

Implementation of the “regulatory guillotine” and development of the administrative law

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Abstract. The purpose of this study is to analyse the functioning of the “regulatory guillotine” in the context of the development of administrative law. The authors used qualitative methods to identify the features of the “regulatory guillotine” and determine its place among the institutions of administrative law. Quantitative methods were applied to define the scope and consequences of administrative reforms. The use of the legal comparative method made it possible to describe the peculiarities of the “regulatory guillotine” in Russia. The research results were conclusions from the analysis of legislation and the practice of implementing administrative and legal reforms that show the technological nature of the “regulatory guillotine”. In terms of organisation and implementation, the authors attributed the “regulatory guillotine” to administrative reforms, but in terms of content, the “regulatory guillotine” goes beyond even legal reform, as it involves assessing regulatory instruments from the point of view of not only legality but also economic efficiency and social feasibility. The novelty of this research should be considered the conclusion that the “regulatory guillotine” technologies can contribute to the improvement of administrative and legal regulation in Russia, provided they are thoroughly and purposefully applied in conjunction with the updated institutions of administrative procedures, administrative responsibility, licensing, expert and evaluation activities.

Keywords: public administration, state control, administrative reform, regulation, administrative simplification

1 Introduction

In the second half of the twentieth century, the number of entities with regulatory powers in business is expanding [1, 2]. Therefore, the proliferation of rules and requirements, the complication and departmental disunity of legal regulation, duplication and collision of legal provisions [3] created excessive administrative barriers [4], restrained the social and economic development. It is no coincidence that since the 1970s, in many countries of the world reforms have been carried out to optimise the number of regulations and improve their content. In 1980, such a reform in Sweden was named the regulatory guillotine, and by 2004 it acquired the features of a special method of administrative reform.

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Since 1980s, in many countries of the world, in response to the expansion of administrative law regulation of the economic activities, the “regulatory guillotine” technologies have been used. They allowed the state to revise regulatory provisions, reduce their number and simplify the content of regulation.

Since 1985, more than 100 states have applied the “regulatory guillotine” method in practice, from the United States to Mexico, Croatia, Iraq, Kenya, Kyrgyzstan and Thailand. For example, in Italy, initially, there was envisaged “administrative simplification” to reduce bureaucratic formalities and increase the efficiency of public administration. The Administrative Procedure Act of 1990 established some general rules on administrative action; Statute of 1997 [5] determined that, on an annual basis, the Government would identify the administrative procedures to be simplified and the Parliament would adopt a statute on administrative simplification. At the next stage, the concept of “normative simplification” was approved to coordinate the various rules adopted over the years and eliminate those that had become obsolete. Since 2000, numerous sectoral codes have been issued, which have grouped together the legislative and regulatory standards. At the later stage, a sort of “legislative guillotine” has been held. The statute of 2005 [6] described the automatic repeal of all statutes prior to 1970, excluding those considered indispensable and expressly “saved” by specific Government decrees.

In 2019-2020, this technology was mastered in the Russian Federation.

2 Methods

The authors used qualitative methods to identify the “regulatory guillotine” as a way of administrative reform and to determine its place in the system of administrative law. Quantitative methods were applied to define the scope of the administrative guillotine and to reveal socio-economic consequences of the regulatory simplification. The use of the legal comparative method made it possible to describe the peculiarities of the “regulatory guillotine” in Russia.

3 Results and discussion

“Regulatory guillotine” as a method of administrative reform. The “regulatory guillotine” was established in the context of liberal new public management reforms and its ultimate goal was to limit government intervention in business affairs. Like any administrative reform, the “regulatory guillotine” is organised by the central government and is carried out in a self-reforming format [7]. Usually, a specialised body is created to implement it (Office of Information & Regulatory Affairs of the Executive Office of the President of the United States, Agency for Administrative Procedural Control in Vietnam, Egyptian Commission on Administrative Reform and Development). Business representatives often act as the deregulation reform initiators.

The “regulatory guillotine” model as a method of administrative reform was developed by Jacobs, Cordova & Associates [8], and then confirmed by international organisations, primarily the Organisation for Economic Co-operation and Development [9]. Its elements are 1) clearly defined goals and objectives; 2) principles [10]; 3) special legal regulation [11-14]; 4) organisers (the administrative regulatory bodies) and the reforming participants (representatives of business and the public); 5) a phased and clearly established algorithm for the preparation and implementation of changes.

The “regulatory guillotine” is characterised by completeness of the inventory; the presumption of redundancy of regulatory provisions and the imposition of the burden of

proving their necessity on the state body; short timeframes (from 9 to 30 months); the use of modern scientific methods [15].

The successful implementation of the “regulatory guillotine” can have a positive effect on the economic development of the country by stimulating business and contributing to economic growth [3]. At the same time, it can increase economic inequality and lead to stagnation of real incomes of the population [16, 17].

The “regulatory guillotine” mechanism aimed at reducing administrative rules is itself an object of administrative and legal regulation. The breadth and focus of changes are conditioned by the status of administrative legislation, and their successful implementation depends on the development of administrative law institutions.

Features of the “regulatory guillotine” in Russia. In Russia, the “regulatory guillotine” has become a logical follow-up of the reform of the control / supervisory activities of public authorities which was enshrined in the federal laws “On Mandatory Requirements in the Russian Federation” [18] and “On State Control (Supervision) and Municipal Control in the Russian Federation” [19].

The goals were set, on the one hand, to revise the subordinate legal regulation, and on the other hand, to completely replace the requirements mandatory for business and checked during the state control (supervision).

The revision of the mandatory requirements was attended by the Subcommittee for Improving the Control, Supervisory and Licensing Functions of Federal Executive Bodies under the Government Commission on Administrative Reform (hereinafter referred to as the Subcommittee); 40 federal executive bodies (of which 17 are ministries); 43 working groups of experts and business representatives.

The Russian Federation Government has determined the principles of regulation in the respective area: the least regulatory impact; one control body; legal and regulatory soundness; risk orientation; transparency and consensus with controlled entities; feasibility; dealing with only external risks; priority of the legislative level of regulation; proportionality [20].

An algorithm for revising regulatory instruments was developed and applied: federal bodies elaborate proposals for taking inventory – working groups evaluate these proposals – the Subcommittee removes the differences that have arisen.

By the beginning of 2021, a new structure of legal regulation in each area of public administration, subject to state control and supervision, was actually established.

Table 1 Results of the “regulatory guillotine” by January 1, 2021.

Mandatory requirements revised	49,000
Subordinate regulations abolished	In total over 12000
Russian Federation Government acts abolished	577 decrees, 15 orders
Departmental acts abolished	2411
Mandatory requirements in every area abolished	30%
Russian Federation Government acts adopted	106 decrees, 2 orders
Departmental acts adopted	339

As a comparison, it should be pointed out that successful administrative deregulation reforms in South Korea led to the abolition of 48.8% and simplification of 21.7% of 11,125 regulatory acts [16], in Vietnam – 8.8 and 77% of regulatory acts, respectively [21], that is reforms in those countries were carried out on a smaller scale than in Russia.

The transition to risk-based control and supervision [22], as well as the use of the “regulatory guillotine” made it possible to reduce the types of control / supervisory activities. So, in the area of education, instead of three types of control and supervision, one

supervision over the observance of legislation by educational organisations has been created. The “regulatory guillotine” mechanism is extended to the requirements that are mandatory during not only control and supervision but also licensing, appraisal and expert activities, bringing to administrative sanctions [23].

Possible consequences of the “regulatory guillotine” for the Russian administrative law development. The “regulatory guillotine” technologies have been mastered due to the clearly expressed political will and organisational activities of the Russian Federation Government. This was facilitated by the willingness of business to cooperate with the state in optimising the legal regulation. In turn, the reform exposed the impermissible lacunas and mosaic nature of administrative legislation, the unresolved theoretical problems in Russian administrative law.

In Russia, there is no federal law on laws and regulations; therefore, a comprehensive systematisation of regulatory rules is not yet possible. It is difficult to determine the place of mandatory requirements in the legal regulation system. It is still unclear how mandatory requirements relate to regulations, prohibitions and guidelines.

During the “regulatory guillotine”, there were revised the provisions adopted by the federal executive authorities. However, the mandatory requirements for Russian business are also contained in other instruments. In order for the measures lead to the expected results, it is necessary to revise the content of the current federal laws, regional and local regulatory documents and take into account the regulations of the Eurasian Economic Union.

Rules controlling business cannot have an effective regulatory impact, if they are not harmonised, on the one hand, with permitting rules, and, on the other, with clear rules on administrative and criminal liability for their violation. The relevant draft laws are being prepared, but the prospects for their passage in the State Duma are not clear. The work on the new Code of Administrative Offences of the Russian Federation is being delayed. The development of the bill on the fundamentals of authorization activity has been suspended [24]. Since 2013, the State Duma has been considering a draft law on forensic expertise [25].

Certain objects of legal regulation and types of control, including financial, customs and currency control, which have a significant impact on business, have been removed from the “regulatory guillotine”. This can lead to an imbalance in public administration, because in the excluded sectors, redundancy and fragmentation of legal regulation are still evident.

The “regulatory guillotine” has become an important part of administrative deregulation but the part should not and cannot replace the whole. There is a need to establish general rules for the delegation of public authority, to determine the possibilities and boundaries of outsourcing in public administration, clarify the status of self-regulatory organisations and revise the status of state corporations.

During the implementation of the “regulatory guillotine”, the interaction of government bodies and business, that is significant for our society, has been established. However, unlike the overwhelming majority of countries in the world, Russia has not yet adopted a law on administrative procedures, which could ensure the triangular participation of the state, business and citizens in the important for society decision making process.

The short time frame and scale of the changes did not allow the stakeholders to thoroughly study the content of the regulatory instruments that passed the inventory, track and guarantee their consistency. When the updated rules and the Registry of Mandatory Requirements begin to apply, gaps and inconsistencies in the legal regulation may emerge. There are risks of making mistakes in the course of reforms at the beginning of the twentieth century: quantitative indicators may prevail over qualitative ones; solving complex problems may depend on the personal qualities of managers, and not legal regulation or even professional expert assessments. In this regard, it is very important to

professionally study the goals, objectives, key areas and content of the state regulatory policy.

4 Conclusion

In 2019-2020, in Russia there were reviewed the legal instruments of federal executive bodies operating in the field of control/supervisory activities. The reform was carried out in compliance with all the basic rules, principles and technologies of the “regulatory guillotine”. It led to the abolition of outdated rules and regulations and also completely replaced mandatory requirements in the field of control/supervisory activities, as well as changed the number and types of control and supervision. The conditions for the transformation of related administrative and legal institutions have been created. At the same time, the shortcomings of administrative legislation have clearly manifested itself, and first of all, its cumbersomeness, fragmentation and lacunas.

“Regulatory guillotine” is just one of the modern technologies that can be used to improve the regulation of business. If the “regulatory guillotine” in Russia becomes not the end of the control/supervisory reform but one of the first steps of a comprehensive reform of public governance, then the risks of fragmentation and formalisation of regulation will be minimised. Due to the lack of contemporary legislation in related areas, there is a risk that the deregulation reform will degenerate into another campaign of a formal and technical nature. The “regulatory guillotine” technologies can contribute to the democratic development and socialisation of public administration, if apply them systematically and purposefully together with the transformation of related institutions of administrative law.

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