



**Constitutional And
Legal Responsibility Of
Public Authorities Of
Subjects Of The Russian
Federation: Modern
Realities And Prospects
Of Legislative Regulation**



CONSTITUTIONAL AND LEGAL RESPONSIBILITY OF PUBLIC AUTHORITIES OF SUBJECTS OF THE RUSSIAN FEDERATION: MODERN REALITIES AND PROSPECTS OF LEGISLATIVE REGULATION

RESPONSABILIDAD CONSTITUCIONAL Y LEGAL DE LAS AUTORIDADES PÚBLICAS DE LOS SUJETOS DE LA FEDERACIÓN DE RUSIA: REALIDADES MODERNAS Y PERSPECTIVAS DE REGULACIÓN LEGISLATIVA

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Abstract

The relevance of the problem is due to the issues arising in the process of attempts to legal implementation of the institution of constitutional and legal responsibility of public authorities of the subjects of the Russian Federation; the current situation in the Russian Federation at the present stage of development of the Federal State, as well as the difficulties encountered in the regulatory regulation of these groups of public relations. In this regard, this article is aimed at a comprehensive analysis of attempts to develop adequate measures of constitutional and legal responsibility in order to protect the Constitution of the Russian Federation, to ensure its Supreme legal force, supremacy and direct action, as well as the supremacy of Federal Laws based on it throughout the Russian Federation. The leading approach to the study of this problem is the analysis of domestic experience in the implementation of the procedure of this responsibility. The article summarizes the problematic aspects associated with the search for the optimal list of



measures of constitutional and legal responsibility of public authorities of the subjects of the Russian Federation, as well as the doctrinal approach to the subject.

Keywords: constitutional-legal responsibility, Federal responsibility, authorities, , Federal discipline, public power, Russian Federation, dissolution.

Resumen

La relevancia del problema se debe a los problemas que surgen en el proceso de intentos de implementación legal de la institución de responsabilidad constitucional y legal de las autoridades públicas de los sujetos de la Federación de Rusia; la situación actual en la Federación de Rusia en la etapa actual de desarrollo del Estado federal, así como las dificultades encontradas en la regulación regulatoria de estos grupos de relaciones públicas. En este sentido, este artículo está dirigido a un análisis exhaustivo de los intentos de desarrollar medidas adecuadas de responsabilidad constitucional y legal para proteger la Constitución de la Federación de Rusia, para garantizar su suprema fuerza legal, supremacía y acción directa, así como el supremacía de las leyes federales basadas en ella en toda la Federación de Rusia. El enfoque principal para el estudio de este problema es el análisis de la experiencia doméstica en la implementación del procedimiento de esta responsabilidad. El artículo resume los aspectos problemáticos asociados con la búsqueda de la lista óptima de medidas de responsabilidad constitucional y legal de las autoridades públicas de los temas de la Federación de Rusia, así como el enfoque doctrinal del tema.

Palabras clave: responsabilidad legal constitucional, responsabilidad federal, autoridades estatales, disciplina federal, poder público, disolución.

Introduction

The problem of constitutional and legal responsibility in the environment of scientists-statesmen the last decade retains an acute discussion character. This is evidenced by the fact that a common approach to understanding this phenomenon has not yet been developed.

Nevertheless, the need for this type of responsibility is recognized. It stems from the constitutional nature of the Russian state. This is required by the theory of constitutionalism, which is confirmed by the presence of this institution in all countries with an established democratic tradition. In addition, the branch of law, especially constitutional law, which is the leading branch of the domestic legal system, will not be able to function normally without a theoretically developed and found a full practical embodiment of the Institute of legal responsibility.

In the context of the constitutional-legal status of subjects of the Russian Federation it is necessary to allocate the constitutional-legal responsibility the subjects of the Russian Federation for violation of Federal constitutional law. It is necessary to agree with the opinion of I. N. Bartsitsa and G. A. Strelnikova, which distinguish it as a separate type of liability, and apply to it the term "Federal responsibility" that correspond to its content, aiming at the protection of the Constitution of the Russian Federation to ensure the integrity



of the state structure of Russia and the unity of the legal space **1**. Russia is a Federal State, and Federal responsibility is conditioned by the presence in its composition of subjects (republics, regions, Autonomous entities, cities of Federal importance).

The General concept in relation to Federal responsibility will be constitutional and legal responsibility. The circle of subjects of a Federal liability is clearly limited, defined grounds of its occurrence (violation of the Constitution and Federal law), and measures (sanctions) of the Federal responsibility form a single Institute of Federal intervention, enshrined in the norms of the Constitution of the Russian Federation and Federal constitutional laws. Therefore, Federal liability is an independent type of liability **2**.

Responsibility of the subject of the Federation for violation of the Federal Constitution and the Federal legislation should be defined as consequences of violation of Federal discipline **3**. This is the responsibility for the improper exercise of public power.

1 Bartsits I. N. Constitutional and legal space of Russia: formation and dynamics. Moscow: rags Publishing house, 2011. Pp. 318.

2 Avakyan S. A., Arbustini A. M., Arinin A. N. Federal intervention: the concept and draft Federal law // Vestnik MGU. Series 11, Right. 2000. № 6. P. 7.

3 Bartsits I. N. A Federal responsibility. Constitutional and legal aspects. Moscow: publishing house of scientific and educational literature REA, 1999. P. 10.

Methodology

The study is based on the dialectical method of cognition of political, legal and socio-economic processes and phenomena, which has made it possible to carry out a comprehensive analysis, generalization, systematization and classification of interrelated relations that make up its object. In addition, the work uses a complex of General scientific (analysis and synthesis, ascent from the abstract to the concrete and from the concrete to the abstract, system) and special (formal-legal, comparative-legal) methods. Their correct application allows us to characterize the existing institution of constitutional and legal responsibility of public authorities of the subjects of the Russian Federation, as well as to formulate proposals aimed at improving it in the context of improving the principles of the Federal structure of the Russian state.

Directly from enshrined in the Constitution of the Russian Federation bases of the constitutional system of the Russian Federation implies the need for adequate measures of the constitutional responsibility to protect the Constitution of the Russian Federation and ensuring its highest legal force, rule and direct actions, as well as the rule based on it Federal laws throughout the territory of the Russian Federation. The most important in this case is just the power of the President of the Russian Federation, provided for part 2 of the Article 85 of the Constitution of the Russian Federation, arising from the function of the head of state as a guarantor of the Constitution of the Russian Federation, human and civil rights and freedoms **4**. This is not a duty, but a right of the President, which can be exercised if acts of the Executive power of the subjects of the Russian Federation contradict, in the opinion of the head of state, the Constitution of the Russian Federation and Federal laws, international obligations of the Russian Federation or violate human and civil rights and freedoms. The head of state, proceeding from state necessity and legal expediency, independently determines whether to resort to suspension of acts of Executive



power of subjects of the Federation, or to address in the corresponding court. Acts of Executive bodies of the state power of subjects of the Russian Federation can be only suspended in this case before the decision of this question by the corresponding court, but not cancelled.

In accordance with these provisions of the Constitution of the Russian Federation, Federal Law №. 184-FL of October 6, 1999 "on the General principles of the organization of legislative (representative) and Executive bodies of state power of the subjects of the Russian Federation 5» was adopted. The provisions of this law specify the powers of the President to suspend the acts of senior officials of the subjects of the Russian Federation (Article 29). The advantage of this normative-legal act was that it regulated the mechanism of responsibility of public authorities of the subjects of the Russian Federation (Article 29.1.). At the same time, the legislator tried to implement the principle of separation of powers at the regional level, creating a system of checks and balances. Actors are the President, the highest official of the subject of the Russian Federation (head of higher Executive body of state power of a subject of the Russian Federation), the legislative (representative) body of state power of a subject of the Russian Federation, court of the appropriate level.

4 The Constitution of the Russian Federation (adopted by popular vote 12.12.1993 g) (including amendments introduced by Laws of the Russian Federation about amendments to the Constitution of the Russian Federation from 30.12.2008 № 6-FL, from 30.12.2008 № 7-FL, from 05.02.2014 № 2-FL, from 21.07.2014 № 11-FL) // collected legislation of the Russian Federation. 2014. №. Article 4398.

5 About the General principles of the organization of legislative (representative) and Executive bodies of the state power of subjects of the Russian Federation: FL of 06.10.1999 No. 184-FL (amended from 03.08.2018) // Collection of legislation of the Russian Federation. 1999. № 42. P. 5005.

The procedure for the implementation of this responsibility is recorded quite consistently. The President of the Russian Federation issues a warning to the highest official of the subject of the Russian Federation (the head of the Supreme Executive body of state power of the subject of the Russian Federation). If within one month from the date of the President of the Russian Federation warning of the Supreme official of constituent subject of the Russian Federation (head of higher Executive body of state power of a subject of the Russian Federation) the specified person has not accepted within its powers, measures to eliminate the reasons that served as the basis for making him a warning, the President of the Russian Federation is the highest official of the subject of the Russian Federation (head of higher Executive body of state power of a subject of the Russian Federation) from office.

Such procedure can be carried out proceeding from provisions of the Article 9 of the present Federal Law and concerning legislative (representative) public authority of the subject of the Russian Federation. It only includes the State Duma of the Federal Assembly of the Russian Federation, which considers the draft Federal law on the dissolution of the legislative (representative) body of state power of the subject of the Russian Federation submitted by the President of the Russian Federation.

Thus, the Federal Law "on General principles of the organization of legislative (representative) and Executive bodies of state power of subjects of the Russian Federation" carries out normative regulation of the whole complex of measures of Federal responsibility



of subjects of the Russian Federation for the edition of the normative legal acts contradicting the Constitution of the Russian Federation and the Federal legislation, as that: dismissal of heads of subjects of the Federation; dissolution of legislative (representative) authorities and appointment of new elections.

Naturally, there should have been a reaction from the regions. And she followed the requests of the State Assembly (Il Tumen) of the Sakha Republic (Yakutia) and the Council of the Republic of the State Council - Khase Republic of Adygea in the constitutional court of the Russian Federation about constitutionality of separate provisions of this Federal Law (sixth paragraph of paragraph 3 of the Article 5, subparagraph "g" point 1, points 2 and 4 of the Article 9, subparagraphs "b" and "g" of paragraph 1, items 2, 3, 4, 5, 6 and 7 of the Article 19 and Article 29.1).

The past fifteen years, aimed at building the so-called "Executive vertical", have revealed shortcomings in the principles of organization of power bodies in the regions transformed based on presidential initiatives. The lack of wide discussion of the whole complex of problems by the scientific community is alarming. It is no secret that the balance of the branches of state power has been violated recently. The bias is in the direction of the Executive power, significantly strengthened to the detriment of the legislative and judicial. This trend can be traced in the analyzed area.

From time to time amendments to the legislation strengthened the responsibility of public authorities of the subjects of the Russian Federation to the President of the Russian Federation. This puts the head of state in an exceptional position in the mechanism of public administration. As an illustration, we can present an analysis of some provisions of Federal Law № 184-FL.

The legislative (representative) body of state power of the subject of the Russian Federation did not execute within six months the court decision and within three months - the warning of the President of the Russian Federation about cancellation of the regulatory legal act accepted by this body which is not corresponding to the Constitution of the Russian Federation and Federal laws.

According to the earlier version of Law № 184-FL, in this case, the President of the Russian Federation submitted to the State Duma a draft Federal Law on the dissolution of the public authority of the subject of the Russian Federation, the State Duma considered the draft within two months, and the powers of the relevant public authority of the subject of the Russian Federation ceased from the date of entry into force of the Federal law on dissolution.

Subsequently, the changes (paragraphs three to five of paragraph 4 of the Article 9) significantly simplified the procedure. The President of the Russian Federation has the right to dissolve independently legislative (representative) body of the state power of the subject of the Russian Federation, thus its powers cease from the date of entry into force of the decision of the President of the Russian Federation on dissolution of the specified body.

The dissolution can expect a legislature of the subject in the case of rejection of the decision on granting the President of the Russian Federation candidates of the higher official of the subject of the Russian Federation (head of higher Executive body of state power of a subject of the Russian Federation) with powers of the higher official of the subject of the Russian Federation (head of higher Executive body of state power of a



subject of the Russian Federation) or on its refusal, or decision on rejection of the said nomination. In this case, relevant consultations are held with legislators, following which the President of the Russian Federation has the right to re - propose the candidacy of the highest official of the subject of the Russian Federation.

If the legislative (representative) body of state power of the subject of the Russian Federation and for the second time did not take a decision or rejected the proposed candidate for the post of the highest official of the subject of the Russian Federation, the President of the Russian Federation has the right to dissolve it. In this case, extraordinary elections to the representative body of state power of the subject of the Russian Federation shall be appointed, which shall be held within the terms established by the Federal law "on basic guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation".

Undoubtedly, the changes could not but affect the provisions of the Articles 19 and 29.1. Federal Law № 184-FL stipulating the grounds and procedure for early termination of powers of the higher official of the subject of the Russian Federation (head of higher Executive body of state power of subject of Russian Federation) and the responsibility of officials of Executive bodies of subject of the Russian Federation **6**.

6 Problems of constitutional and legal responsibility (based on the materials of the conference at the faculty of law) // Bulletin of the Moscow University. Series 11, Right. 2011. № 3. Pp. 132.

The possibility of impeachment of the head of region from office remains by the President of the Russian Federation in connection with expressing his distrust of legislative (representative) body of state power of a subject of the Russian Federation in connection with loss of trust of the President of the Russian Federation, for inadequate execution of their duties, also in other cases envisaged by the Federal law. Article 29.1. amended by paragraph 3.1. establishes an extremely simple procedure. The decision is made by the President himself in the form of a decree. There is an extensive practice of applying these rules.

For the period before assuming the position of the person, endowed with appropriate powers, the President of the Russian Federation has the right to appoint an acting higher official of the subject of the Russian Federation (head of higher Executive body of state authority of the RF subject) (Article 19). By the way, the acting senior official of the subject of the Russian Federation can be appointed by the President of the Russian Federation and in case of early termination of powers of the former senior official of the subject of the Russian Federation or his temporary removal from office.

In our opinion, in this case it is possible to raise a question of conformity of the analyzed provisions to the Article 10 of the Constitution of the Russian Federation where the principle of separation of powers is fixed. This principle should be consistently implemented not only at the Federal but also at the regional level. The President seeks to make the highest official of the subject of the Russian Federation (the head of the Supreme Executive body of state power of the subject of the Russian Federation) and the regional Parliament dependent on itself.

A retrospective of recent appointments reveals another disturbing fact. The President does not submit candidates for approval to the residents of the regions but uses this



mechanism to rotate the staff of the capital's officials. This has significantly reduced the level of legitimacy of the regional authorities.

There is a strengthening of responsibility of public authorities of subjects of the Russian Federation. Simplification and increase of efficiency of mechanisms of constitutional and legal responsibility. But to whom-the President or the people?

Conclusions

Such important topics are subject to national discussion. In many countries, this issue has long been solved on the basis of the principle of openness (transparency): first, bills are thoroughly discussed in the professional community and (publicly) in society as a whole, followed by discussions (together with independent lawyers) in factions and specialized commissions of Parliament, and only after that the bill is submitted to the General parliamentary debate 7.

It should be noted that now there is no alternative process associated with serious changes in the Federal structure of the Russian state. It is directed from the top of the Federal center and is characterized by maximum centralization of the system of Executive authorities, strengthening the responsibility of the regional authorities personally to the President of the Russian Federation. Its result should ideally have been to improve the efficiency of public administration, reduce bureaucratization of the state apparatus, strengthen the unity and integrity of the Russian Federation. However, the practical achievement of the stated goals is currently under great question.ç

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