

## About Delegated Legislation

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### Abstract

*The problems of delegated lawmaking are considered. The author comes to the conclusion that if the domestic legal doctrine has a negative attitude to the problem of delegated legislation and there are very few examples of it, then in the countries of the Romano-Germanic and Anglo-Saxon legal families, legal science pays increased attention to this problem, and the role and importance, specific the weight of the right delegated in the system of sources of law is constantly increasing.*

### Keywords

delegated law making;  
legislation; representative  
bodies; executive bodies;  
legal doctrine; legal  
experiment



## I. Introduction

It seems that the relevance of this article is due to a number of debatable issues. Is delegated legislation a type or method of lawmaking? Does delegated law-making exist in modern Russia? Are there forms of their manifestation delegated by law-making in various legal systems of foreign countries and their legal families?

## II. Research Method

When preparing a scientific article, the following methods were used:

- a. General philosophical (dialectical-materialistic), which is used in all social sciences;
- b. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
- c. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
- d. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

## III. Results and Discussion

### 3.1 Lawmaking of Municipal Bodies - Direct or Delegated Lawmaking?

An analysis of modern legal literature allows us to conclude that scientists often refer to delegated lawmaking as one of the types of lawmaking, which, according to Vitaly Vasilyevich Oksamytny, is the activity of state bodies, officials and certain organizations and institutions associated with the adoption of regulations on the basis of the transfer to them of the corresponding right of bodies and persons directly authorized for such activities. The author explains that the practice of delegated lawmaking is most often observed, when the right to adopt a law or an act replacing it is transferred to other state bodies. With the direct delegation of legislative powers to the parliament, the head of state or the government receives the right to issue laws (France, Kazakhstan, Turkmenistan); in the case of indirect delegation, the government has the power to issue executive acts on

matters that are the exclusive prerogative of Parliament (UK)[1]. It is not difficult to see that the author touched on some general theoretical provisions regarding delegated lawmaking (or rather, lawmaking - Vladimir Valentinovich Kozhevnikov), gave examples of its foreign practice, but did not consider it necessary to respond positively or negatively to the recognition of delegated lawmaking in the domestic legal system.

Roman Anatolyevich Romashov, in relation to modern Russia, connects delegated lawmaking with municipal lawmaking, which is carried out at the level of local governments, which, not being included in the system of state authorities, nevertheless, are endowed with a certain amount of power competence in the lawmaking field. At the same time, the author refers to Article 7 of the Federal Law of October 6, 2003 "On the General Principles of Local Self-Government in the Russian Federation", which determines that "on issues of local importance, the population of municipalities directly and (or) local self-government bodies and officials local self-government adopts municipal legal acts"[2]. A similar position is shared by other scientists [3]. Thus, a very common point of view is that in this case we are talking about dispositive delegated lawmaking, which is observed in cases where public authorities, in accordance with the law, grant the right to lawmaking to bodies that objectively have some autonomy[4].

In principle, agreeing with the above position, Lyudmila Alexandrovna Morozova, showing some inconsistency, on the one hand, notes that delegated lawmaking is a relatively new type for Russia, and earlier laws of a delegated nature were not adopted at the national level, and on the other hand, recognizing delegated lawmaking law-making of local governments, writes that they "... have the right to adopt regulations on issues of local importance" [5].

It should be noted that far from all scientists, including the author of this article, agree with such an interpretation of delegated lawmaking, who do not see it in the above norm of the federal law. It seems that if we recognize the lawmaking of local self-government bodies as delegated lawmaking, then we should accordingly recognize the legal force of their regulatory legal acts, which is identical to the regulatory legal acts (laws) of state bodies that have delegated their lawmaking powers.

For example, a team of authors - Igor Vladimirovich Goiman - Kalinsky, Galina Ivanovna Ivanets, Vladimir Ivanovich Chervonyuk, considering separately municipal and delegated lawmaking, in relation to the latter, again without "binding" to domestic experience, writes that this is lawmaking activity of bodies executive power (as a rule, the government), exercised by them on behalf of (delegation) of parliament. The authors, explaining their position, emphasize that this type of law-making involves the issuance of regulatory legal acts by the executive authority under the authority of the legislative authorities; acts of delegated legislation actually have the force of law; as a result of such law-making activity, normative legal acts are adopted on issues within the competence of the parliament[6]. A similar point of view is supported by a number of other authors [7].

As an independent type of law-making activity, Alber Semenovich Pigolkin recognized the adoption of normative acts by local governments. The scientist wrote that "by issuing normative acts (usually they have different names - decisions, decrees, orders, etc.), local governments ensure that citizens independently resolve all issues of local importance through the bodies they elect or directly, based on the interests of the population, on the basis of the material and financial resources assigned to self-government bodies"[8].

Authors who single out delegated lawmaking often state that "in Soviet times, a type of delegated lawmaking was the transfer of lawmaking powers of the state to public associations, for example, trade unions"[5].

Agreeing with this statement, it is very difficult to understand those scientists who give this example to reveal not delegated, but sanctioned lawmaking[9]. Moreover, emphasizing that after the liquidation of the People's Commissariat of Labor of the All-Union Central Council of Trade Unions in 1933, it was vested with the right to issue regulatory legal acts (decrees and instructions on the application of labor legislation, on labor protection and social insurance), which are of a universally binding nature, for example, a regulation on investigation and accounting accidents at work, approved by the Decree of the Presidium of the All-Union Central Council of Trade Unions of May 20, 1966 [10], theoretical scientists unreasonably use this example again to confirm the existence of sanctioned lawmaking, which, in its content, also covers the proper sanctioned lawmaking and joint lawmaking public organizations and state bodies[11]. On the contrary, L.I. Antonova gives the same example in relation to delegated lawmaking in the period of the USSR [12].

In our opinion, a very contradictory position on delegated lawmaking was expressed by Roman Mikhailovich Romanov, who first, depending on the subjects carrying out lawmaking, names the lawmaking of local governments (district, settlement, rural representative bodies and relevant local administrations) as an independent type, then believes that in this case we are talking about authorized (permitted, confirmed by the state). And after that he declares that delegated lawmaking is sometimes not separated from authorized lawmaking. According to the author, delegated lawmaking consists in the fact that the highest representative body of state power (parliament) authorizes the president, the government of the country, other bodies to adopt acts of a legislative nature instead of him, indicating that such a way of lawmaking) is enshrined in the constitutions of foreign states (for example, Italy, France, Brazil, Spain, Poland, Switzerland, Kazakhstan, Turkmenistan). According to Roman Mikhailovich Romanov, delegation is not characteristic of federal law-making [13], but in some subjects (which ones, it remains unknown – Vladimir Valentinovich Kozhevnikov) the right of state authorities and administration (subject to a number of conditions) is provided to transfer part of their powers to publish normative legal acts to lower authorities[14].

It is equally possible to critically assess the position on the problem under consideration by Ruman Kharonovich Makuev, who, on the one hand, defines the law-making activities of local governments as an independent type of law-making, and, on the other hand, claims that the first does not fit into other types of law-making and the proposal attribute it to the direct, immediate adoption of legal acts are unreasonable[15]. Illogicality also takes place in the arguments of Magomed Imranovich Abdulaev and Sergey Alexandrovich Komarov, who, highlighting such a type of lawmaking as the sanctioning by state bodies of legal customs or norms adopted by corporate organizations, then write the following: “The lawmaking activity of corporate (public) organizations, in contrast to norm-setting functions of state bodies, as a rule, excludes the independent adoption of the rules of law by these organizations. The state participates in the law-making process in various forms: delegation of law-making powers; sanctioning acts adopted by these organizations; preliminary permission for the issuance of the relevant act or their joint adoption”[16].

### **3.2 The Difference between Authorized and Delegated Lawmaking**

It seems that one should agree with the point of view of Valery Vasilyevich Lazarev and Sergey Vasilyevich Lipen, who, analyzing the law-making activities of public organizations, draw a distinction that exists between sanctioned and delegated law-making. As the authors emphasize, sanctioned lawmaking is the approval by state bodies of the

norms adopted by non-state organizations; in a number of cases, the law provides for such approval or registration of charters and other acts of public organizations. Delegated lawmaking is the implementation of lawmaking activities by public organizations on behalf of the competent state bodies [17]. During the existence of the USSR, delegated lawmaking was associated with the transfer of certain functions of state bodies to public organizations [18].

It should be borne in mind that authorization can be carried out both before the adoption of a legal act - by approving a future legal act, and after the adoption of such an act by giving consent to its application. In modern conditions, the role of sanctioned lawmaking is extremely important, since it is it that is more focused on directly reflecting the needs of public life than state lawmaking. It is a flexible and socially sensitive system that can quickly respond to changes in social life. This allows you to speed up the process of making managerial decisions, makes it possible to take into account the uniqueness of the localities, and contributes to the development of democracy in society. It is important to note that sanctioned lawmaking is an integral attribute of civil society, as it contributes to the establishment of partnerships between the government and civil society institutions, strengthening their mutual support and coordinated activities. The participation of various public organizations and associations in changing and improving legislation, as well as in the development of new draft laws, helps to strengthen public confidence in the authorities. Thus receiving information about the state of public opinion, the state can and should take it into account when determining public policy and, above all, when introducing new legal regulations. Delegated lawmaking should be distinguished from authorized lawmaking. Despite the fact that these concepts are largely similar and are often considered equivalent in the legal literature, a number of features inherent in delegated lawmaking can be distinguished. First of all, it should be said that delegated lawmaking is a broader concept, and sanctioning is one of the varieties of delegation. In general, delegated lawmaking should be understood as the activities of state bodies and / or officials, as well as individual non-governmental organizations, related to the adoption of regulatory legal acts on the basis of an order (delegation) of another body or official. When delegating powers, one state body (as a rule, a higher one) temporarily and under certain conditions transfers some of its powers to another state body (lower one), while maintaining control over their implementation. In other words, the authorized body of the state gives its permission in advance to another body (organization) to issue normative legal acts on issues within the jurisdiction of the first. As a result of this, there is a temporary expansion of the powers of the body to which they are delegated. Delegation of powers is allowed only on a certain range of issues, provided that this is not prohibited by the constitution of the state. At the same time, a higher body can delegate powers only within its competence, i.e. cannot delegate more powers than he himself possesses, and cannot delegate those powers that he does not possess. After the delegation of powers, the higher body necessarily retains control over their implementation. It is possible to transfer powers both for a certain time, and without specifying the deadlines. If the authority is delegated for a certain time, then after its expiration they are automatically terminated. And when delegating without specifying the terms, the powers can be withdrawn at any time by decision of the delegating body. The result of delegated lawmaking are normative legal acts, the legal force of which, as a rule, is equal to the legal force of the acts of the delegating body. Most often, according to the author, without giving specific examples, the recipients of the delegation are the Government of the Russian Federation and the executive bodies of the subjects of the federation. For example, this is the publication of a law by the Government with delegating powers to it by the Parliament or the adoption of a regulatory legal act by

the executive body of a subject of the federation in the field of joint competence of the Russian Federation and the subjects of the Russian Federation. The team of authors believes that “the formula “within the powers provided by law” implies the delegation of special rule-making powers by the legislator to the relevant executive authority. Scientists seem to rightly point out that, in principle, the Constitution of the Russian Federation does not provide for delegating rule-making powers [19], although the powers to adopt by-laws can be delegated to such entities as public organizations.

Commentators of the Constitution of the Russian Federation of 1993, emphasizing that Part 2 of Article 132 is addressed to state bodies, on the one hand, indicate that it is they who have the right to vest local self-government bodies with state powers, and only representative bodies of the state can do this and only one act - law, but on the other hand, draw attention to the fact that the Constitution does not regulate the issue of delegation of powers. [twenty].

Nadezhda Viktorovna Inochkina also addressed the problem of distinguishing between authorized and delegated lawmaking. In her opinion, sanctioned lawmaking can be defined as the activities of officials (heads of enterprises, institutions, organizations, etc.) and other non-state actors aimed at developing, issuing, repealing and improving legal norms that have received state approval or consent. Through this type of law-making, the state gives non-governmental organizations, associations and movements the opportunity to participate in rule-making activities and show civil initiative. The subjects of authorized lawmaking can be various non-state structures: local governments, commercial, joint-stock, industrial organizations and partnerships, professional and political organizations (for example, trade unions), as well as officials of enterprises, institutions, ministries and departments. The result of such law-making activities are by-laws and regulations, which acquire a generally binding character and legal force after their approval (authorization) by the authorized state body.

Depending on the method of transferring rights, the author distinguishes between direct and indirect delegation of law-making powers. In case of direct delegation of powers, the law-making body issues a legal act, on the basis of which the authorized body receives the right to delegated law-making, indicating specific deadlines and a list of issues on which it is vested with such a right. Indirect delegation is used in special cases and emergency situations. With such delegation, the law-making body adopts a normative act, which only in general terms, without specifying, regulates certain social relations, and the authorized body itself deals with the specification of the powers established by this act. Partially delegated lawmaking can be considered the lawmaking of local governments, since these bodies are not part of the state system, but have the right to adopt regulations on issues of local importance. This right is delegated to them by the state. For example, according to the Constitution of the Russian Federation, local governments establish local taxes and fees, which implies the issuance of relevant regulations by them. In addition, as the author writes, again without confirming this with examples, the practice of delegating state powers of executive power to local self-government bodies has become widespread. Delegation of powers significantly speeds up the process of lawmaking. Most often, the transfer of powers occurs due to the congestion of the legislature, when it cannot quickly and timely regulate emerging public relations. If the adoption of a legal act requires the use of highly professional knowledge in a particular area, the law-making body can also delegate powers to the relevant specialized executive authorities. The delegation of law-making powers allows for some optimization of public administration, contributes to the rational distribution of working time, and helps to establish the practice of training highly qualified personnel. Tasks in the delegation of authority are carried out by those who really

know how and can perform them, it is accompanied by the transfer of duties and responsibilities, simplification of the organizational structure, and the elimination of expensive management links. For more effective use of delegation of authority, such delegation should be carried out on a long-term basis, that is, for the future, and include not only the transfer of relevant powers and responsibilities to another entity, but also be supported by sufficient material resources (workforce, material values and monetary allowance) [21].

In contrast to the stated intermediate position on the issue of the nature of lawmaking of local governments, supported by Nadezhda Viktorovna Inochkina, we believe that local governments are independent subjects of lawmaking activities in the Russian Federation. In the most general form, the law-making of local governments can be represented as the activities of these bodies to adopt, change or abolish the rules of law governing issues of local importance in a particular municipality. Thus, the foregoing allows us to conclude that we consider the law-making of local governments as direct law-making, which exists along with the law-making of the relevant state bodies, their officials, the people and other subjects of law-making. Municipal self-government of the Russian Federation is a form of exercise by the people of their power, which ensures, within the limits established by the Constitution and laws of the Russian Federation, the independent and under their own responsibility decision by the population directly and (or) through local governments of issues of local importance, based on the interests of the population, taking into account historical and other local traditions[22]. Lawmaking is one of the important activities of local self-government, through which its power is exercised to manage affairs within the framework of the municipality [23].

Part 1 of Article 132 of the Constitution of the Russian Federation establishes that “local self-government bodies independently manage municipal property, form, approve and execute the local budget, establish local taxes and fees, protect public order, and also resolve other issues of local importance.” Commenting on the stated rule of law, Valery Vasilievich Lazarev quite rightly emphasizes that each body, within its competence, resolves relevant issues of local importance independently. Not a single state body is authorized to cancel the acts of local self-government adopted in accordance with the law, no one endorses their decisions, neither preliminary nor subsequent sanctions are required for certain actions. Local self-government bodies exercise the functions of public authority under their own responsibility[20].

In the context of the problem under consideration, it seems important to answer a very problematic question about how scientists solve it in different ways: is the exercise of certain state powers for local governments a right or an obligation?[24]. It seems that the position of those scientists who argue that local governments are not obliged to resolve issues of national importance that require state powers should be supported[25; 26].

### **3.3 Delegated Lawmaking in the Modern Legal System of Russia**

Speaking in general about delegated lawmaking in the domestic legal system, it should be said that it had a very small volume and was represented by the few examples given above. Today there is no delegated lawmaking in the Russian legal system. Domestic scientists-theorists, speaking about this legal phenomenon, are limited only to purely theoretical reasoning. So, Robert Vachaganovich Yengibaryan and Yuri Konstantinovich Krasnov, speaking about the law-making of local self-government bodies, believe that, in addition to resolving issues of purely local significance, they adopt (as a factual situation - Vladimir Valentinovich Kozhevnikov) acts related to the exercise of state powers transferred to them by the subject Russian Federation. The authors believe that such a

transfer can be carried out in two ways: first, by the law of the subject of the Federation, on the basis of which local governments make decisions on assuming the implementation of these powers; secondly, on the basis of an agreement concluded between a subject of the Federation and a local self-government body. Scientists emphasize that both in the first and in the other case, a decision is required both from the state body that delegates powers, and from the local self-government body that assumes their execution. Unilaterally, to which we drew attention above, the subject of the Russian Federation is not entitled to impose on the municipal formation the performance of state functions. Summarizing the above, they draw attention to the fact that “the procedure for delegating powers to local governments is subject (in the future - V.K.) to be regulated by the law of the subject of the Russian Federation”, and the procedure for preparing and concluding agreements on the transfer of state powers to local governments “should (again, in the future - Vladimir Valentinovich Kozhevnikov) be regulated by a special law of the constituent entity of the Russian Federation”[27].

### **3.4 Delegated Lawmaking in the Legal Systems of Foreign Countries and Their Legal Families**

A different characteristic takes place in relation to delegated lawmaking, which is very common in the legal systems of foreign states and the corresponding legal families. However, we have to admit that in some cases insufficient attention is paid to it. For example, when analyzing the family of common law, Timofey Nikolaevich Radko limited himself to pointing out that “the law is the second source of law. This includes not only the law in the literal sense, but also various by-laws adopted in pursuance of the law (delegated or subsidiary legislation)”[28].

Galina Nikolaevna Andreeva connects one of the powers of the governments of foreign countries with their norm-setting activities, which involves not only “the adoption of normative acts in pursuance of laws”, but “and on the authority of the parliament and acts of delegated legislation, i.e. acts on issues of the competence of parliament”[29 ].

Alexander Yuryevich Larin mentions that the Spanish government has the right to adopt acts that have the force of laws (decrees) on issues determined by the Parliament. In the event of emergencies and urgent situations, the Spanish government may adopt temporary laws (decrees) that are subject to approval in the Congress of the Spanish Parliament. The author draws attention to the fact that the Italian constitution stipulates that the government has the right to issue legislative decrees and decree-laws, and legislative decrees are adopted by the government in relation to a certain range of issues and for a limited time. In case of necessity and urgency, the government has the right to issue decrees - laws, if they do not contradict the constitution of the republic and the current legislation. Decrees-laws adopted by the government must be approved by the Houses of Parliament.[30]

At one time, August Alekseevich Mishin expressed at least three main points on the issue under consideration.

First, as part of the normative activities of the governments of foreign countries, he singled out the following areas:

- a. The Government issues normative acts under the direct or indirect authorization of the Parliament. The scientist, explaining, wrote that the corresponding authority can be directly expressed in the parliamentary law or it is implied if the law is formulated indefinitely. In France and Italy, such laws are called "frame laws", in the Anglo-Saxon countries - "skeletal legislation". The government thus receives the authority to issue normative acts on subjects of legal regulation that fall within the exclusive competence

of parliament. Parliament in this case delegates its powers to the government directly or indirectly.

- b. The government issues normative acts containing general rules of conduct on matters within the exclusive competence of Parliament, without any authorization from the latter. However, in a number of countries these acts must subsequently be approved by parliament. The author supports this provision with the following example: in Italy, decrees issued by the government, if necessary and urgent, under their own responsibility, become invalid from the moment of publication, if they were not approved by the Parliament within 60 days after their publication (parts 2 and 3 of article 77 of the Constitution)

Secondly, these directions - delegated legislation - in the modern era are the main forms of norm-setting activity of the government of foreign countries. The author accompanied this provision with specific examples. Thus, in the UK, delegated legislation has become widespread and is carried out by all levels of the government apparatus. The subjects of this legislation are ministers, who have the right to delegate their right to issue normative acts to the heads of institutions and departments subordinate to them, and they, in turn, can transfer this right to lower departments, resulting in a multi-stage sub-delegation. The subjects of delegated legislation, which is important to note in the context of the above provisions of the article, include local governments. Moreover, the acts of delegated legislation in Great Britain far exceed parliamentary laws in terms of their number.

In the US, delegated legislation is carried out both by the President and by the heads of the executive departments of numerous federal agencies. It is noted that decrees, orders, proclamations, military orders, directives, regulations, etc., issued in this manner, have the same legal force as acts of Congress.

In the V French Republic, the main subjects of delegated legislation are the President, Prime Minister and ministers who issue ordinances, decrees, resolutions, circulars, instructions, regulations, etc. August Alekseevich Mishin noticed that delegated legislation in France is not only in its scope and significance surpasses the norm-setting activity of the parliament, but it is also difficult to control [31].

Thirdly, the scientist drew attention to the fact that in the United States, most often, Congress itself delegated its constitutional powers to the head of the executive branch of government. As August Alekseevich Mishin wrote, in American literature and court decisions, doctrines have been put forward more than once that any delegation contradicts the very idea of separation of powers. In support of these doctrines, the rule formulated by John Locke is given: delegated power cannot be delegated. Since, according to the official theory, legislative powers are delegated to Congress by the people, Congress cannot cede them to anyone. But American practice has never been bound by a theory that prevents this practice from getting what it wants. Judicial policy in this regard is effectively limited to allowing delegation on a case-by-case basis. In their decisions, the courts are not so much concerned with the issue of the legitimacy of the delegation of legislative powers, as it is assumed, but with the establishment of the scope of powers and the limits of their exercise[31].

In the framework of the so-called special parliamentary procedures, Veniamin Evgenievich Chirkin called the right of the parliament, provided for by the constitutions of many countries, to delegate legislative powers to the executive branch - the government, the head of state, and sometimes ministers. The author notes that such delegation is usually carried out by the decision of the majority of the parliament, but sometimes more stringent

conditions are established (for example, in Denmark, the consent of 5/6 of the parliament is required. It is clarified that if this right is granted to the government, its acts are usually formalized as presidential decrees-laws ; there are special forms of parliamentary control over the fulfillment of the conditions for the delegation of powers [32] Sergey Vasilyevich Bobotov and Igor Yuryevich Zhigachev wrote about this: other structural divisions of the state mechanism. The purpose of such a mechanism is to ensure freedom, lawfulness and the prevention of arbitrariness. This goal is achieved by the separation of powers because in such a situation one power is limited by another power; different branches of power in mutually balance the limits of the power functions of the relevant state bodies: legislative, executive-administrative and judicial "[33].

We believe that it is quite justified to consider the problems of delegated lawmaking through the prism of the features of modern legal families, Romano-Germanic and Anglo-Saxon.

So, in relation to the Romano-Germanic legal family, the Afghan scholar Hashmutalla Behruz emphasizes that “the increase in the influence and significance of government and other administrative acts is reflected in government rule-making, called delegated legislation or regulatory power, the adoption of which is authorized by the parliament and under its control” Apparently , here we are talking about regulatory acts (reglements) issued, in accordance with Article 37 of the Constitution, on issues “not within the scope of legislation”, executive and administrative bodies represented by the government, ministers, as well as authorized bodies of administration at different levels .

Taking France as an example, the author writes that, according to the Constitution of 1958, acts of delegated legislation are acts of the President, Prime Minister, ministries, departments, etc. All issues that are not within the scope of legislative regulation are resolved administratively by the relevant legal acts, among which ordinances play a significant role. The latter are acts of the Council of Ministers - the Government of France, issued with the permission of Parliament. The author explains that the ordinances are aimed at streamlining relations that are usually regulated by law; they are subject to approval by Parliament within a certain period, after which they acquire the force of law; their change or cancellation is possible only with the help of the law. [34]. Hashmatullah Behruz argues that immediately after the adoption of the French Constitution, these acts were considered rather as exceptional measures taken in case of any kind of social and other upheavals, under emergency circumstances. Later, they became widely used as ordinary measures of government, due to the tendency to blur the boundaries between acts of parliament and acts of government bodies[35].

According to Mikhail Nikolayevich Marchenko, in essence, ordinances are one of the varieties of delegated legislation, consisting of a special kind (by their nature, adoption procedure, legal force, etc.) of normative legal acts that are in force in almost every novel German law of the country[36]. In Italy, for example, the system of normative legal acts, in addition to laws, includes, in accordance with Article 76 of the Constitution of the country, the so-called legislative decrees issued by the government in the exercise of the legislative function delegated to it from parliament "not otherwise as indicating the guidelines and criteria for such a delegation, and only for a limited time and on a certain range of issues[37]. In cases of “special need and urgency”, the government is also empowered to adopt, in accordance with Article 77 of the Italian Constitution, “under its own responsibility” such normative acts “temporary orders having the force of law”. On the same day they must be submitted for approval to Parliament, whose chambers, “even if they are dissolved, are specially convened and assembled within five days” [37]

It seems that in relation to the characterization of the delegated legislation of the Romano-Germanic legal family, the clarifications made by Elena Nikolaevna Sustavova are very important. authorities: 1) the first model, which assumes that the constitution establishes the exclusive competence of the supreme legislative body in certain areas, and those issues that are not related to the sphere of legislation constitute the exclusive competence of the government. Moreover, the latter may be given the authority to issue acts of delegated legislation on issues that are the exclusive competence of the Parliament (Portugal, France); 2) the second model - the constitution does not contain instructions on limiting the legislative powers of the parliament (Italy, Germany). The constitutions of these states provide for the possibility of delegating powers in the field of legislation to executive authorities on issues determined at the discretion of the parliament, which is the bearer of the highest legislative power; 3) the third model - the constitution does not contain indications of limiting the legislative powers of the parliament, but within the framework of these powers it identifies a range of issues, the legal regulation of which cannot be delegated to the executive power under any circumstances (Spain)[38].

Secondly, into two main ways of delegating the legislative function to the executive bodies: 1) direct delegation, which implies the issuance by the highest legislative body of the state of a special normative act authorizing the delegation of legislative powers to the executive branch; 2) indirect delegation, which implies that in the event of emergency conditions or exceptional circumstances, a different procedure for delegating powers from the legislative branch to the executive is necessary, providing the ability to quickly respond to the requirements of the situation[38].

Note that in the scientific literature there is a slightly different interpretation of the indirect delegation of legislative powers. Thus, Valery Sergeevich Troitsky and Lyudmila Alexandrovna Morozova believe that under the latter, a parliamentary law is drawn up in very general terms and it is impossible to apply it without the corresponding norm-setting activity of the executive bodies. This practice usually does not have a legislative regulation of this process. The exception is France, in the Constitution (part 2 of article 34) which states that the law defines the basic principles: a) the general organization of national defense; b) free management of local collectives; c) education; d) the regime of ownership, rights in rem, civil and commercial societies; e) labor law, trade union law and social security. On these issues, the parliament issues only framework laws, establishing the main principles, without specifying which their full implementation is impossible. Therefore, the government in this case issues acts specifying the law and having the highest legal force. The authors emphasize that the indirect mode of delegation essentially leads to the creation of delegated legislation without authority. Generally, in countries where constitutions allow delegated legislation, the issuance of acts of government with the force of law without special authorization by Parliament is not allowed. Thus, Part 1 of Article 77 of the Italian Constitution states that the Government cannot issue decrees without the express authority of the chambers. which would have the force of ordinary law. However, there are exceptions to this rule. For example, Article 86 of the Spanish Constitution allows the Government, in emergency and urgent cases, to issue temporary legislative acts in the form of decree-laws that cannot affect the operation of the main institutions of the state, the rights, duties and freedoms of citizens, the position of regional autonomous associations, as well as universal suffrage right. Such provisional laws must immediately be discussed and voted on by the Congress of Deputies (lower house) in its entirety, and if it is not convened at that time, then it is convened specifically within 30 days from the date of promulgation of this act. Congress within 30 days must announce the approval or non-approval of the

decree-law, in connection with which the Rules of Procedure of the Chamber provide for a special short procedure[39].

On the growing role of delegated legislation[40] in the 20th century. Hashmutallah Behruz discusses the common law family. At the same time, the Parliament empowers the relevant executive authorities, in particular the government, ministries, government departments, with the authority to issue, for certain purposes, relevant regulatory acts (orders, resolutions, instructions, etc.), which, as a general rule, have the same legal force as and the laws of Parliament under which and in pursuance of which they are made. The highest form of delegated legislation is the "order in council", issued by the government on behalf of the Queen and the Privy Council [35].

In addition to orders in the Council, which in fact are orders adopted by the government on behalf of the queen and approved by the Privy Council, Alexander Konstantinovich Romanov also draws attention to other acts adopted in the manner of delegated legislation: 1) decisions and instructions adopted by ministers and relevant government departments. If the statute gave them these sufficiently broad powers; 2) by-laws adopted at the local level of government [41].

The same author also focuses on the following important provisions. First, the advantages and disadvantages of delegated legislation. As the first, the author refers to the fact that the practice of delegated legislation saves time for solving larger and more controversial political issues. Through delegated legislation, ministries can respond more quickly to situations requiring immediate intervention. In addition, such legislation provides more flexibility in that sense. That the rules and instructions adopted under delegated legislation may be supplemented or changed from time to time without resorting to the need to adopt an appropriate act of Parliament. The main criticism of the practice of delegated legislation focuses on the fact that, firstly. It removes part of the legislative process from the direct control of democratically elected representatives of the people; secondly, the parliament does not have sufficient time resources to control the adoption of delegated legislation.

Secondly, on judicial and parliamentary forms of control over delegated legislation. Judicial control implies the following: if a minister, a government department or a local government body, by their decision or an adopted normative act, exceeds the delegated powers belonging to them, the court has the right to recognize this act or decision as exceeding their powers and having no legal force. Parliamentary control can be exercised in different forms. Thus, some statutory documents must be submitted to Parliament already at the stage at which they entered into force. The House of Parliament may decide to abolish such a statutory instrument. In this case, the latter becomes invalid after 40 days from the date of the decision. Other statutory instruments must be approved by the House of Parliament in order to come into effect. In addition, the scientist notes, there is a Joint Committee of the House of Commons and the House of Lords of Parliament, whose functions include consideration of statutory documents and determining which of them and on what grounds should be submitted to Parliament[41].

Mikhail Nikolayevich Marchenko clarifies by saying that the development of acts of delegated legislation in England, as well as the development of statutory law, is conditioned not only by the country's internal needs, but also by external factors relating to international economic and other cooperation. Of great importance in this regard is the development of England's relations with the countries of the British Commonwealth, as well as its role within the European Union [36]. In another work, the scientist emphasizes that one of the fundamental reasons for the emergence and then rather rapid development of delegated legislation is that that it is more mobile and responsive than statutory law, and

that in the event of unforeseen circumstances where urgent legislation is required, it can be used without waiting for the next session of Parliament. Among other reasons for the increasing importance of delegated legislation in the system of sources of law, according to the author, one should mention the relative flexibility of its constituent normative acts, their ability to respond faster to changing life circumstances than more fundamental and rather conservative parliamentary statutes can do. Finally, not the last role in the process of expanding delegated legislation and strengthening its impact on social relations is played by such factors as the ability of some of them to enact parliamentary statutes, change and supplement their content, and in some cases temporarily suspend them [42]

Indeed, one of the signs of the Anglo-Saxon legal family should include the historically established principle of the supremacy of parliament that has an impact on modernity. The largest English theorist of state law of the late nineteenth century. Albert Vann Dicey wrote about this: "The principle of parliamentary supremacy means the following: parliament ... has ... the right to issue and destroy possible laws; there is no person or institution that English law recognizes as having the right to transgress or disobey the laws of Parliament." [43] The same is typical for the modern position of the legislator in the UK. As Alan Garner wrote, "Except for a few very vague limitations of a jurisdictional nature, which have come to light only in recent years, Parliament, by virtue of its supremacy, may, in due form, make any changes in law that it considers desirable" [44]. Based on the principle of the supremacy of the parliament, the right to rule-making, in principle, should be reserved exclusively for the legislator. However, "in real life, the parliament has to transfer part of its legislative powers to subordinate law-making bodies. Crown ministers, local governments, independent corporations, the Anglican Church, private companies, Commissions of the Council of the European Communities - all of them are empowered to issue legal acts ... The emergence of extensive delegated rule-making is a hallmark of modern civilization and is characteristic of any state" [44].

Initially, all the provisions governing the manner in which powers were exercised by a minister or other body entrusted by parliament with the power to issue normative acts were contained exclusively in the enabling statute itself. However, in 1946, the Delegated Legislative Acts Act was passed, with the aim of enacting a kind of comprehensive procedural code for the drafting of such acts. This law legally defines an act of delegated legislation, the rules for publishing such acts, regulates the procedure for their publication, allowing parliament to take them under its control.

Sergei Lvovich Sergevnin focuses on the analysis of several types of acts of delegated legislation: some acts only put the statute into effect; others reproduce or modify Acts of Parliament by virtue of an enabling act; still others - regulatory acts - may contain a list of objects or types of property, additions or explanations to them, provide explanations for the terms mentioned in the original statute; sometimes the original statute may prescribe the observance of certain general standards, and the minister is given the right to specify them in relation to particular cases. According to the author, most of the by-laws belong to the fourth type, "dressing the statute." Their essence is that the statute sets out general principles, outlined more or less broadly, and their concretization falls to the share of the department to which the right-establishing powers are delegated [46].

In our opinion, the reflections of Mikhail Nikolaevich Marchenko concerning the concept of delegated legislation are of interest.

Firstly, delegated legislation is not issued by the highest legislative (representative) bodies, but the authority to issue these acts always comes from them. The author notes that the question of the right to transfer such powers usually does not raise objections and disputes in most common law countries, with the exception of the United States and some

other countries. In the United States, from time to time, the question of the legitimacy of delegating authority to issue relevant acts is raised, since this process, according to opponents of delegated legislation, contradicts the spirit of the theory of separation of powers. In England, the process of transferring part of the powers of Parliament to adopt legislative acts to another body is considered quite natural and legitimate, because it is justified by the above-mentioned doctrine of the supremacy of Parliament. It is also derived and justified by the supremacy of the parliament, which, as a “sovereign institution”, can either itself adopt “any act it wants”, or entrust it to be done by its authority to any other body. The legitimacy of delegated legislation in England is justified, in addition, by purely pragmatic arguments, namely, the need for further development and improvement of statutory law[42].

Secondly, the power to adopt delegated acts, according to the legislation and practice in force in common law countries, can be transferred both to the government and to other “subordinate” bodies. The author clarifies by pointing out that the delegation of legislative powers can be carried out in two main ways. This is most often enforced by passing a special law that gives the government the right to issue certain acts by way of delegated legislation (for example, the Emergency Law of 1920, which allows the Crown to declare a state of emergency, and the government to immediately take appropriate measures, including legal). Another way of delegating legislative powers from parliament to the government is the issuance of such laws drawn up in the most general phrases and expressions (“skeletal legislation”, “law-framework”), which a priori require the adoption of relevant acts-decisions for their application. As an example, English social security law is cited, which “fixes only the general provisions of the social security system”, and all “countless details” regarding the application of this law are contained in government and other acts. Mikhail Nikolaevich Marchenko notes that, in addition to the government as a whole, the authority to issue delegated acts can also be transferred directly to the ministers of the Crown, other central government departments, local authorities, private institutions and corporate judiciary[42].

Thirdly, delegated legislation often has (“temporary and always targeted”) “strictly functional character”. The author explains by saying that the “temporary” nature of the delegated act means, on the one hand, a limitation on the time of its action (for example, the act is valid only during the state of emergency), and on the other hand, on the time of its adoption and entry into force. The target, “strictly functional nature” of delegated legislation means that delegated acts are not issued in general, to regulate certain social relations, but to solve quite specific tasks, to achieve specific goals.

Fourthly, acts issued in order to delegate legislative powers from parliament to other state or non-state bodies are subject to mandatory control. In addition to parliamentary and judicial control, which we analyzed earlier, the author draws attention to administrative control, which is carried out by administrative bodies. First of all, ministries and central departments, as well as control by interested pressure groups or interest groups, public control carried out by the general population[42].

Hashmatullah Behruz, when considering the sources of American law, also mentions delegated legislation, i.e. regulations issued by the highest executive bodies of the United States, the right to publish is delegated by the highest legislative bodies of the country[35]. Akmal Khomatovich Saidov believes that the normative legal acts of the US executive authorities are a source of American law that is constantly growing in its value. The basis of this area of activity of the federal administrative apparatus is the powers delegated to the executive authorities by the legislative bodies. The scientist believes that in practice,

administrative acts (orders, rules, directives, instructions) adopted with the aim of concretizing and detailing laws, in many cases replace them[40].

Immediately, we note that the US Constitution in section 8 of Art. 1 fixes in great detail the objects that are subject to the legislative powers of Congress: taxes, duties, other fees, loans, trade, naturalization, units of weights and measures, post office, science, etc. [46]. Article 2 of the US Constitution vests executive power in the President and specifies in detail the powers vested in him. But, neither in this article, nor in any other, there is a wording on the basis of which it would be possible to substantiate the by-law rule-making. However, executive authorities from the very beginning of their functioning issued normative acts. They received this right from Congress in the form of a delegating statute. The American theorist of law and politics T. Lowey writes that “at the end of the 19th century, Congress could no longer cope with the avalanche of cases that fell upon it and was forced to increasingly delegate powers to issue normative acts to the president and other executive authorities. One of the first statutes to be delegated was the Interstate Commerce Act of 1887, which endowed the administrative institution, the Interstate Commerce Commission, with all legislative (i.e., rule-making), executive, and even judicial power in matters of its conduct” [46]. Since that time, Congress has delegated to the administrative agencies the power to legislate on almost all matters in which, in accordance with the Constitution, it has the right to legislate. Today, the rule-making powers arising from the delegating statute are legalized by the law on administrative procedure of June 11, 1946, which was included in the US Code (title 5, chapter 5).

Sergey Lvovich Sergevnin draws attention to several concepts of delegated rule-making developed by the theory of state law in the United States.

Historically, the first concept was the doctrine of "standards", which was formulated by judicial practice in the 19th century. It was the Supreme Court of the United States, in a decision in a specific case in 1812, which challenged the constitutionality of delegating rule-making powers to executive authorities, that sanctioned such a practice. Somewhat later - in 1825 - Judge Marshall formulated the rule that the delegation of rule-making powers is justified if it (delegation) concerns "less important" issues, and is unacceptable if the executive authorities are given the right to resolve "important" issues. In the twentieth century, the doctrine of "standards", i.e., important and less important issues, was transformed into the concept of "principles and details", the essence of which is. that the congress sets out the fundamental provisions in the law, creates a kind of “framework”, and the executive authority fills the scheme given to it with details. Finally, the author emphasizes that lately courts and lawyers have been leaning towards the instrumental positivist doctrine of "procedural guarantees". In other words, there was a refusal to search for a substantive criterion for distinguishing between a law and a subordinate regulatory legal act in favor of the most detailed study of procedural criteria for their development and adoption [45].

#### **IV. Conclusion**

In conclusion of this article, it should be emphasized that the problem of delegated lawmaking in the domestic (Soviet and Russian) has not been widely developed. In practice, acts of delegated legislation, with the exception of a few examples indicated above, are absent. In our time, this is explained, first of all, by the fact that the Russian legal doctrine has a negative attitude to this problem, based on a strict separation of powers and referring lawmaking to the exclusive competence of representative authorities; the

appointment of the executive branch of power is the operational management of various spheres of society on the basis of laws adopted by representative bodies of power.

Meanwhile, in our opinion, it would be necessary to support the scientists who believe that it is possible to revise the domestic legal doctrine towards delegated lawmaking. Thus, Valery Sergeevich Troitsky and Lyudmila Alexandrovna Morozova are convinced that "despite the fact that our country has a deep tradition of confrontation between the executive and legislative powers, ... in some cases it is possible for the Government of the Russian Federation to apply to the Federal Assembly of the Russian Federation for permission to exercise within a limited period issuance of acts having the force of law to carry out specific programs that are especially important for the life of society. At the same time, the Government should not issue such acts without the clearly expressed and clearly defined powers of the Federal Assembly, and the powers themselves are not subject to transfer to any body other than the Government. According to the authors, "... delegated lawmaking could be tested in our country as a legal experiment" [39].

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