

Public control and digital technologies in the context of constitutional and legal responsibility implementation among officials

Control público y tecnologías digitales en el contexto de la implementación de la responsabilidad constitucional y legal entre los funcionarios

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Abstract

The study is devoted to one of the topical areas of modern jurisprudence - digital technologies in law, public control and responsibility. The article discusses some problems of public control implementation and analyzes the main forms of this institution implementation in the activities of officials of state authorities. The article examines Russian and foreign research on digital technologies in law, substantiates the relationship between the results of public control and the possibility of applying constitutional and legal responsibility of public authority officials. Besides, the authors conduct the comparative legal analysis of their legal regulation and focus on possible problematic aspects. On the basis of the established constitutional practice and the rapid development of digital technologies, they identified and substantiated the need to change a number of regulatory legal acts that ensure their use.

Key words: public control, officials, government bodies, constitutional and legal responsibility, digital technologies.

Resumen

El estudio está dedicado a una de las áreas de actualidad de la jurisprudencia moderna: las tecnologías digitales en el derecho, el control público y la responsabilidad. El artículo discute algunos problemas de implementación del control público y analiza las principales formas de implementación de esta institución en las actividades de los funcionarios de las autoridades estatales. El artículo examina la investigación rusa y extranjera sobre las tecnologías digitales en el derecho, fundamenta la relación entre los resultados del control público y la



posibilidad de aplicar la responsabilidad constitucional y legal de los funcionarios de la autoridad pública. Además, los autores realizan el análisis jurídico comparativo de su normativa legal y se centran en posibles aspectos problemáticos. Sobre la base de la práctica constitucional establecida y el rápido desarrollo de las tecnologías digitales, identificaron y fundamentaron la necesidad de cambiar una serie de actos legales regulatorios que aseguran su uso.

Palabras clave: control público, funcionarios, órganos de gobierno, responsabilidad constitucional y legal, tecnologías digitales.

Introduction

At present, the decrease of public confidence level in the activities of government officials, the accuracy and correctness of their power execution is a serious problem in the Russian Federation. Nowadays, a sufficient number of facts indicate that the unclear performance of their official duties, the adoption of dubious and inappropriate decisions from a legal point of view, the concealment of the facts of offenses, the presence of corruption-generating factors in their activities cause a critical attitude of the population towards the actions of officials as the representatives of the state authorities. This, in turn, reduces the authority of the government as a whole. The question arises - what causes such violations of the law by officials? This situation is facilitated by the fact that the legislation does not clearly establish the mechanism for bringing such officials to personal responsibility.

In this regard, the urgent task is to solve the abovementioned problems. For this, it is necessary to make qualitative changes in the interaction of regulatory state bodies with officials in order to increase the efficiency of the activities and responsibility of officials. Moreover, the solution to this problem is possible by involving society in public administration, which will help increase citizens' confidence in the authorities. It is necessary to create such an effective mechanism capable of encouraging officials to perform their duties consistently and properly.

Achieving lawfulness in the activities of officials is possible through the development of an effective mechanism for the implementation of personal responsibility using the capabilities of digital technologies, which can significantly improve the quality of law enforcement in public authorities. However, due to the dynamic development of digital technologies, Russian and foreign scholars cannot clearly determine the subject of digital law regulation, they find it difficult to define the scope it covers. Therefore, improving the regulatory and practical implementation of government official

responsibility using the latest technologies and practices is an urgent task of both Russian and foreign law.

Methods

The methods by which the research was carried out are presented as a system of general scientific and specific scientific methods of cognition. They made it possible to consider the subject of our research from the standpoint of internal logic more qualitatively, comprehensively and objectively. The use of dialectical and systemic-structural methods made it possible to analyze and generalize Russian and foreign ideas of scientists about the institution of public control over the activities of officials and, on its basis, to build a concept of digital technology use in the mechanism of responsibility implementation among the officials of state bodies.

Private law methods, such as theoretical and predictive, legal modeling and comparative legal plan, were used to highlight the features of the research problem. With their help, they carried out the comparison of various points of view of researchers regarding digital technologies in law, public control and responsibility of officials. They also helped to analyze the norms of the Russian Federation, foreign state legislation and the practice of their application. In addition, general logical methods of cognition were used - deduction and induction, analysis and synthesis. With their help, the optimal concept of this study was formed, which together made it possible to consider the problem comprehensively.

Results and Discussion

Control is one of the functions of the management system, which contributes to its quality improvement. The essence of control is the formation of conditions to increase the efficiency of the management system and ensure the transparency of its activities. With its help, it is possible to check the compliance of the subject activities with the requirements stipulated by regulatory legal acts (Koroteeva, 2014). Moreover,



in the process of exercising control, it is possible to identify various errors, shortcomings and committed violations in the activities of officials and prevent their occurrence. Effective control can prevent misconduct and abuse of authority.

The institution of public control is a relatively new legal phenomenon in the Russian Federation. Currently, this institute is at the stage of improvement. To optimize the procedure for public control exercising in the Russian Federation, it seems possible to use foreign experience. So, in foreign countries, they determined the principles, goals and objectives of control concerning the activities of public authority officials by society. In the legislation of developed countries, such as the United States or the countries of the European Union, the main goal of society control over the activities and functioning of public authority officials is the democracy provision. For example, the Law on Freedom of Information (<https://www.foia.gov>) stipulates that democratic human and civil rights and freedom provision is the highest goal of civil society institution activities. A similar document, which was adopted as a supplement and development of the Law on Freedom of Information, is the Memorandum on Freedom of Information. This document enshrines the following formula for the implementation of the goal of democratic society institutions: "Democracy requires accountability; accountability requires transparency"

(<https://obamawhitehouse.archives.gov>). Thus, the main principles of public control over public officials are transparency and accountability of public authorities.

Jacob Sideman (the European Commissioner for Human Rights) points out that transparency in this case is "a procedure by which public authorities make decisions ... and which ... must be clear and open, and the decisions themselves must be reasoned; the information on the basis of which such decisions are made should be available to the public as much as possible" (<https://www.researchgate.net>).

Within the framework of the state apparatus functioning and the interaction with society, the following types of control over the activities of officials can be distinguished: internal control, which is carried out by the authorized state bodies (for example, the Prosecutor's Office); and external control exercised by the public. However, as practice shows, internal control is not always and not objective to the proper extent, since being in "one team" is not allowed to admit obvious mistakes openly in the work of the state apparatus. On the one hand, in the case of covering each other, one can see the decrease of responsibility among

the officials for their actions. Moreover, state control bodies can be limited in their actions due to their subordination to one or another state body, therefore they cannot check the activities of officials objectively. However, on the other hand, state control bodies can actually act on the principle of checking "themselves", according to which it is possible to resolve the issues among themselves without publicity, contributing to the concealment of shortcomings, erroneous and ill-considered decisions, and inappropriate behavior.

External control is more effective, which means the functioning of public control institution. In the Russian Federation, this institution is regulated by the Federal Law No. 212-FZ "On the Foundations of Public Control in the Russian Federation" (July 21, 2014) (The Federal Law N 212-FZ "On the Basics of Public Control in the Russian Federation" (July 21, 2014)). It establishes the following forms of public control exercise: public monitoring, expertise, verification, discussion, public hearings and other forms. These forms can be used by various civil society institutions to influence officials in order to induce them to perform their duties in accordance with the current legislation. They can also contribute to the establishment of a dialogue between the authorities and representatives of the public to solve common problems.

According to the Article 9 of the said Federal Law, the following subjects are vested with powers to exercise public control: The Public Chamber of the Russian Federation, public councils, supervisory commissions, inspections, and public control groups. However, researchers rightly note that citizens and public associations are not named as an independent subject of public control (Mikheev, 2015). On the one hand, the wording "other organizational structures of public control" prescribed in the law does not imply the inclusion of citizens and public associations in the subjects. However, on the other hand, participation in the implementation of control must go through certain organizational and legal forms, since a certain professional level of training is required to conduct quality and qualification control. Therefore, it seems true that citizens can participate in public control as public inspectors and experts.

It should be noted that public control over the activities of senior officials of state power bodies is also very relevant in order to improve the mechanism for the implementation of legal responsibility and the application of its measures. So, in the sphere of constitutional and legal relations, in the event that a senior official commits



any offense, constitutional and legal responsibility arises.

Constitutional and legal responsibility is the obligation of the subject of constitutional and legal relations to suffer adverse consequences as the result of his illegal actions or inaction. The decision on the application of constitutional and legal responsibility is made by that instance in the competence of which is the official assessment of a particular official activities. In the event of a negative assessment, one of the forms of adverse consequence implementation should follow: collegial or personal. So, in the case of collegial responsibility - the dissolution, resignation of the public authority, and in the case of personal responsibility - the recall, resignation and removal from the office of an elected or other official. For example, the President of the Russian Federation and, with a certain degree of convention, the State Duma can personally bring the highest officials of the federal executive bodies to constitutional and legal responsibility.

At present, the influence of public opinion on the position of the Russian Federation President when he decides on the responsibility of senior officials is minimal, since there is no mechanism for a public position development on a particular issue important for the whole society. At the same time, there are the forms of public control that can be used by the Head of State (his apparatus) during a position development on the responsibility of an official.

One of the purposes of public control is to identify violations of the current legislation by officials. Thus, it should be assumed that the interaction of the mechanisms for the implementation of constitutional and legal responsibility and public control can minimize subjectivity when deciding on the application of measures of constitutional and legal responsibility and help to form instances of application for a better and more complete assessment of the activities performed by the officials. Its value is determined by the purpose and objectives of the Constitution: ensuring the stability of social development, the effective functioning of the state mechanism (Maly & Permilovsky, 2015). Therefore, the effective implementation of public control is important not only to prevent and reduce illegal activities of officials, but also to bring them to justice. In the fair opinion by R.S. Barker, this principle is an essential element of democracy and a democratic society must constantly expand the limits of its application, striving to cover all spheres of state and municipal government (Barker, 2000).

A key factor for the development of public control was the development of digital technologies, which created the conditions for realizing many opportunities for control in real time. With the help of Internet technology, there is a search and formation of solutions aimed directly at those who are in power. Therefore, a very relevant way of accessing information about the activities of officials and the implementation of public control is possible through the use of digital technologies. The "digitalization" of society predetermines the demand for the Internet, and in this regard, the practice of digital solutions and Internet platform use is gaining momentum: digital platforms for submitting Internet petitions, appeals through official websites of government bodies, social media (blogs, social networks), broadcasts, video conferencing, etc. In this regard, not only an active part of the population, but the owners of Internet sites themselves can act as the subjects of public control, since they are able to accumulate the position of social groups. Therefore, it will be advisable to introduce them into the legal space by fixing their rights and obligations in regulatory legal acts. This practice already exists. For example, by analogy with the legislative regulation concerning the activities of "bloggers", one should consider the possibility of consolidating a "public group" that can conduct public monitoring and public discussion on the Internet.

An opportunity is organized for citizens to contact with the questions about the actions of officials on the official websites of the RF President, the Parliament, the Government of the Russian Federation, ministries and departments. For example, the Order of the Russian Federation Government No. 93-r (January 30, 2014) approved the Concept of openness of federal executive bodies (The Order of the RF Government N 93-r "On the Concept of Openness of Federal Executive Bodies" (January 30, 2014)). This concept provides for the main mechanisms (tools) to realize openness: the adoption of action plans, their public discussion, expert support, the formation of public reporting, work with reference groups, interaction with public councils, the organization of independent anti-corruption expertise and public monitoring of law enforcement, etc.

However, the currently used tools and methods for managing goals, powers, duties of officials and digital monitoring systems are scattered, thereby they do not provide a holistic picture and a unified approach.

Summary



1. To increase the responsibility of public authorities to society and thereby, strengthen public control, it is necessary to consolidate the reporting procedures for the officials of public authorities, to define their responsibilities for interaction with public control institutions and establish responsibility for public control obstruction at the regulatory legal level. Moreover, with the help of proper staffing (for example, the experts in a wide range of society life areas), the tasks of disseminating professional knowledge that ensure public control should be solved.

2. It is necessary to regulate the existing mechanisms of public control in the virtual space. For this, it is proposed to create a single Internet portal in which it is possible to accumulate the population opinion about the activities of officials. Such an Internet portal will be very effective in forming the assessment and applying responsibility to them. Thus, it will contribute to the development of responsibility institution through the institution of public control.

3. It is necessary to develop an integral mechanism of public control over the activities of officials. Its shortcomings are caused by the gaps in the legal regulation of the constitutional and legal institution and by controversial legal constructions used in the law. For example, a limited list of public control subjects; the complexity of public control influence mechanism on the object of control. Moreover, questions arise about the composition of public control subjects and their independence.

Conclusions

The productivity of the systematic monitoring of the performance among the officials directly depends on the solution of the abovementioned problems. It should be agreed that with the help of law it is possible to achieve social well-being, which is an indicator of the interaction between an individual and the authorities, an individual and a state (Maly, 2019). Therefore, due attention and sincere interest in interaction problem solution between the public authorities and the population can multiply the potential of the democratic and legal development of the state, including responsibility in a short time.

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