Shapiro 

Kuban State University, Krasnodar, Russia.

ORCID: <https://orcid.org/0000-0001-7750-0140>

E-mail: irina.v.shapiro@mail.ru

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House is becoming more relevant in connection with the implementation of state and legal reforms in Russia, which are designed to optimize the existing system of law, the state apparatus, and also contribute to the real implementation of human and civil rights and freedoms.

METHODS

This study was conducted using general scientific and special research methods. First of all, these are logical methods of analysis and synthesis, induction, and deduction. A comparative method was used to study the evolution of the formation of the Upper House of the Russian Parliament. The sociological method and the method of system analysis were also used. The method of analyzing legal documents made it possible to conclude that there was a phased legislative regulation of the procedure for the formation of the Federation Council of the Federal Assembly of the Russian Federation in the conditions of building a modern democratic federal rule of law state with a republican form of government.

RESULTS

The results of the study included the following:

- 1) The main stages of the formation of the Upper House of the Parliament of the Russian Federation have been analyzed.
- 2) Several new aspects of the constitutional and legal status of the Federation Council due to the constitutional reform in Russia have been identified.
- 3) It has been concluded that the status of senators has been expanded to strengthen the interaction of federal and regional government bodies: having retained the status of representatives from a constituent entity of the Russian Federation for senators – representatives of regional government bodies, constitutional legislation

granted senators, appointed by the President of the Russian Federation, the status of representatives of the Russian Federation.

The study of the requirements for senators allows noting that special qualifications are established for certain categories of senators along with the general qualifications.

DISCUSSION

A special place among the representative bodies of state power is occupied by the Federal Assembly – the Parliament of the Russian Federation. According to its structure, the Russian Parliament is a bicameral body, the Upper House of which – the Federation Council, due to the federal nature of the state, is designed to represent the interests of the population of the subjects of the Russian Federation. Following the Constitution of the Russian Federation of 1993, the main functional purpose of the Federation Council is to reflect the positions and interests of the subjects of the Federation at the federal level of state power (MAKLAKOV, 2001).

The Constitution of the Russian Federation, as amended in 1993, stipulates that the Council of the Federation includes two representatives from each subject of the Russian Federation: one from the legislative and one from the executive body of state authority (Article 95). Since the constitutional norms establish a specific procedure, several models of the formation of the Upper House of the Federal Parliament have been implemented: since 1993 – by direct election by the population (DECREE OF THE PRESIDENT OF THE RUSSIAN FEDERATION, 1993); since 1995 – by the representation of the heads of the legislative and executive bodies of state power of the subjects of the Russian Federation (FEDERAL LAW OF THE RUSSIAN FEDERATION, 1995); since 2000 – by election (appointment) of a representative from the legislative and executive bodies of state power of the subject of the Russian Federation (FEDERAL LAW OF THE RUSSIAN FEDERATION, 2000); since 2012 – by election (appointment) of a representative from the legislative and executive bodies of state power of the subject of the Russian Federation based on the will of voters (FEDERAL LAW OF THE RUSSIAN FEDERATION, 2012).

During the period of validity of the normative legal acts on the formation of the Upper House of the Federal Assembly, the qualifications required for candidates to the Federation Council, the terms of decision-making by the state authorities of the subject of the Russian Federation on the appointment (election) of candidates, and the terms from which a member of the Federation Council began to exercise its powers had been changing. A significant step that has changed the procedure for forming the Federation Council was the Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation of March 14, 2020, No. 1-FKZ "On improving the regulation of certain aspects of the organisation and functioning of public authority" (FEDERAL LAW OF THE RUSSIAN FEDERATION No. 1-FKZ, 2020) and the Federal Law of December 22, 2020, No. 439-FZ "On the procedure for forming the Federation Council of the Federal Assembly of the Russian Federation" (FEDERAL LAW OF THE RUSSIAN FEDERATION No. 439-FZ, 2020).

The Law of the Russian Federation on the amendment to Article 95 of the Constitution of the Russian Federation introduced a new concept – senators of the Russian Federation. Therewith, in connection with the complicated procedure for revising the Constitution of the Russian Federation, along with the senators of the Russian Federation, the term member of the Federation Council is retained (Article 134, 135, Chapter 9 of the Constitution of the Russian Federation). According to the amendments to the Constitution of the Russian Federation, the Federation Council, in addition to representatives from the legislative and executive bodies of state power, includes the President of the Russian Federation, who has terminated their powers due to the expiration of their term in office or prematurely in the event of their resignation – for life, while they have the right to refuse the powers of a senator of the Russian Federation, as well as no more than 30 representatives of the Russian Federation appointed by the President of the Russian Federation, of which no more than seven can be appointed for life.

The President of the Russian Federation is empowered to form the Upper House of the Federal Parliament due to the status and functions of the head of state, their appointment to maintain civil peace and harmony in the country, to ensure the coordinated functioning and interaction of bodies that are part of a single system of public power.

The establishment of a new order of formation of the Upper House of the Federal Parliament simultaneously expanded the status of senators. According to the Federal Law "On the Status of a Member of the Federation Council and the Status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation" dated May 8, 1994, No. 3-FZ (FEDERAL LAW OF THE RUSSIAN FEDERATION, 1994), a member of the Federation Council was defined as a representative from a subject of the Russian Federation. The Constitution of the Russian Federation and the new version of this Federal Law (FEDERAL LAW OF THE RUSSIAN FEDERATION No. 440-FZ, 2020), having retained the status of representatives of regional state authorities for senators – representatives of the subject of the Russian Federation, gave senators, appointed by the President of the Russian Federation, the status of representatives of the Russian Federation. It seems that the established procedure for the formation of the Federation Council is aimed at strengthening the interaction of federal and regional state authorities, a harmonious combination of national and regional interests.

The representatives of the Russian Federation, who exercise the powers of senators of the Russian Federation for life, may be appointed citizens who have outstanding services to the country in the field of state and public activities. The question of the criteria for determining whether a citizen has outstanding services to the country in the field of state and public activities requires specification. Having retained the qualifications established by previous laws on the procedure for forming the Upper House of the Federal Parliament concerning age, Russian citizenship, the requirement to reside in the territory of a constituent entity of the Russian Federation, and whether a candidate has moral and ethical qualities, Federal Law No. 439-FZ of December 22, 2020 "On the Procedure for Forming the Federation Council of the Federal Assembly of the Russian Federation" specified and supplemented certain provisions.

In particular, the list of candidates for granting the powers of a senator of the Russian Federation – a representative from a subject of the Russian Federation, who are not subject to the requirements for permanent residence of the candidate in the territory of the subject of the Russian Federation, has been expanded. These are persons who fill the position of the federal state civil service and have a class rank corresponding to the military rank of General of the Army, Admiral of the Fleet, Colonel General, Admiral; serve or served in the troops of the National Guard of the Russian Federation on the territory of this subject of the Russian Federation.

At the constitutional level, there are prohibitions concerning the presence of a senator of the Russian Federation of citizenship (nationality) of a foreign state or a residence permit or other document confirming the right to permanent residence in the territory of a foreign state, the presence of accounts (deposits), the storage of cash and valuables in foreign banks located outside the territory of the Russian Federation. The prohibitions to have the citizenship of a foreign state, to permanently reside in the territory of a foreign state were transferred by the Federal Law of 2020 from the rank of legal restrictions to the category of qualifications imposed on candidates for the post of senator.

It has also been clarified that a candidate for the empowerment of a senator of the Russian Federation, who is not prohibited from opening and having accounts (deposits), storing cash and valuables in foreign banks located outside the territory of the Russian Federation, owning and (or) using foreign financial instruments, must close such accounts (deposits), stop such storage of cash and valuables and (or) alienate such financial instruments: prior to the registration by the electoral commission of a constituent entity of the Russian Federation of the corresponding candidate for the position of the highest official of the constituent entity of the Russian Federation (head of the supreme executive body of state power of the constituent entity of the Russian Federation) either before the legislative body of state power of the constituent entity of the Russian Federation considers the appropriate candidate; before the submission of a written application by the President of the Russian Federation, who has terminated the exercise of their powers; until the day of entry into force of the decree of the President of the Russian Federation on the appointment of a senator of the Russian Federation – a representative of the Russian Federation.

The Federal Law of 2020 established the legal mechanism of the procedure for appointing senators of the Russian Federation. The procedure for electing a representative from the

legislative and executive bodies of state power of the subject of the Russian Federation remained the same. The President of the Russian Federation, who has terminated the exercise of their powers and made a decision on the exercise of the powers of a senator of the Russian Federation, submits to the Federation Council a written statement confirming such a decision, and such an application can be submitted only once.

In our opinion, the procedure for appointing senators of the Russian Federation by presidential decree requires legislative consolidation. The powers of a senator of the Russian Federation – a representative from a constituent entity of the Russian Federation, begin and end in the same way as was provided for earlier by the legislator – from the date of entry into force of the decision of the relevant state authority of the constituent entity of the Russian Federation to grant them the powers of a senator of the Russian Federation, and terminate from the date of entry into force of the decision of the relevant state authority of the constituent entity of the Russian Federation to grant the powers of a new senator of the Russian Federation – a representative from this authority.

The exercise of the powers of a senator of the Russian Federation by the President of the Russian Federation who has terminated the exercise of their powers begins on the day of receipt of a written application to the Federation Council for a decision on the exercise of the powers of a senator of the Russian Federation and is terminated upon the relevant application. The powers of the senator of the Russian Federation – the representative of the Russian Federation appointed by the decree of the President of the Russian Federation, begin from the date of entry into force of this decree. The powers of a senator of the Russian Federation, a representative of the Russian Federation, appointed by the President of the Russian Federation for life terminate upon a corresponding application, and the powers of a senator of the Russian Federation, a representative of the Russian Federation, appointed by a decree of the President of the Russian Federation, terminate upon the expiration of six years from the date of entry into force of this decree.

CONCLUSION

The analysis of the constitutional and legal regulation of the formation of the Upper House of the Federal Parliament of the Russian Federation allows concluding that the search for an optimal model is difficult. The current order reflects the socio-political realities, corresponds to the foundations of the constitutional system, and allows for a more complete reflection of the constitutional foundations of democracy, popular representation, and the principles of parliamentarism. Therewith, numerous changes in the legislation under study indicate that the question of the procedure for forming the Federation Council, as the Upper House of the Russian parliament, continues to be controversial and debatable, as we have noted in the scientific literature (KOVTON, TERESHCHENKO, 2016).

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The new laws in the order of formation of the federation council of the federal assembly of the Russian Federation

As novas leis na ordem de formação do conselho da federação da assembleia federal da Federação Russa

Las nuevas leyes en el orden de formación del consejo de la federación de la asamblea federal de la Federación Rusa

Resumo

O objetivo deste trabalho é estudar as bases constitucionais e legais para a formação da Câmara Alta do Parlamento Federal em relação à aprovação da Lei da Federação Russa sobre a Emenda à Constituição da Federação Russa de 14 de março de 2020, nº 1-FKZ "Sobre a melhoria do Regulamento de Certos Aspectos da Organização e funcionamento da Autoridade Pública". Assim, o método de análise de documentos legais permitiu concluir a gradual consolidação legal da ordem de formação do Conselho da Federação da Assembleia Federal da Federação Russa nas condições de construção de um Estado democrático legal. Tendo estudado os aspectos teóricos e legais da formação do Conselho da Federação, os autores observam que a ordem atual reflete as realidades sociopolíticas, corresponde aos fundamentos do sistema constitucional e permite uma reflexão mais completa dos fundamentos constitucionais da democracia, da representação popular e dos princípios do parlamentarismo.

Palavras-chave: Câmara Alta da Assembleia Federal da Federação Russa. Novo modelo de formação. Senador. Requisitos. Restrições.

Abstract

The purpose of this work is to study the constitutional and legal basis for the formation of the Upper House of the Federal Parliament in connection with the adoption of the Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation of March 14, 2020, No. 1-FKZ "On Improving the Regulation of Certain Aspects of the Organisation and Functioning of Public Authority". Thus, the method of analyzing legal documents allowed concluding the gradual legal consolidation of the order of formation of the Federation Council of the Federal Assembly of the Russian Federation in the conditions of building a legal democratic state. Having studied the theoretical and legal aspects of the formation of the Federation Council, the authors note that the current order reflects the socio-political realities, corresponds to the foundations of the constitutional system, and allows for a more complete reflection of the constitutional foundations of democracy, popular representation, and the principles of parliamentarism.

Keywords: Upper House of the Federal Assembly of the Russian Federation. New model of formation. Senator. requirements. Restrictions.

Resumen

El propósito de este trabajo es estudiar la base constitucional y legal para la formación de la Cámara Alta del Parlamento Federal en relación con la aprobación de la Ley de la Federación de Rusia sobre la Enmienda a la Constitución de la Federación de Rusia de 14 de marzo de 2020, No. 1-FKZ "Sobre la mejora de la regulación de ciertos aspectos de la organización y el funcionamiento de la autoridad pública". Así, el método de análisis de documentos legales permitió concluir la consolidación jurídica gradual del orden de formación del Consejo de la Federación de la Asamblea Federal de la Federación de Rusia en las condiciones de construcción de un estado democrático legal. Habiendo estudiado los aspectos teóricos y jurídicos de la formación del Consejo de la Federación, los autores señalan que el orden actual refleja las realidades sociopolíticas, corresponde a los fundamentos del sistema constitucional y permite un reflejo más completo de los fundamentos constitucionales de la democracia, la representación popular y los principios del parlamentarismo.

Palabras-clave: Cámara alta de la Asamblea Federal de la Federación Rusa. Nuevo modelo de formación. Senador. Requisitos. Restricciones.