

The Role of the Model Standards in Lawmaking

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Abstract: The article considers the problem of place and role of the model laws in the legislative authorities' work in the Commonwealth of Independent States countries. The whole article is based on the analysis of the Inter-parliamentary Assembly of Member Nations of the Commonwealth of Independent States requirements to legislation. Since the model laws are the acts of an advisory nature, the sample, on the basis of which there can be adopted this or that legal document of common interest in accordance with international treaties, so there are problems arising from the obligation to use this model. Some ones remain unclaimed in the legislative processes, legislative practice of individual states. The author analyzes different perspectives of ambiguous attitude to the model laws problem as a means of legislation unification and harmonization.

Key words: Model law • Model legislation • Model legislative act • The model code

INTRODUCTION

The development of legal norms in the former Soviet Union countries has never happened by itself. Since all the CIS countries came from the same general state, this fact played a great role in the development of these countries legislation. The formation of the newly emerged states legal system was affected by the creation of advisory laws that later became known as the "model laws". "The model acts are as a rule developed by international organizations, at least - states, and are then offered to various countries legislative authorities as a sample, on the basis of which this or that legal document can be made. In this case, however, no state is associated a priori with the commitment to use the model. The only exception are the cases, where the adoption of domestic legal act on the basis of the model is the statutory duty of the state, a member of the international integration association (international organization)" [1].

Big Legal Dictionary gives the following definition of the model law - "a legislative act of a typical character containing regulatory recommendations, as well as the options for possible legal solutions (sometimes explanations of possible options, examples) certain issues of the specific sphere of social relations" [2].

To denote them in domestic international legal literature there are the terms "model" ("exemplary" or

"typical") law, "advisory" ("typical", "model") legislation [3.4].

The Inter-parliamentary Assembly of Member Nations of the Commonwealth of Independent States Regulation on the Development of Model Legislative Acts and Recommendations gives a set of definitions affecting the issue of the model legislation, "model legislation-the activities of the Inter-parliamentary Assembly in the model legislative acts development, adoption and publication, consistent with the objectives of convergence (unification) of legislation of Member Nations of the Inter-parliamentary Assembly and integration development objectives of the Commonwealth of Independent States. Model legislative act of the Commonwealth of Independent States - a legislative act of an advisory nature, adopted by the Inter-parliamentary Assembly in the prescribed manner, in order to create and implement the harmonized legislative activity of Member Nations of the Inter-parliamentary Assembly on the issues of common interest, bringing the legislation of the Member Nations of the Commonwealth in accordance with international treaties concluded within the framework of the Commonwealth and other international agreements, the participation in which of the Member Nations of the Commonwealth is highly desirable to achieve common goals" [5].

The model legislative acts of the Commonwealth include the Model Code of the Commonwealth of Independent States, the model law. Where necessary, the model legislative acts may take the form of typical regulations, charters, and agreements.

Considering the features of the model acts, various authors stated that they are “advisory in nature; perform regulatory and consolidating role in legislation, allow the legislative bodies to determine the degree of perception of the model laws in legislative activity independently, designed to bring the existing legal regulations to a common denominator; used as a legal standard [6].

MATERIALS AND METHODS

“The attitude to the model laws as a means of unification and harmonization of legislation is not unique. Some experts say that the use of the model legislation provides an opportunity to develop new quality standards tailored to modern relationships. The state taking these rules has the right to partially modify them, to adapt to the peculiarities of its legal system, abolish unilaterally, if they are ineffective. The model legislative system has the properties of “flexibility”, allowing the states with various historical and legal traditions to apply the model norms. However, there are the opposite perspectives. In particular, the French scientist R. David noted that a flaw in the model legislation is that it firstly gives the possibility of making uncoordinated amendments to the model, and, secondly, there is a danger that the state will subsequently refuse from it unilaterally” [7].

Article 20 of the Commonwealth of Independent States Charter establishes that “Member Nations cooperate in the field of law, in particular, through multilateral and bilateral agreements on legal assistance and facilitate the coordination of national legislation. In case of conflict of the national legislative norms of the Member Nations, regulating relations in the sphere of joint activity, Member Nations consult and negotiate to develop proposals to eliminate these contradictions” [8].

Special role in the development of the model legislation is given to the Recommendations of the Inter-parliamentary Assembly of the Commonwealth of Independent States - as the proposals adopted by the Inter-parliamentary Assembly to coordinate national legislation of the Members of the Commonwealth in the issues of common interest, to bring their legislation into line with the international treaties provisions, made within the Commonwealth framework, and to promote the ratification procedures synchronization.

The recommendations adopted by the Inter-parliamentary Assembly include:

- ones to coordinate national legislation of the Member Nations of the Commonwealth;
- ones to synchronize ratification procedures of contracts made in the Commonwealth framework and other international agreements by the parliaments of the Member Nations of the Commonwealth, the participation in which is highly desirable for the Member Nations of the Commonwealth to achieve common goals enshrined in the Charter of the Commonwealth of Independent States;
- ones to bring the legislation of the Member Nations of the Inter-parliamentary Assembly in accordance with the provisions of international treaties made within the Commonwealth framework;
- ones on cooperation of the Member Nations of the Inter-parliamentary Assembly in various fields;
- ones on the matters referred to the Inter-parliamentary Assembly by the Council of the Member Nations and the Council of the Heads of the CIS Government.

ILA model legislative activity is in accordance with the adopted perspective programs and legislative work plans [9].

Programs and plans of the model legislative activities are formed on the basis of the parliamentary delegations proposals, standing committees, the CIS bodies. The range of other bodies and officials, endowed with the right to make model bills, is regulated by the Inter-parliamentary Assembly of the CIS Member States.

Model legislation act still does not have a single standard and generally accepted scientific definition, the legal nature and legal significance, the place and role of the model acts are not revealed, the mechanism to implement them into national law is not developed, an assessment of the positive and negative features of the model legislation as a means of legal norms unification is not given.

Inter-parliamentary Assembly as well as the European Union lawmaking activity, is based on the ideas of democracy and promotes the formation of the CIS constitutional state and functioning civil society, providing guarantees of the human rights and freedoms protection, as well as the peoples and nations economic prosperity.

At the same time there are weaknesses of such integration. Standing committees and experts spend much time and energy to develop various recommendations,

techniques, model laws. Although these regulations are approved and adopted at the international level, some of them still remain unclaimed in the legislative processes, legislative practice of some Commonwealth States.

RESULTS AND DISCUSSION

The Research Results Suggest the Following:

- The CIS model legislative acts are advisory in nature. Advisory nature of the model legislation is that they are not binding and do not create legal relations. This explains why the model legislation does not always achieve its goal.
 - Model laws are used by individual states in some areas, the states alter them according to their needs, and do not accept unchanged. However, neither uniform nor model acts have legal power as long as they are not actually adopted by the state legislature. They acquire legal power after publication in the form of laws.
 - The development of the model law actually conforms to the legislative technique rules. And the norms regulating the process of the model law adoption clearly define all stages of this process. However, despite the apparent regulation, the procedure of development and adoption of the ILA normative legal acts is very slow; they are obsolete by the time of adoption.
 - Model laws are effective only in combination with the agreements, conventions and treaties, setting the guidelines for interaction.
 - The necessity of legal regulation through model laws disappears in case of:
 - emergence of a sufficiently clear, detailed regulation in national legislation;
 - no need for specific legal relationships;
 - sustainable practice of legal regulation.
 - Model laws, developed within the Commonwealth are unsystematic. Spontaneous model laws can not provide the necessary level of complex relationships regulation.
 - The aim of creating model laws should be determined by the common needs and interests. Model laws may be used in case if the overall goal of the states interaction is determined consciously and not manifested as a spontaneous result of the diverse activity, then *ceteris paribus* the implementation of such acts requires less efforts and time. In fact, the legislation development priorities are not clearly defined.
 - Law predictive function is poorly implemented. Adoption of uniform norms to a greater extent than before, suggests a preliminary comprehensive study of the existing law shortcomings, their generalization, and hence the complete identification of existing errors, which is not often done.
 - Advisory norms qualitative characteristics increase as a result of the developed projects independent examinations. However, this activity is often formal.
 - Mechanism of attraction to legislature of not only ILA deputies and experts, but also of the states executive bodies' specialists - is a mere formality.
 - While implementing the right to legislative initiative and legislative initiatives portfolio formation, the Inter-parliamentary Assembly of Member Nations of the CIS model legislation experience is not taken into account.
 - Member Nations of the CIS Inter-parliamentary Assembly little inform about the use of the model legislative acts in the standards-related activities [10].
 - The existing problems of the model acts implementation are solved very slowly, which is not conducive to their widespread use.
 - The Assembly of Member Nations of the Commonwealth of Independent States, adopting the model legislative acts does not have a corresponding "weight" on the world stage.
 - The absence of the model acts clear functions also hinders their practical application.
 - The model documents abundance only creates the illusion that the CIS is a full-fledged participant of the so-called civilized international community. The ILA CIS model legislative acts, the CIS solutions and advisory legal documents, as well as the national authorities declarative joint solutions (statements, appeals, etc.) are not the CIS legal sources, so are not means of unification [11].
- The main goal of the model law, in our opinion, is the law harmonization- the creation of the national law similar norms, especially if the state has no legal regulation of any relationships and the use of the model act immediately allows generating the single sample corresponding acts in the national legal systems. This provides a unified approach to the issue. It's cheap. This pattern helps to choose the relations regulating path. Model laws should always be designed ahead of time, be the future standards.
- It is very difficult to create a model law suitable for any legal system. Countries differ in economic development level, and certain social relations regulation,

and the structure of law. Model legislation should not “conflict” with domestic law. This means they cannot contradict the existing state regulatory requirements, must be interfaced with them. Only in this case one can talk about coordinated development of national legislations through the development of common scientific concepts, legislative activity programs coordination, and model acts adoption. Such legislative acts contribute to the legislative activity further development, allowing to form a new regulation not empirically, by trial and error, but deliberately, based on the pre-established principles allowing to count on the well-defined result. And if the law does not regulate the new relationships, because a special law has not been created yet, it is possible to rely on the existing basic model legislation, without experiencing complete legal vacuum difficulties.

So, summing up our research, it should be noted that the analysis of the conditions, prerequisites and problems of the model norms practical implementation suggests the lack of study of the problem. There is no doubt that in the conditions of the overall integration and globalization there is a need for further development in this direction in legislation.

The research results can be used in the application-level activities of the state legislative and executive branches, interstate associations, and be directed to the medium and long term perspective, balanced and sustainable development of unification means and legislation harmonization.

Based on the practical significance of the research the following conclusions are made:

- The model legislation results are to be used in the unified conceptual framework development.
- It's necessary to conduct systematic work to identify strengths and weaknesses of the developed model standards, model legislation structure and content requirements, model norms preparation procedure and implementation, the changes order, publication and use. The development of model laws should move to a qualitatively new level. The development of the model legislative acts projects could include the research work fulfillment.
- Nowadays the concept of the “model legislation” is not clearly defined anywhere. Evaluation categories, evaluation features are not defined. The categories vary in different countries. To our mind it was correct to state the law adoption procedure in legislature as a law and introduce the notion of the “model law” in it [12].

- Preparation of the model bill working plan should not only contain the model acts working titles, but their detailed concepts, program and implementation concept.
- The subject of regulation should be clearly determined taking the actual legislative interests and national parliament's plans into consideration.
- In accordance with the present time reality the effectiveness of regulation may significantly increase if the model acts preparation “package” principle is implemented, which is the simultaneous development and adoption of the model laws complex, regulating specific social relations. While implementing this principle it is also advisable to provide the direct action norms, enhancing the legislative norms unification effect. Testing of this principle can be implemented as an experiment in relation to one of the legal regulation tools.
- To pay more attention to the international expert evaluation in compliance with the international standards while working out the model legislative acts projects.

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