

Federal Assembly of the Russian Federation and parliamentary control bodies as objects of public control

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This article is devoted to the public legal analysis of the Federal Assembly of the Russian Federation and the parliamentary control bodies as objects of public control. The author analyzes the main features of the formation and functioning of the Federal Assembly of the Russian Federation, as well as the system of its powers. This article formalizes and examines the main topical issues related to the organization and implementation of public control over the activities of the Federal Assembly of the Russian Federation, as well as the parliamentary control bodies. The author has developed and justified a system of measures to resolve these problems, including by making appropriate changes and additions to the legislation of Russia.

Keywords: Federal Assembly, Russian Federation, bodies, parliamentary control, public control, objects, subjects, Commissioner, Accounts Chamber, democracy.

Данная статья посвящена публично-правовому анализу Федерального собрания Российской Федерации и органов парламентского контроля как объектов общественного контроля. Автор анализирует основные особенности формирования и функционирования Федерального собрания Российской Федерации, а также систему его полномочий. В данной статье формализуются и рассматриваются основные актуальные вопросы, связанные с организацией и осуществлением общественного контроля за деятельностью Федерального собрания, а также органов парламентского контроля. Автором разработана и обоснована система мер по решению этих проблем, в том числе путем внесения соответствующих изменений и дополнений в законодательство России.

Ключевые слова: Федеральное собрание, Россия, органы, парламентский контроль, общественный контроль, объекты, субъекты, уполномоченный, Счетная палата, демократия.

Introduction. As a number of authors rightly point out, an important place in the system of objects of public control that belongs to the federal bodies of state power in the Russian Federation is occupied by the Federal Assembly of the Russian Federation, as well as the parliamentary control bodies [1, p. 2–5], [2, p. 186–188], [3, p. 28–33]. Thanks to this institute of Russian civil society, the citizens of the country, as well as the public associations and other numerous non-governmental non-profit organizations, have the opportunity to participate in the organization and implementation of measures to monitor the activities, acts and decisions of public authorities, as well as other objects of public control. This circumstance determines the special relevance, scientific and practical significance of this topic of the scientific research.

This article uses a number of methods of scientific research, in particular: comparative-legal; historical-legal; formal-logical; statistical; sociological, as well as a number of others.

The main part. The importance of the Federal Assembly of the Russian Federation and the parliamentary control bodies is due to a number of reasons.

Firstly, the Federal Assembly, consisting of two chambers (the lower one is the State Duma, and the upper one is the Federation Council), is not only the federal legislative body of state power, but also the highest representative body of state power in the country, since most its members (deputies of the State Duma) are elected directly by the population, and a significant part of the senators are elected or appointed by the federal bodies of state power (the President of the Russian Federation) or the regional bodies of state power (regional parliaments, as well as the heads of executive power – the heads of the subjects of the Russian Federation). In this regard, the Federal Assembly has a dual status. On the one hand, it consists of representatives of the people elected by them directly (State Duma) or indirectly (Federation Council), and on the other hand, the delegated powers need optimal, constant and effective control on the part of voters, who have endowed their representatives with such important powers.

Secondly, the Federal Assembly, according to the Constitution of Russia, is endowed with enormous powers, which can be conditionally reduced to several groups: 1) to form the basis of the legislation of the Russian Federation by adopting federal laws and federal constitutional laws; 2) to

participate in the formation of a number of federal bodies of state power (for example, the Accounts Chamber of the Russian Federation), as well as in the appointment of individual officials of the federal level (in particular, the Prosecutor General of the Russian Federation); 3) to participate in the procedure for declaring war and giving consent to the President of the Russian Federation for the use of the Armed Forces of the Russian Federation outside Russia; 4) to express no confidence in certain federal bodies of state power (the Government of the Russian); 5) to remove from the office of the head of state; 6) to independently appoint the federal officials related to parliamentary oversight bodies (the Commissioner for Human Rights in the Russian Federation); 7) to declare amnesty; 8) to approve the federal budget, as well as the report on its implementation; 9) to introduce taxes, fees, fines, penalties, other mandatory payments from individuals and legal entities, etc. Thus, the powers of the Federal Assembly affect almost all aspects of the life of Russian society and the state, the rights, freedoms and legitimate interests of individuals and legal entities, public authorities (public authorities and local governments). In this regard, civil society should ensure comprehensive public control over activities related to the implementation of these powers in order to prevent, on the one hand, violations of the current legislation, and on the other hand, infringement of the rights, freedoms and legitimate interests of individuals and legal entities, public authorities.

Thirdly, the special significance of the Federal Assembly lies in the fact that only in this federal body of state power there is an upper chamber (the Federation Council), whose dissolution, in principle, is not provided for by the Constitution of the Russian Federation and current legislation. While any other federal government bodies and their officials (including, for example, the Prosecutor General of the Russian Federation, judges of the Supreme and Constitutional Courts of the Russian Federation, the head of state, members of the Government of the Russian Federation) may be dismissed, dissolved, removed from positions temporarily suspended from the performance of their duties. In this regard, a situation arises when the upper house of the Federal Assembly is virtually beyond the control of any public authority. Moreover, due to the fact that senators have immunity from criminal and administrative prosecution, which can only be lifted by the Federation Council itself, the possibilities of law enforcement agencies in terms of control over the activities of senators are also significantly narrowed. In this regard, the need for the organization and implementation of constant and effective public control over the activities of the upper house of the Federal Assembly by public control bodies is growing.

Fourthly, the Federal Assembly is elected for a fairly long term. In particular, the deputies of the State Duma – for five years, and the senators both for the term of office of the person who elected (appointed) them to the post of senator, and for life, which gives particular relevance in terms of the need to organize and ensure the activities of the Russian parliament on the part of civil society represented by the public control bodies.

Fifthly, the necessity of organizing and exercising public control over the parliamentary control bodies, in particular, the Commissioner for Human Rights in the Russian Federation, is acquiring great importance. It should not be forgotten that this official is not elected directly by the people, but receives powers from the State Duma of the Federal Assembly that elects him or her. In this regard, its activities require close monitoring by civil society. Moreover, the activities of some human rights commissioners in the Russian Federation were clearly politically biased (in particular, S.A. Kovalev, O.O. Mironov) [4, p. 15–19], [5, p. 15–19], [6, p. 194–196], since candidates for this position are nominated and elected by deputies who are part of the parliamentary majority, which can be represented either by one political party (as in the modern composition of the State Duma) or by a coalition of several political parties (which was typical in the first convocations of the State Duma before the United Russia political party received the majority of seats in the State Duma).

The Russian parliament – the Federal Assembly – is a government body with a relatively young history. The Russian Federation, having gained independence and state sovereignty at the end of 1991, did not immediately move from the institution of the Supreme Council to the modern institution of parliamentarism, based on democratic legal principles of separation of powers, legality, federalism, etc.

It took almost two years of heated political debate, which ended with the shooting of the Supreme Soviet of the Russian Federation, its dissolution, as well as the adoption of a new Constitution of the Russian Federation, thanks to which Russia has finally moved from the omnipotence of soviets at all levels, which lasted almost three quarters of a century, to a democratic system of organizing power based on the principle of separation of powers.

Over its short political history (less than thirty years), the Federal Assembly of the Russian Federation has repeatedly changed the principles of forming its chambers, the number of members of the Federation Council (now – senators), the term of office of deputies of the State Duma of one convocation, the duration of the term of office of senators, as well as the very powers of both chambers of the Parliament of the Russian Federation.

Thus, the deputies of the State Duma and members of the Federation Council of the first convocation were elected almost identically – directly by the population. Starting from the second convocation, the procedure for forming the Federation Council was changed – it began to include the heads of the legislative and executive branches of power of the constituent entities of the Russian Federation (heads of regional parliaments and heads of regions). Subsequently, the practice of persons combining the status of regional elected officials with the status of a member of the Federation Council was recognized as inconsistent with such principles of organization and activity of state authorities as separation of powers and federalism. Therefore, representatives of the regions began to be elected (appointed, approved) for office by regional parliaments and the heads of the executive authorities of the constituent entities of the Russian Federation (heads of regions).

Further reform of the formation of the Federation Council entailed the inclusion of new varieties of members of the Federation Council. In addition to the two categories of senators elected by the regional government bodies, two more categories of senators have emerged – those appointed by the head of state, including those who are appointed for life, as well as former Presidents of the Russian Federation, who can hold the post of senator for life at will (today, with such a status only 2 citizens of the Russian Federation possess – Putin Vladimir Vladimirovich and Medvedev Dmitry Anatolyevich, and the latter has not yet exercised this right).

The powers of the Federation Council also underwent fundamental changes, which were significantly narrowed (especially in the light of the amendments made to the Constitution of the Russian Federation at a popular vote in July 2020). In the course of these amendments, the Federation Council, in particular, lost the right to appoint to the post of the Prosecutor General of the Russian Federation – this authority passed to the President of the Russian Federation.

Since 1993, the electoral legislation concerning the election of deputies of the State Duma of the Federal Assembly of the Russian Federation has been changed many times. The legislation on political parties was radically changed. Changes were also made to the very Constitution of the Russian Federation, concerning the institution of the lower house of the Russian parliament.

As a result of these reforms, only political parties retained the right to nominate candidates for the position of State Duma deputies on the federal list. At the same time, political parties represented in the Russian parliament or regional parliaments enjoy a number of preferences (for example, candidates from these parties do not need to collect voters' signatures to be nominated for deputies). The parliamentary parties themselves began to receive financial support from the federal budget, proportional to the number of votes cast for a political party in the last federal elections.

Candidates nominated for the position of State Duma deputies in single-mandate constituencies are also not placed on an equal footing. Some of them, nominated by political parties represented in the State Duma and regional parliaments, are relieved of the need to collect voters' signatures in support of their nomination in elections within a single-mandate constituency. The rest of the candidates are forced to collect signatures of voters in support of their nomination.

At present, the term for which deputies of the State Duma are elected (from four to five years) has also been significantly expanded (compared to the original). However, the changes and additions made to the Constitution of the Russian Federation in the summer of 2020, as well as in the case of the Federation Council, significantly narrowed the powers of the State Duma.

So, for example, the Accounts Chamber of the Russian Federation has lost the status of a parliamentary control body, since, according to the modern version of the Constitution of the Russian Federation, candidates for the position of Chairman of the Accounts Chamber of the country, his or her deputy, as well as auditors, can be submitted to the Federal Assembly only by the President of the Russian Federation, which makes this the body is not a parliamentary body, but a presidential oversight body (since the very procedure of uncontested election of auditors of the Accounts Chamber in fact makes the powers of the chambers of the Federal Assembly in the formation of this federal body of state power a fiction).

At present, the organization and implementation of public control over the chambers of the Federal Assembly of the Russian Federation, as well as the parliamentary control bodies (in particular, the Commissioner for Human Rights in the Russian Federation), are associated with a number of problems of both objective and subjective nature.

Firstly, a significant problem in the organization and implementation of public control over the activities of the State Duma deputies and members of the Federation Council of the Federal Assembly is the parliamentary and senatorial immunity of the deputies themselves, senators, their correspondence, etc. So, according to the Constitution of the Russian Federation, as well as Article 19 of the Federal Law of 08.05.1994 № 3-FL «On the status of a senator of the Russian Federation and the status of a deputy of the State Duma of the Federal Assembly of the Russian Federation», the immunity of a senator of the Russian Federation, a deputy of the State Duma applies to residential and office premises, personal and official vehicles used by them, means of communication, documents and luggage belonging to them, for their correspondence. Thus, the subjects of public control have virtually no access to any information and any documents related to the activities of deputies of the State Duma and senators of the Federation Council. Consequently, the conduct of public control measures by the subjects of public control in relation to both the activities of an individual deputy of the State Duma or a senator of the Federation Council, which are based primarily on working with documents and information, will be impossible without the consent of the deputy (senator) herself.

Secondly, an important problem in organizing and exercising public control over the activities of State Duma deputies and senators of the Federation Council is limited access to the building of the State Duma and the Federation Council. At the same time, neither Federal Law of 08.05.1994 № 3-FL «On the status of a senator of the Russian Federation and the status of a deputy of the State Duma of the Federal Assembly of the Russian Federation», nor Federal Law of 21.07.2014 № 212-FL «On the fundamentals of public control in the Russian Federation» does not contain a mechanism that would secure free access for representatives of the subjects of public control to the buildings and premises of both the State Duma and the Federation Council itself, and to the premises of public reception rooms for deputies and senators. The practice of access of individuals to the buildings of the Federation Council and the State Duma is such that this access is provided only by decision of individual deputies and senators, or the leadership of the Federation Council and the State Duma. This also applies to the participation of representatives of civil society in plenary sessions of the Federation Council, as well as the State Duma, the work of committees and commissions, parliamentary factions and deputy groups.

Thirdly, a significant problem in organizing and exercising public control over the activities of deputies of the State Duma and members of the Federation Council is the fact that the deputy mandate (and in many respects senatorial) is imperative in nature, in which the recall of a deputy by voters is not possible. And, consequently, public control bodies, on the one hand, cannot participate in this process, on the other hand, initiate this process, and, inform voters in a timely manner about the activities of the State Duma deputies that violate the current legislation, rights, freedoms and the legitimate interests of both the citizens of the Russian Federation themselves and other associations. In addition, it seems that a deputy of the State Duma and a senator of the Federation Council, in principle, cannot be deprived of the powers of a senator or a deputy, respectively, if they ignore the legal actions of subjects of public control (for example, upon request for information about their activities, any documents). This circumstance completely blocks the possibility of realizing operational full and comprehensive control of the subjects of public control over the activities of the State Duma deputies and the senators of the Federation Council of the Federal Assembly of the Russian Federation.

Fourthly, a significant problem in the mechanism of organizing and exercising public control over the activities of the deputies of the State Duma and the senators of the Federation Council is not the possibility or the difficult nature of bringing the deputies of the State Duma, as well as the members of the Federation Council, accountable for actions (inaction) that impeded the legal activities of public control bodies, including not providing information, not allowing access to buildings, etc.

Fifthly, a significant problem is the dilemma about the possibility of exercising public control over the activities of the State Duma deputies and the members of the Federation Council, concerning work with voters, for example, receiving voters, reporting to voters, representing their interests in public authorities, including law enforcement agencies. Moreover, opposition to legal activities

of representatives of subjects of public control can be carried out in the form of administrative offenses, as well as crimes. The presence of parliamentary and senatorial immunity from criminal and administrative prosecution (which to overcome requires a decision of the Federation Council or the State Duma, respectively, by a majority vote), creates a significant obstacle to the organization and implementation of public control on a permanent basis.

Sixthly, the problem in the organization and implementation of public control over the activities of deputies of the State Duma and members of the Federation Council is the fact that the definition of acceptable forms, methods, types of public control measures from among those proposed by Federal Law of 21.07.2014 № 212-FL «On the Basics of public Control in the Russian Federation» acts as a certain dilemma. The Federal Assembly and the parliamentary control bodies have not been removed from the jurisdiction of Federal Law № 212-FL. At the same time, this Federal Law does not contain any specific forms, methods, types of public control and its measures (as well as for other objects of public control). And the forms, methods, and types of public control enshrined in the aforementioned Federal Law do not take into account the specifics of the powers of the State Duma and the Federation Council, the absence of deputies and senators of deputy (senatorial) immunity, which, moreover, extends to their personal and office premises, correspondence, telephone and other messages, etc.

Seventhly, federal laws and federal constitutional laws regulating the activities of the parliamentary control bodies, for example, Federal Constitutional Law of 26.02.1997 № 1-FCL «On the Commissioner for Human Rights in the Russian Federation» do not contain any mention of the possibility of organizing and implementing public control over the activities of parliamentary control bodies. Moreover, the point of view is extremely widespread in the scientific and educational literature, according to which the very institution of the Ombudsman in the Russian Federation (together with the institution of human rights ombudsmen in the constituent entities of the Russian Federation) is regarded as the most important institution of civil society, [7, p. 151–157], [8, p. 196–200] or as the most important intermediary between power and society [9, p. 7–10], [10, p. 127–130]. Although this federal body of state power is a classic body of parliamentary control, an instrument in the hands of the Federal Assembly in terms of ensuring state control over the activities of other public authorities in terms of the latter's observance of the rights, freedoms and legitimate interests of both citizens of the Russian Federation and foreign citizens, persons without citizenship, as well as public associations. And without proper control on the part of civil society institutions over the activities of the ombudsman institution in the Russian Federation, there is a risk of its use not in accordance with the goals and objectives defined in the above-mentioned Federal Constitutional Law, but as a politically biased instrument of influencing certain public authorities. So, in particular, in the 90s, this institution, represented by the human rights ombudsman in the Russian Federation, S.A. Kovalev was actively used by liberal circles to influence the Armed Forces of the Russian Federation during the armed conflict in the Chechen Republic [11, p. 220–222].

Eighthly, a certain problem in the organization and implementation of public control in relation to the activities of the Federal Assembly of the Russian Federation, as well as parliamentary control bodies, is the lack of certainty regarding the limits of public control in relation to these objects of public control.

Conclusion. It seems that in order to resolve these problems, as well as to organize the provision of comprehensive, effective public control over the activities of the Federal Assembly (including its individual chambers, as well as the deputies of the State Duma and the senators of the Federation Council) and the parliamentary control bodies, a number of measures should be taken.

Firstly, in order to organize effective, comprehensive and constant control of the subjects of public control over the activities of the Federal Assembly (including its individual chambers, as well as the deputies of the State Duma and the senators of the Federation Council), it should be enshrined in the Federal Law of 08.05.1994 № 3-FL «On the status of a senator of the Russian Federation and the status of a deputy of the State Duma of the Federal Assembly of the Russian Federation» separate provisions on the institution of public control. In these provisions, it is necessary to determine, on the one hand, the limits of public control over the activities of both the individual deputies of the State Duma and the senators of the Federation Council, and the chambers of the Federal Assembly as a whole (including the activities of individual committees and commissions, parliamentary fractions and deputy groups), on the other hand, the system of the duties of the deputies of the State Duma and the senators of the Federation Council, the officials of the chambers of

the Federal Assembly to assist in the organization and conduct of lawful measures of public control. The above provisions should also contain specific forms and methods of exercising public control over the activities of the Federal Assembly, which, on the one hand, would not interfere with the legislative activities of deputies and senators, and on the other hand, their communication with voters. Alternatively, it is possible to envisage specific types of measures of public control over the activities of both the individual deputies of the State Duma and the senators of the Federation Council, and the activities of the chambers of the Federal Assembly (their individual structural subdivisions) as a whole. Such types of measures of public control could be, for example, public reports of the deputies of the State Duma and the senators of the Federation Council to civil society, which should be of a regular nature. Another specific type of public control measures could be public debates of the deputies of the State Duma and the senators of the Federation Council in the media (including social platforms on the Internet) with representatives of subjects of public control. Another important type of public control measures can be the participation of representatives of the subjects of public control in anti-corruption briefings within the framework of the activities of the committees and commissions of the chambers of the Federal Assembly in order to prevent lobbying activities that may violate (infringe) the rights, freedoms and legitimate interests of the citizens of the Russian Federation and their associations. In view of the exceptional importance and significance of the Federal Assembly of the Russian Federation in the system of federal bodies of state power in Russia, as an option, it is possible to remove the organization and implementation of public control from the jurisdiction of the Federal Law of 21.07.2014 № 212-FL «On the Foundations of Public Control in the Russian Federation» by adopting a separate Federal Law «On the Basics of Organization and Implementation of Public Control over the Activities of the Federal Assembly of the Russian Federation». In this Federal Law, it is possible to concentrate all provisions concerning the organization and implementation of public control both in relation to the activities of the Federal Assembly of the Russian Federation itself (both chambers, their committees, commissions, parliamentary factions, senators and deputies), and the activities of parliamentary control bodies.

Secondly, it is necessary to establish in the internal regulations of the State Duma and the Federation Council of the Federal Assembly the duties of the civil servants of the apparatus of the chambers of the Federal Assembly, the assistants to the deputies of the State Duma and the senators of the Federation Council to assist in the organization and implementation of public control measures that will be carried out by representatives of subjects of public control.

Thirdly, it seems necessary to move away from the practice of imperative mandates of deputies of the State Duma of the Federal Assembly by making appropriate amendments to the Constitution of the Russian Federation and Federal Law of 08.05.1994 № 3-FL «On the status of a senator of the Russian Federation and the status of a deputy of the State Duma of the Federal Assembly of the Russian Federation». An institution should be introduced to recall the deputies of the State Duma of the Federal Assembly of the Russian Federation by voters. For example, if the number of voters speaks for this decision is more than the given deputy received in the course of the election campaign. If we are talking about the deputies elected according to federal lists of political parties, then for their recall it will be enough that signatures equivalent to 1/450 of the total number of voters in the Russian Federation will be collected for recalling the corresponding deputy. In addition, public control bodies should be given appropriate powers to participate in the procedure for recalling the deputies of the State Duma of the Federal Assembly by voters. For example, in the form of initiating this procedure based on the results of public control measures carried out by the relevant subjects of public control in relation to the activities of the corresponding deputy of the State Duma of the Federal Assembly.

Fourthly, federal laws and federal constitutional laws regulating the activities of parliamentary control bodies should be enshrined, for example, the Federal Constitutional Law of 26.02.1997 № 1-FCL «On the Commissioner for Human Rights in the Russian Federation», provisions on the mechanism of organization and exercising public control over parliamentary control bodies. In these provisions, it is necessary to fix specific forms, methods of public control, as well as certain types of public control measures that can be used by subjects of public control. This will make it possible to promptly respond to any violations of the current legislation both by the deputies of the State Duma, the senators of the Federation Council, as well as the civil servants working in the apparatus of the chambers of the Federal Assembly and the parliamentary control bodies in the Russian Federation.

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