

The Institute of Legislative Initiative of Citizens in the Subjects of the Russian Federation

**ОХУ-ын Холбооны субъектууд дахь
иргэдийн хууль санаачлах институт**

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[Abstract]

The author reveals the issues of the history of legal regulation of the people's legislative initiative in the Russian Federation from the pre-revolutionary period to the present. As of today, the federal legislator has not sufficiently regulated the issues of the procedure for the implementation of legislative initiatives by citizens, therefore, various legislative practices have developed in the regions. Almost all constituent entities of the Russian Federation have adopted special laws regulating the mechanism for the implementation of legislative initiatives by citizens, with the exception of a number of regions. In order to expand the possibility of citizens' participation in regional lawmaking, a framework legal regulation of this institution at the federal level is proposed.

Based on the results of the analysis of regional legislation, several forms of implementation of the legislative initiative by citizens were identified - the submission of a bill to parliament, amendments to the bill and a legislative proposal. These forms have their own specifics due to the mechanism of their implementation, therefore, it was proposed to separate the legislative proposal into an independent legal institution, and simplify the procedure for amending draft laws.

The objective reasons for the lack of widespread practice of implementing the institution of legislative initiative of citizens in the regions are revealed, which lie in the cumbersome procedure for the implementation of the legislative initiative by citizens, as well as in the overestimated requirement for the number of citizens who must support the bill (amendments to the bill) at the stage of collecting signatures. The author made an attempt to determine the optimal number of signatures that must be collected by the initiative group in the implementation of this institution.

The results of the study can be applied by regional legislators when improving the mechanism for the implementation of legislative initiatives by citizens, as well as in theoretical studies devoted to the consultative institution of direct democracy - the legislative initiative of citizens.

[Keywords]

Lawmaking, Legislative Initiative, Democratization of Lawmaking, Popular Legislative Initiative, Legislative Initiative of Citizens, Bill.

The issues of citizen participation in law-making activities have been raised in Russian science since the emergence of the first parliament in Russia - the State Duma, which was an advisory body. For example, at the beginning of the 20th century, L. Tal noted the need for civil society to assist the Russian parliament in legislative work by preparing and providing analytical materials, various studies, discussing legislation and making proposals for its improvement. As an example, he cited the experience of Western countries (France and Germany), where public organizations carry out similar work [21, p. 652]. In the legislative practice of that period, citizens were granted the right to submit petitions to Emperor Nicholas II on issues of state structure and the welfare of the people, which were considered and discussed by the Council of Ministers [8, p. 16].

In the Soviet period, Russian legal scholars actively developed issues of democratization of law-making activities. Extensive research on this topic was conducted from the 1960s to the 1970s by such Soviet legal scholars as N.D. Abdullaev, E.G. Apatonov, N.P. Koldaeva, A.V. Mitskevich, V.D. Popkov, N.Ya. Sokolov, I.M. Stepanov, A.F. Shebanov and others. Scientific substantiation of the need for public participation in legislative activity and theoretical developments of a number of forms of direct democracy served as the basis for legislative consolidation of such forms of citizen participation in lawmaking as public discussions of bills, voter mandates, citizen surveys (referendums), and citizen appeals in the form of proposals [14, p. 19]. One of the major achievements of socialist democracy was the granting of the right of legislative initiative to public organizations in the Supreme Soviet of the USSR in 1977 (Article 113 of the 1977 Constitution of the USSR; similar provisions were in the 1978 Constitution of the RSFSR). At the same time, the issue of the need to grant public organizations this right was actively raised and supported by such Soviet scholars as N.E. Andrianov, V.F. Kotok, N.P. Koldayeva [13, p. 190].

The right of citizens to implement legislative initiative was considered by Soviet scholars through the legal form represented by public organizations, but at the same time the idea of implementing this right directly by citizens was not rejected. As E.G. Apatonov noted, the right of popular law-making initiative should be considered from several aspects: a type of personal rights of Soviet citizens that allow for the improvement of the social rights of the individual; a means of guaranteeing the rights of the individual, directly related to the implementation of other constitutional freedoms of a citizen (freedom of speech, assembly, press); a form of involving citizens in the political, economic and cultural life of the country,

which contributes to increasing the political consciousness and legal culture of citizens [5, p. 26]. Despite the abundance of scientific research in the Soviet period, citizens were never granted the right of legislative initiative.

After the constitutional reforms in modern Russia, the active introduction of new institutions of direct democracy began, which had extensive law enforcement practice in foreign countries, at the regional and municipal levels - popular legislative (law-making) initiative, public hearings, referendums, etc. Among them, the institution of popular legislative (law-making) initiative, which expands the opportunities for citizens to participate in law-making activities, is of particular importance.

In the modern period, a large number of scientific works are devoted to the institution of popular legislative (law-making) initiative, among which we can highlight a number of dissertations by S.S. Vazhnov, E.I. Bychkova, K.A. Ivanova, D.L. Kuteynikov, A.R. Galoyan. However, despite the abundance of scientific literature on this topic, several issues regarding the implementation of citizens' right to legislative initiative remain unresolved in regional legislative practice. The study of legislation allows us to generalize the experience of legal regulation of the institution of popular legislative initiative with the possibility of identifying the main problems and prospects for the development of this institution, models of the mechanism for its implementation in order to prepare proposals for improving federal and regional legislation.

Legal regulation of the institution of popular legislative initiative in the Russian Federation

The issue of granting citizens the right to legislative initiative is regulated at the federal and regional levels. It should be noted that there are several models of legal regulation of forms of direct democracy in the Russian Federation - this is centralized (elections, referendums, citizens' appeals), framework (consultative institutions of direct democracy at the municipal level, public control, etc.), residual principle (recall of elected officials, voters' orders), where there is broad independence for regions in matters of legal regulation of the procedure for implementing democratic institutions [3, p. 7-8].

To determine the model of legal regulation of the institution of popular legislative initiative, it is necessary to determine its legal nature. In legal literature, this institution is considered from several aspects - the right of citizens to manage state affairs, the consultative institution of direct democracy, the stage of the legislative process. The institute of popular legislative initiative in this regard is a rather complex and multifaceted legal institution, in which various legal institutions are combined and intersect. In this regard, there is a need for at least a framework legal regulation of

this institution at the federal level.

At the federal level, the possibility of granting citizens the right of legislative initiative is established by Part 1 of Article 6 of the Federal Law of 06.10.1999 No. 184-FZ “On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation”, according to which the constitution (charter) of a subject of the Russian Federation may grant the right of legislative initiative to citizens residing in the territory of this subject of the Russian Federation. In fact, the federal legislator chose the residual principle of regulation of this institution with the granting of regions broad powers to legally regulate this issue. In practice, only one requirement has been established - the consolidation of this right in a legal act of the highest legal force at the regional level - the constitution (charter) of a subject of the Russian Federation.

Currently, about thirty-five subjects of the Russian Federation have provided for the right of citizens to implement legislative initiative. At the same time, several options for securing the right of citizens to legislative initiative in the constitutions (charters) of the subjects of the Russian Federation can be distinguished:

1) a blanket method, which is the most common in the regions. In this case, the regional legislator grants citizens the right of legislative initiative in the constitutions (charters), but the main conditions for the implementation of legislative initiative by citizens are not disclosed, and the legislator makes a reference to the relevant law of the subject of the federation;

2) a framework method, where regional legislators in the constitutions (charters) of the region secure this right for citizens and determine the conditions for the implementation of legislative initiative by indicating the number of citizens necessary to support and submit a legislative initiative to parliament. When establishing the number of citizens necessary to implement a legislative initiative, two options for legal consolidation can be distinguished - establishing a percentage of the number of citizens with active voting rights, or indicating the minimum number of citizens. Moreover, the latter method of establishing the number of citizens is widespread in the regions [14, p. 22].

Almost all subjects of the Russian Federation have adopted special laws regulating the order and procedure for the implementation of legislative (law-making, civil) initiative by citizens, but there are exceptions. For example, in the Magadan Region, the charter of the region grants citizens the right to legislative initiative. In the Murmansk Region and the Altai Republic, the constitutions (charters) of the regions do not

indicate citizens in the list of subjects of legislative initiative, but at the same time, these legal acts grant citizens the right to participate in the law-making initiative (Altai Republic), to introduce a bill by implementing a popular legislative initiative (Murmansk Region). However, the above-mentioned regional legislators have not yet adopted special regional laws establishing the conditions and procedure for the implementation of this right by citizens. This circumstance raises a number of questions about the reasons for the current situation, and may indicate the unwillingness of the regional legislator to create legal conditions for the implementation of this right by citizens.

Determining the number of citizens required to support popular legislative initiative

It should be noted that there are currently no methods for determining the optimal number of citizens required to support and implement popular legislative initiative in the regions. This issue is open in the legal literature.

The federal legislator has determined the minimum number of citizens' initiative groups for the implementation of citizens' legislative initiative at the local government level, which cannot exceed three percent of the number of residents of the municipality who have the right to vote, and has not established any requirements for the regional level. This issue is currently under the jurisdiction of the regional legislator.

An analysis of regional legislation on determining the number of citizens required to implement popular legislative initiative allows us to conclude that there are a variety of practices in resolving this issue. For the purposes of the study, we took data from the election commissions of the constituent entities of the Russian Federation on the number of voters as of January 1, 2021, as well as data on the requirements for the number of citizens (voters) required to support a legislative initiative (both numerically and as a percentage). Based on the results of the study, we obtained the following picture in the regions for determining the number of citizens for introducing legislative initiatives in the regions:

Table

№	Name of the subject of the Russian Federation	Number of voters	Number of signatures	Percentage of citizens
1	Nizhny Novgorod Region	2 546 549	2 000	0,08
2	Irkutsk Region	1 851 493	2 000	0,1
3	Kaluga Region	798 764	1 000	0,12
4	Tambov Region	828 488	1 000	0,12
5	Astrakhan Region	727 354	1 000	0,14

6	Jewish Autonomous Region	125 447	200	0,16
7	Tyumen Region	1 122 275	2 000	0,18
8	Krasnoyarsk Region	2 056 713	5 000	0,2
9	Tver Region	828 488	3 000	0,29
10	Bryansk Region	978 333	3 000	0,3
11	Sverdlovsk Region	3 314 682	10 000	0,3
12	Arkhangelsk Region	885 402	3000	0,34
13	Penza Region	1 048 406	5 000	0,48
14	Republic of Tyva	197 932	1 000	0,5
15	Volgograd Region	1 825 783	10 000	0,55
16	Moscow	7 440 740	50 000	0,67
17	Udmurt Republic	1 173 773	10 000	0,85
18	Kaliningrad Region	816 762	7 000	0,85
19	Kostroma Region	520 726	5 000	0,96
20	Altai Region	1 803 626	18 036	1
21	Amur Region	608 341	6 083	1
22	Tomsk Region	764 048	7 640	1
23	Smolensk Region	754 503	10 000	1,32
24	Republic of Bashkortostan	3 029 855	15 000	1,6
25	Omsk Region	1 506 170	25 000	1,66
26	Khanty-Mansi Autonomous Okrug – Yugra	1 134 763	20 000	1,76
27	Lipetsk Region	920 682	18 414	2
28	Kirov Region	1 043 054	20861	2
29	Tula Region	1 168 125	25 000	2,14
30	Krasnodar Region	4 249 315	100 000	2,35
31	Republic of Khakassia	396 907	19845	5

For the analysis, it should be noted that the share of the urban population in the total population of the Russian Federation as of January 1, 2020 is about 74.7%, which is quite a high percentage. It is the urban population that usually initiates political initiatives, and with such a concentration of the population, one can theoretically conclude that there is no problem with collecting signatures in support of a legislative initiative. As the data show, about twenty regions have established up to one percent of the number of residents of the region required to support the initiative. But this is the first impression that can be formed by specialists who have not encountered the procedure for collecting voters' signatures in practice. Currently, the mechanism for collecting signatures is actively

used in elections (an imperative institution of democracy). Our survey of ten specialists (electoral lawyers, professional signature collectors) allows us to conclude that collecting signatures is a rather serious and complex procedure in organizational and legal terms, where ordinary citizens can make simple mistakes. At the same time, the procedure for collecting signatures during elections (for example, deputies of parliaments in single-mandate constituencies), where it is necessary to obtain the support of 1,000 to 5,000 voters, begins a month before the elections are called and is carried out during the month at the very beginning of the election campaign. At this stage, a large number of signature collectors are involved - from 50 to 100, electoral lawyers, a lot of work is done to verify the signatures. This work is professional and paid, if we are talking about the success of the event. The minimum budget for collecting 1,000 signatures can be from 200,000 rubles, and then in a region where such services are cheap. In this regard, even collecting 1,000 signatures during a campaign to support a legislative initiative for ordinary citizens can result in great organizational and financial difficulties. Therefore, it is not surprising that the practice of implementing a popular legislative initiative is practically absent.

V.V. Komarova suggests establishing a minimum number of signatures similar to the support for the initiative to hold a regional referendum in the amount of 2 percent of the number of voters in the region, and S.S. Vazhnov - 3 percent [20, p. 113].

In political terms, the use of legislative initiative by citizens may indicate the emergence of a public demand for improvement of legislation, when other consultative institutions of direct democracy (citizens' appeals, voters' orders, legislative proposals) in building communication between citizen initiators and government bodies have not worked. In this regard, social tension and conflict arise between the initiators and the public authorities, which can expand its boundaries during the initiation and implementation of the institution of popular legislative initiative with increased requirements for the required number of voters' signatures. But does this make sense?

According to federal legislation, the number of signatures required to support the initiative to hold a regional referendum cannot exceed two percent of the number of voters, and for a local referendum it cannot exceed five percent. When establishing a requirement of two or more percent of the number of citizens necessary to support a legislative initiative, the initiators may have a reasonable question about the advisability of using this institution, when it is possible to move on to direct lawmaking by holding a referendum (an imperative institution of democracy).

An attempt to implement a legislative initiative by citizens occurred

in the Tver region in 2014, when citizens introduced a bill to the regional parliament on establishing restrictions on the retail sale of non-alcoholic energy drinks. More than five thousand signatures were collected in order to implement this initiative, but following the verification, a thousand signatures were declared invalid due to the lack of passport data of citizens, since many were simply afraid to provide them. As a result, citizens were unable to implement their initiative due to the complexity of the signature collection procedure itself. However, after the actual “failure” of the legislative initiative, understanding the public resonance and support of the population for the legislative idea, the parliament prepared and adopted a corresponding law [9, p. 46]. This case demonstrates the complexity of the signature collection procedure. It is not surprising that after this story in the Tver region, the regional legislator lowered the requirement for the number of signatures from 5,000 to 3,000 in 2015. It was followed by the Tyumen region, which in 2017 lowered the requirement from 3,000 to 2,000 [14, p. 22]. The European experience of implementing civil initiatives has cases when initiatives received the necessary support among the population (over one million signatures of citizens of at least one quarter of the countries of the European Union), but did not always achieve their legislative result. According to Eric Longo, a striking example of such a case is the European civil initiative - “Right2Water”, the purpose of which was to recognize the right to water and a ban on the liberalization of water supply services, on proper sanitary and hygienic conditions. Following the review, the European Commission was unable to fully implement the initiative due to the fact that this issue is within the competence of national authorities. However, the European Commission has made informal efforts to resolve this issue by committing to prepare a review of the Water Framework Directive and make the necessary amendments to it, as well as to conduct public consultations on this directive in the countries of the European Union. In this regard, the scientist notes that civil initiative has become a tool for creating policy that promotes dialogue between citizens and authorities, an open channel for public debate or even indignation at the actions of the authorities on the part of the population [22]. It is easier for citizens to implement their legislative idea through other institutions of direct democracy - citizens’ appeals, voters’ orders, legislative proposals, public events. At the same time, the latter institution of democracy in our country is becoming increasingly popular, but not always effective in its results. Some institutions of democracy, for example, voters’ orders, today acquire a different subject - this is the solution of economic issues of the electoral district [4], although earlier the Soviet legislator attached a different legal and socio-political meaning to them. At present, the institution of popular legislative initiative is by its nature a more constructive mechanism for

interaction between parliament and the electorate on issues of improving legislation, and attempts to overstate the requirements for the number of citizens necessary to support a legislative initiative may lead to the opposite effect. The issue of the need to simplify the procedure for popular legislative initiative has been repeatedly raised in legal literature, which will contribute to the democratization of legislative activity [7, p. 73]. In this regard, it is proposed to reduce the requirements for the number of citizens necessary to support a legislative initiative.

Forms of implementation of legislative initiative by citizens

An analysis of regional legislation allows us to identify several forms of implementation of legislative initiative. Since the Soviet period, two forms of implementation of the initiative have been established - by introducing a legislative proposal or a bill [18, p. 123]. Currently, priority is given to bills and amendments to bills both at the federal level and in most regions.

The least common form of implementation of legislative initiative in the regions is a legislative proposal, which is understood as the right of initiators to raise before parliament or the subject of legislative initiative the issue of the need to prepare (develop) and adopt a bill [12, p. 13]. It should be noted that the introduction of a legislative proposal by citizens can be carried out by implementing a legislative initiative (Kaluga Region, Khanty-Mansi Autonomous Okrug) or a citizen's initiative (Rostov Region).

At present, there is a need to classify the legislative proposal of citizens as an independent legal institution, which refers to a separate legislative stage (the preparatory stage of the legislative process). At the same time, the mechanism for implementing a legislative proposal by citizens should be simple.

A third option for implementing a legislative initiative is also distinguished - this is the introduction of amendments to bills. Regarding the granting of the right to citizens to introduce amendments to bills, several options for legislative consolidation and regulation of this issue can be noted:

1) the right of citizens as a subject of legislative initiative to introduce amendments to bills before the second reading is provided, but a special law regulates only the procedure for introducing a bill, thereby omitting this issue;

2) the right of citizens to introduce amendments to bills is granted in a special law dedicated to popular legislative initiative (for example, the Jewish Autonomous Region, Volgograd and Nizhny Novgorod Regions)

[14, p. 19].

Providing citizens with the opportunity to introduce amendments to bills may be quite in demand, since the preparation of amendments to bills does not take much time and allows citizens to identify the problem before parliament about the imperfection of the bill, as well as the opportunity to propose an acceptable option. If we raise the issue of the actual implementation of this form of legislative initiative, it is necessary to note the cumbersomeness of the procedure of popular legislative initiative itself. It is important to note that the procedure for initiating popular legislative initiative in most regions involves two stages - this is the initiation of a legislative initiative by a group of citizens before parliament, followed by verification by parliament of its legality, and after receiving approval and issuance of a registration certificate by parliament, the collection of signatures of citizens in support of the initiative. This model of implementing legislative initiative of citizens can become a significant obstacle, since the procedure of initiation and obtaining support from the population when collecting signatures can drag on for several months. And while citizens are carrying out this procedure of initiating and submitting a legislative initiative to parliament, then during this period the bill can undergo the procedure of discussion in the second (third) reading and will be adopted by parliament.

As a solution to this problem, we propose simplifying the procedure for citizens to submit amendments to draft laws in the order of popular legislative initiative, including reducing the requirements for the number of signatures collected from citizens to support a legislative initiative, and eliminating the stage of preliminary registration of a popular legislative initiative (preliminary examination of amendments to a draft law, obtaining approval from parliament for the subsequent collection of signatures).

Models of the mechanism for implementing legislative initiatives by citizens at the regional level

V.V. Komarova identifies several stages in the implementation of civil law-making initiatives - the stage of initiation and registration of the initiative (including several stages - the formation of an initiative group, consideration of the initiative by the government body, its registration, determination of the deadlines for collecting signatures and approval of the signature sheet form); preparation for the official submission of a civil initiative (collection of signatures of voters (citizens), preliminary preparation for consideration of the initiative by the government body, information about the collection of signatures for the petition, implementation of financing); official submission of the petition to

the government body (submission of documents by the initiative group (organizational stage), verification of signature sheets by the government body, preparation of documents for registration of the petition and official submission of the petition); the procedure for implementing proposals (development of a draft legal act (if the initiative is submitted as a proposal to develop a legal act), consideration and voting on the draft legal act, monitoring the implementation of the decision) [19, p. 377].

V.V. Galoyan identifies several stages of implementing legislative initiative by citizens at the regional level - putting forward a legislative initiative by citizens (holding a meeting of the initiative group, registering the initiative group), collecting signatures in support of the initiative, submitting final documents and registering them in parliament, making a final decision [15, p. 104].

S.S. Vazhnov identifies several main stages of implementing legislative initiative by citizens at the municipal level - forming an initiative group, submitting a draft legal act to a public authority, considering the legislative initiative [11, p. 73].

The regions have developed a variety of practices in the mechanism for implementing legislative initiative by citizens, and there are specific features in the implementation of some stages. Nevertheless, it is possible to identify general and main stages of implementing legislative initiative:

a) initiating legislative initiative by citizens - this is the formation of an initiative group, the registration of a legislative initiative in the form of a legislative proposal, a bill or an amendment to a bill, preparing the necessary documents, registering the initiative group (not all regions provide for the last stage). It should be noted that recently in regional practice such a stage as registration of an initiative group in parliament with obtaining a registration certificate after conducting legal and other examinations has appeared and has begun to be actively used. On the one hand, this stage when initiating a legislative initiative can remove a number of problems in the future that citizens and parliament could face. For example, citizens did a lot of work collecting signatures, and only after introducing a legislative initiative did they find out about the impossibility of its approval by parliament due to a violation of the principle of legality. At the same time, this stage is not suitable for such a form of legislative initiative as citizens' introduction of amendments to a bill, since registration of an initiative group takes a certain amount of time and can become an obstacle to the implementation of a legislative initiative. In our opinion, this mechanism could be improved. At this stage, the responsible committee of parliament, after conducting an examination and considering the legislative initiative, could decide to develop a bill (if a legislative proposal is made) or to

independently introduce a bill to parliament by deputies who are members of the responsible committee. This mechanism would simplify the task for citizens, freeing them from the subsequent collection of signatures. Although it is more logical to talk about the implementation of legislative initiative by citizens, rather than about a legislative proposal as a separate legal institution. And in the event of a refusal by the responsible committee with positive results of the examination, citizens could continue to exercise their right, but already as a popular legislative initiative;

b) obtaining support for the legislative initiative from the population by collecting signatures and preparing documents for submission to parliament by the initiative group. In the context of digitalization of society and the state, signatures can be collected through the Internet information and telecommunications network, where citizens can vote in support of the bill. Moreover, Federal Law No. 67-FZ of 12.06.2002 “On the Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation” provides for the possibility of collecting voters’ signatures in the regions using the federal state information system “Unified Portal of State and Municipal Services (Functions)”;

c) submitting documents based on the results of signature collection to parliament (submission of documents and their registration by parliament, verification of signature sheets, decision to refuse or submit the issue to a parliamentary session). At this stage, the participation of citizens during the verification is of great importance, as well as providing citizens with the opportunity to additionally collect voters’ signatures if violations in the procedure for registration of signature sheets were identified. After all, it would be a shame if citizens collected signatures, but as a result of the verification they were short of a few valid signatures. Some regional legislators, when regulating the issue of verification of signature sheets, followed the analogy with the electoral process, which is quite formal when recognizing voters’ signatures as invalid. It should be noted that the electoral legislation provides for about thirteen such grounds;

d) consideration of a legislative initiative by parliament. An important guarantee of the implementation of a legislative initiative by citizens in the event of its rejection by parliament will be the opportunity to subsequently initiate a referendum if the legislative initiative was submitted in the form of a bill. As S.A. notes, Avakyan, in some countries (for example, in some states of the USA) the institution of adoption of normative acts by means of popular initiative is envisaged, when the published draft of the legal act is supported by the population upon collection of the required number of signatures. This option is quite interesting for Russia, especially in the case

when the parliament did not support the popular bill.

Law enforcement practice of realization of legislative initiative by citizens shows that this institute of democracy itself is “dormant”, i.e. there are practically no cases of its application in the regions.

This circumstance is caused by a number of subjective and objective factors – low awareness of this institute among the population, insufficient level of legal knowledge among citizens for preparation of bills, cumbersomeness of the procedure of legislative initiative, high costs in terms of financial, human and time resources, inflated requirements for the number of citizens necessary for support of the legislative initiative, etc. But this situation should encourage the legislator to work on improvement of the mechanism of popular legislative initiative, because This institution is aimed at democratizing lawmaking and realizing the right of citizens to manage state affairs.

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