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Legality as a principle of organization and activity of executive authorities in the Russian Federation: constitutional and legal analysis

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Abstract

This article is devoted to the constitutional analysis of the most important principle of organization and activity of executive authorities in the Russian Federation - legality. The authors have developed and justified a set of recommendations on strengthening and strengthening the rule of law and order in the activities of executive bodies and the responsibility of their officials.

Keywords: Legality; Executive power; Russian Federation; Principle.

Legalidad como principio de organización y funcionamiento de los órganos del poder ejecutivo en la Federación de Rusia: análisis constitucional y jurídico

Resumen

Este artículo está dedicado al análisis constitucional del principio más importante de la organización y las actividades de los órganos del poder ejecutivo en la Federación de Rusia: la legalidad. Los autores elaboraron y justificaron un conjunto de recomendaciones para fortalecer y fortalecer el estado de derecho y el estado de derecho en las actividades de los órganos del poder ejecutivo y la responsabilidad de sus funcionarios.

Palabras clave: Legalidad; Poder ejecutivo; Federación de Rusia; Principio.

1. INTRODUCTION

The principles of the organization and activities of executive authorities in Russia are thoroughly investigated in the works of I.A. UMNOVA, S.A. AVAKYAN, V.V. KOMAROVA, N.Yu. KHAMANEVA, O.E. KUTAFIN, L.Yu. GRUDSYNA, Yu.A. TIKHOMIROV, V.E. HRKIN, T.Ya. KHABRIEVA, and several other authors. These works provide the basis for the analysis of the theoretical content of the public administration system in Russia in relation to its social essence. However, the share of researches that illuminate the problems of implementing the principle of legality in the organization and activities of executive authorities in the Russian Federation is extremely small. In this regard, the main purpose of this research is a comprehensive study of the rule of law as a principle of organization and activity of executive authorities in the Russian

Federation, in order to expand and clarify the conceptual and categorical apparatus of the science of constitutional law in the field of public administration, forming an integral concept of optimal organization and the exercise of executive power in Russia, and the subject of the research is the regulatory framework securing the above principle organization and activity of bodies of executive power in the Russian Federation, as well as scientific views on the resolution of problems associated with its implementation.

2. METODOLOGY

This article in the process of cognition of state-legal phenomena were used: a) General scientific methods (formal-logical, systemic, structural-functional, concrete-historical); b) General logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); c) private scientific methods (technical and legal analysis, specification, interpretation, etc.) (ZALESNY & GONCHAROV, 2019; ZALESNY et al., 2019; ZALESNY & GONCHAROV, 2020).

3. RESULTS

Legality in the legal literature is considered from various angles: as a method of state management of society (BACHRACH, 2010: 158); as a regime of the system of relations between the

population and state bodies (BACHRACH, 2010: 158); as a principle of organization and activity of state power (or its individual branches) (GONCHAROV, 2008: 46-57).

It seems that legality is one of the universal general legal principles and an attribute of the existence and development of a democratically organized state and society and is defined as the steady implementation of laws and other relevant legal acts by state bodies, officials, citizens and public organizations (LEGAL, 1984: 101).

In accordance with the Constitution of the country, the hierarchy of normative legal acts is established; universally recognized principles and norms of international law and international treaties of Russia are an integral part of its legal system.

However, the legal norms contained in laws and other normative legal acts do not always correspond to the Constitution of the country, and even more so, to the existing level of development of public relations, the interests and aspirations of the majority of the people, in connection with which, a number of scientists introduce the concept of legal law, establishing a distinction between law as an objective phenomenon of public life and law as a form of expression of law (NERSESYANTS, 1983; ISAEV, 2006).

In their opinion, legislation should be a means and mechanism of securing law by the state, acting as a legally legalized balance of interests of all classes and social groups, as well as nations and ethnic

groups that form a single state-legal community (EBZEEV, 1990: 3-10).

In modern domestic legal literature, a number of authors contrast the concepts of "legitimation" and "legalization" of state power (BLYACHER, OGURTSOVA, 2006: 53-67; ZELETDINOVA, LOMOV, 2006: 49-58; BEZKOROVAYNAYA, 2011: 101-103), considering legalization as "the establishment, recognition, support of this power by law, primarily by the constitution, the support of power on the law" (CHIRKIN, 1995: 65), and legitimation as "process is not necessarily formal and even more often informal, through which state power acquires the property of legitimacy, i.e. a state expressing correctness, justification, expediency, legality, and other aspects of the conformity of a particular state power with the attitudes, expectations of individuals, social and other collectives, society as a whole" (CHIRKIN, 1995: 66).

Some scientists identify up to four mandatory elements that ensure the legitimacy of state power (the establishment and exercise of power by the people through referendum and elections; legal ways to regulate social conflicts; a system of authorities coordinated and distributed in society and the state; ongoing sociological research and public opinion polls, the results of which are necessarily taken into account in the process of exercising power) (IVANNIKOV, 2005: 17-22).

Indeed, in the constitutions and laws of a number of states, state

arbitrariness, inequality, racism (for example, in Nazi Germany) were met, power and norms were legalized in them, which did not correspond to the level of development of public relations, the interests of citizens and society as a whole. Moreover, sometimes arbitrariness corresponds to the interests of the majority of the population. So, the overwhelming majority of Germans in Germany of the 30-40s approved the policy of genocide of the non-Aryan population in the occupied territories, which, according to I.A. ISAIEV talks about the archaic of public consciousness and the subconscious and the irrational nature of state power (2006). Some states (for example, the USA, Great Britain), hiding behind universal values and the struggle for freedom of «peoples oppressed by dictatorial regimes», ignoring international legal norms, are occupying sovereign states around the world (Iraq, Afghanistan) that are not controlled by Western multinational corporations.

The concept of legality as a whole includes the requirements of society to the state to create conditions for the realization of the rights, freedoms and legitimate interests of a person and citizen, as well as to maintain law and order.

The basic requirements of legality are:

- 1) The rule of law in relation to all other legal acts in force in strict accordance with it and on its basis.
- 2) The unity of understanding and application of laws by all

subjects. A unified understanding of the essence and specific content of laws on the territory of all constituent entities of the Federation is ensured by the enforcement activities of the competent authorities and officials, corresponding to the real meaning of the laws and implementing the regulatory functions laid down in it.

3) The equal opportunity for all citizens to enjoy the protection of the law and their equal obligation to follow its instructions (equality of all before the law and the court). On the one hand, legal entities must fully fulfill the duties assigned to them and obey the requirements of the law, on the other hand, the state is obliged to create all the necessary conditions for the realization of the legal rights and freedoms of all citizens.

4) The inadmissibility of the opposition of legality and expediency, since legal laws should contribute to the maximum realization of the social and individual needs of people, having the highest social expediency.

Modern Russian legislation and the activities of authorities often do not meet the interests of most citizens of the country, which gives rise to crime, embezzlement and corruption. So, according to a representative express survey of 1600 Russians conducted from January 23 to 26, 2015, 55% of respondents believed that things are going in the right direction, and 27% believe that events lead us to a dead end. Moreover, more than

62% of respondents noted the figure of V.V. PUTIN as a politician who enjoys the greatest confidence in them and who justified the hopes associated with his coming to power (REPRESENTATIVE, 2020). In turn, the population is negative about the work of the internal affairs bodies. So, according to a survey of 2000 respondents conducted by the Public Opinion Foundation on January 30-31, 2010 in 100 settlements of 44 Russian regions, 68% of respondents negatively assess the work of the police, and only 16% of respondents are satisfied with their work (POKIDA, 2010: 266).

5) Prevention and effective fight against offenses, causes and conditions that give rise to them.

Favorable material living conditions, social security of the population, political stability in the country, the existence of fair law enforcement laws could constitute the real basis of the rule of law, strengthen Russian statehood, curb crime and corruption in government. The requirements of the rule of law in unity and interaction are designed to ensure stability and harmony in public life, to promote the development of civil society in accordance with the objective laws of the historical process.

On the one hand, legality is a process of implementing laws, it means a state of public life in which participants in legal relations freely exercise their legal rights and obligations; on the other hand, is a prerequisite for such an order in public life that is consistent with the

requirements of legal norms. In other words, as a result of the rule of law, a legal order is formed in society, which is the purpose of legal regulation of public relations.

According to A.F. CHERDANTSEV:

The state of legality, first of all, in a decisive way depends on how much the state apparatus is saturated with the spirit of legality, how strong the rule of law is here. The state of the rights and freedoms of citizens, their law-abidingness, depend on the state of legality in the sphere of activity of official (1996: 191).

In this regard, there is a need to consider the role and place of legality in the organization and activities of executive bodies of both levels (federal and regional), as well as the powers vested in these bodies by the Constitution of the Russian Federation, Federal and regional legislation to ensure it, which by their nature are control.

In the domestic scientific legal literature, a lot of publications (EFREMOV, 2000: 106-120; LEBEDEVA, KOSACH, 2018: 58-60) are devoted to the consideration of this issue, scientific and practical conferences, meetings and seminars are regularly held.

It seems that the President of Russia acts as a kind of guarantor of the legality of a unified system of executive power, on the one hand, acting in accordance with the Constitution of the country and Federal laws (his decrees and orders should not contradict them); and on the other, endowed with enormous powers to ensure the rule of law in the

Russian Federation, not only by the Constitution of Russia, but also by a number of federal laws. Being the guarantor of the Constitution, human and civil rights and freedoms, the head of state has the right to suspend the acts of the executive authorities of the subjects in case of conflict with their federal laws, international legal obligations of Russia or violation of human and civil rights and freedoms until this issue is resolved by the relevant court (Part 2 of the Article 85 of the Constitution of the Russian Federation).

In accordance with Article 27 of the Federal law «On General Principles of Organization and of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation» dated 06.10.1999 № 184-FL, the President, after applying to the legislative (representative) body of the subject with a view to bringing it into conformity with the Constitution of the country, the Federal legislation of the constitution (charter), the legislation of the subject and the failure to reach an agreed decision, shall have the right to refer the resolution of the dispute to the relevant court of law.

In addition, he has the right for the same reasons to suspend the act of the highest official of the subject (head of the executive body of state power of the subject), acts of the executive power of the subject until this issue is resolved by the relevant court, moreover, during the period of the relevant Decree of the President other acts having the same subject of regulation, except for an act repealing an act whose action has been suspended by the President (Article 29 of the aforementioned law). If the above violations are not eliminated in the

acts within a month from the day the head of state issued a warning to the officials indicated in the previous paragraph, the head of state dismisses them. In addition, in the event that the aforementioned persons are charged with a grave or especially grave crime, on the basis of a motivated submission by the Prosecutor General of the Russian Federation, the President may temporarily remove them from office by his decree.

The Head of the Russian State is one of the entities that have the right to apply to the Constitutional Court of the Russian Federation with a request for compliance with the Constitution of the country of federal or regional legislation, intra-federal and international treaties (Article 125 of the Constitution). Moreover, the aforementioned acts (their provisions), recognized as unconstitutional, lose their force, and international treaties of Russia are not subject to entry into force and application.

The implementation of the principle of legality is ensured through a variety of means, including through the provision in the Constitution that all laws are subject to official publication (Part 3 of Article 15). It is based on the premise that legality is possible in conditions where their content is accessible to all who must comply and comply with the laws. In relation to normative acts, including departmental ones, which regulate the rights, freedoms and duties of an individual, more stringent requirements are established: they are not subject to application if they were not published for public information. Moreover, as I.I. LUKASHUK emphasized, authorities in

their activities are bound by both domestic and international law (RUSSIAN, 1996: 3-28).

In ensuring the rule of law, the executive authorities play a huge role: firstly, the number of public servants of the executive branch is greater than all other combined; secondly, the executive authorities, possessing great powers, directly manage huge financial and material and labor resources; thirdly, in accordance with the Constitution of the country and federal legislation, executive authorities carry out law enforcement and issue normative acts. In addition, the Government of the Russian Federation, in accordance with Paragraph "e" of Part 1 of Article 114 of the Constitution, takes measures to ensure the rule of law.

In characterizing the executive branch, one should also bear in mind such an aspect of its activity as the exercise by the executive authorities and officials of jurisdictional powers, extrajudicial coercion, since they are directly responsible for the mechanism of legal coercion, protection (army, police, state security bodies, correctional labor institutions, etc.) (BACHRACH, 2010: 158). This does not mean the invasion of the executive branch in the sphere of activity of the judicial branch. Within the framework of their competence, the executive authorities have the right to independently assess the lawfulness of the conduct of participants in performing activities, consider and resolve disputes arising in connection with this, apply coercive measures prescribed by law, that is, their powers largely coincide with the powers of the judicial authorities. In turn,

administrative jurisdiction is also exercised by the courts of general jurisdiction (Article 118 of the Constitution), the Constitutional Court of the Russian Federation (Article 125 of the Constitution), and arbitration courts (Article 127 of the Constitution).

The legitimacy of the executive branch is manifested in the fact that the bodies that implement it are obliged in their actions to be guided exclusively by law, cannot intervene in the field of civil rights, without having legal authority. Even in those cases when it comes to interference in the field of human and civil rights and freedoms, the executive branch has no right to derogate from the requirements of the law, which defines the framework and boundaries for each legal action of its bodies.

It seems that the level of work of the Government of Russia and its officials to strengthen the rule of law leaves much to be desired, since they ignore the instructions of the Accounts Chamber and the Central Bank on violations of financial discipline and the execution of the federal budget; prosecution and state security agencies regularly disclose high-profile crimes, which featured senior officials of the executive branch.

Within their competence, executive authorities: are called upon to issue legal acts in a timely manner that ensure the implementation of laws; allocate the necessary material and financial resources for the implementation of the law; to carry out organizational and managerial measures that must be carried out in accordance with the law; improve

human rights procedures and the activities of human rights bodies; to control the results of the law and prepare proposals for its improvement; collect and evaluate information on real changes in the regulated sphere.

The executive branch is bound by law, and its observance of laws is controlled by the legislative, judicial branch and the prosecutor's office. The restriction in the activities of executive bodies should not be confused with the restriction prescribed by law, which is important to consider in the context of guarantees of fundamental rights, since the content of the articles of the country's Constitution on the rights and freedoms of a person and citizen (Chapter 2) covers the meaning, application and content of laws, and the activities of state bodies; interference with the scope of fundamental rights is possible by law or by judicial decision.

Perhaps the main means of ensuring the rule of law in the field of executive power is the powers vested in the courts. However, according to some participants of the All-Russian meeting, «... there were a lot of problems in the mechanism for implementing the decisions of the Constitutional Court of the Russian Federation related to the new concept in Russian justice - judicial control" ... on the differentiation of powers in the implementation of regulatory control between the courts of the three branches of the judiciary ... more flexible solutions are required ... the possibility of constitutional review of the decisions of the Plenum of the Supreme Court of the

Russian Federation being discussed by the Constitutional Court ...» (BOBROVA, 2001: 157-158).

The possibility of recognition by the Constitutional Court of a country of a normative legal act of the executive power completely or partially contrary to the Constitution of the country is the most important guarantee of the rule of law. Thus, the Decree of the Constitutional Court of Russia established:

If a court of general jurisdiction when considering a case in any instance, having concluded that the law applied or to be applied in a particular case does not comply with the Constitution of the Russian Federation, nevertheless does not apply to the Constitutional Court of the Russian Federation with a request to verify its constitutionality, such a process of applying this law means, in fact, an invasion of the scope of constitutional proceedings (Article 25, Part 4 of the Constitution of the Russian Federation) and creates obstacles ... to judicial protection on the basis of the principle of the equality of all before the law and the court (Article 19, Part 1; Article 46 Part 1 of the Constitution of the Russian Federation) (IN, 2002: 1601).

Courts of general jurisdiction and arbitration courts have the right not to apply the law or any other normative act contrary to the Constitution of the country or federal law. So, an important means of ensuring the direct operation of the Constitution is the provision of Part 2 of Article 120 of the Constitution of the country, by virtue of which the court, having established in the consideration of the case

that the act of the executive authority does not comply with the law, is obliged to make a decision based on the law. The validity of this constitutional norm extends to the acts of any body or official without any restrictions.

A high role in ensuring the legitimacy of the activities of the executive authorities of the Accounts Chamber of the Russian Federation. This is explained by the fact that it is the only permanent financial control body that exercises both overall control over the timely execution of the federal budget and a number of other control powers, in particular, control over the legality and timeliness of the movement of Federal budget funds and the budgets of federal extra-budgetary funds (Articles 1 and 2 of the Federal law «On the Accounts Chamber of the Russian Federation» dated 11.01.1995 No. 4-FL) (ON, 1995: 167).

If the Accounts Chamber exercises control over the observance of laws by executive authorities and ensures legality in the budget sphere, the Bank of Russia exercises similar functions in the monetary sphere by issuing normative acts that are generally binding within their competence (Articles 1-7 of the Federal Law «On the Central Bank of the Russian Federation (Bank of Russia)» dated 10.07.2002 № 86-FL) (ABOUT, 2002: 2790).

The peculiarity of the prosecutor's office in ensuring the rule of law is that its interference in the activities of the supervised bodies is limited, permissible during the verification activities only with the aim

of establishing violations of the law, the causes of violations and the conditions conducive to them (DOLEZHAN, 1991: 12); it acts as a body designed to monitor the establishment of a uniform understanding of the rule of law. Its difference from the Constitutional Court of the Russian Federation in this matter is that the latter does not initiate constitutional legal proceedings by its own decision, but only upon the requests and appeals of the established circle of subjects. M.A. MITYUKOV draws attention to the fact that "in Federal districts and constituent entities of the Russian Federation, prosecutors actively use the positions of the Constitutional Court in their protests and statements in the courts, especially decisions and decisions concerning the republics" (SCHUBERT, 2001: 93).

The big problem today is the underdevelopment of the constitutional (charter) courts of the constituent entities of Russia and the inconsistency of regional executive acts with Federal legislation (GONCHAROV, 2010a: 36-40).

As participants in the All-Russian Meeting on the Issues of Federal and Regional Government Authorities Enforcing Decisions of the Constitutional Court of Russia and the Constitutional (Statutory) Courts of the Subjects of the Country on 21.03.2001 noted that «in some cases, the constitutions, charters and other normative acts of the constituent entities of the Federation have not yet been cited in accordance with the well-known decisions of the Constitutional Court ... within the constituent entities of the Federation, the potential of the

statutory or constitutional courts is far from always used subjects» (SCHUBERT, 2001: 92).

However, in a number of regions there has been a successful work of constitutional justice of the constituent entities of the Russian Federation to strengthen the rule of law. These courts are the most important tool of power, through which not only the rule of law is strengthened and the fundamental law of the subject is stable, but human rights and freedoms are quickly and effectively restored. So, in a number of regions, up to 10 cases a year are considered by constitutional (charter) courts (GONCHAROV, 2010b: 8-12; KRYAZHKOV, 2000: 99-102).

4. CONCLUSIONS

Thus, in order to implement the principle of legality in the organization and activities of executive authorities in the Russian Federation, it is necessary to detail the competence of a number of Federal and regional authorities in terms of ensuring proper monitoring of compliance with applicable laws by executive authorities, for example, by giving the Commissioner for Human Rights in the Russian Federation to suspend acts of executive authorities that are contrary to law and violate rights and freedoms citizens.

The implementation of the principle of legality also requires optimization of the mechanism of responsibility of officials of the

executive authorities of the Federal and regional levels for violation of applicable law. Moreover, the Constitution of Russia should provide for the responsibility of senior officials of the executive branch. So, it is necessary to constitutionally consolidate the responsibility of the head of state (in the form of deprivation of immunity with further prosecution) for actions or omissions that have caused harm to the interests and security of Russia, creating a threat to its unity and territorial integrity.

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