

SLCMC 2021**International conference «State and law in the context of modern challenges»****CONSTITUTIONAL PRINCIPLES OF RUSSIAN PUBLIC
AUTHORITY SYSTEM WITH REGARD TO CONSTITUTIONAL
REFORM**

Elena V. Kombarova (a)*, Vladimir V. Kabyshev (b), Tamara V. Zametina (b),
Tatiana V. Troitskaya (b)
*Corresponding author

(a) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia, kombarova_ev@mail.ru,
(b) Saratov State Law Academy, 1, Volskaya Str., Saratov, 410056, Russia

Abstract

Basing on the Constitution of Russian Federation, constitutional law doctrine, Russian legislation and Russian Constitutional Court practice, this article considers the public authority system principles and explains their fundamental character. The constitutional reform of 2020 and its effect on fundamental principles of the public power system are being studied. The potential of the current Constitution is analyzed from constitutionalization perspective associated by the authors with the process of formal and legal consolidation of the existing system of public and power relations, which does not imply nevertheless a fundamental revision of the basic public power system characteristics. Constitutional consolidation and up-and-coming development of the implementation mechanism for fundamental principles of public authorities' management and operation in Russia guarantees that democratic state foundations are immutable. The scope of the constitutional principles of the Russian public authority system indicates their development towards the expended involvement of civil institutions in the state power mechanism work at all levels, as well as in local self-government. The Russian constitutional system of public authority principles promotes the development of the mechanism aimed at providing interaction of public authorities with one another and with public institutions. The main results found can be used in research practice in order to expand Russian constitutional law knowledge, and be applied in legislative and law enforcement practice. The study contributes mainly to scientific classification of public authority principles based on the analysis of changes introduced into the Russian Constitution of 1993 and existing approaches in the Russian legal science.

2357-1330 © 2022 Published by European Publisher.

Keywords: Constitutionalization, constitutional principles, constitutional reform, local self-government, public power, state power



This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial 4.0 Unported License, permitting all non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

1. Introduction

The public power is one of the basic constitutional and legal regulation objects. While in Soviet juridical science the public power was not separated from the state power in any way, and there were no any special researches of this phenomenon, in current Russia the tradition of conceptualizing it has been formed.

Law 1-FKZ dated March 14, 2020 on amending the Constitution of the Russian Federation updated the issues of power system modernization in contemporary Russia, and defined further scientific research development directions in this area. New provisions concerning organization and functioning of public authorities in the country need theoretical reflection in terms of the basic principles of the Russian public authority system being applied in the view of the constitutional reform of 2020.

2. Problem Statement

The new revision of the Russian Constitution mentions the concept of "public power" six times, but it was not enshrined in law at earlier stages of Russia's constitutional development. Legal positions of the Constitutional Court of the Russian Federation have formed the theoretical and methodological basis for public authorities' actions in Russia.

The constitutional reform of Russia of 2020 emphasized the relevance of an important question: Will there be qualitative changes in public authority system foundations and its content or will any changes be only the formal way to legalize the existing public and power relations? To answer this question, it is necessary to analyze the theoretical aspects of exercising public authority, law enforcement practice and the subject matter of the underlying principles of the Russian public authority system as well as its codification.

3. Research Questions

The ongoing processes aim at reforming public authority system and search of the ways to provide steady socio-economic development for the constituent entities of the Russian Federation, to enhance Russia's role in the forming polycentric world, and its influence in global information space mainstream the problems of implementation of the Russian Constitution of 1993. Performance of duties by all state structures can be fulfilled following the principles of democracy and constitutionalism fixed in the Constitution. Constitutional innovations. These all are designed to stimulate the development potential of the state and the system of legislation, rather than to become a brake on social relations (Vetrenko, 2020).

This confirms the need to analyze the amendments to the Constitution of the Russian Federation of 2020 in relation to the Russian public power organizational model, as well as the principles of its formation and functioning. For this purpose, it is necessary to use the proposals on improvement of content as well as constitutional and legal consolidation of the Russian public power system principles developed by the authors of the article.

4. Purpose of the Study

The purpose of this research is to analyze the category "public authority", its classification and scope of its organization and functioning principles, to work out proposals aimed at improving the public authority follow-up mechanism in Russia within the framework of the constitutional reform of 2020.

5. Research Methods

Various methods and methodological approaches were used while conducting this scientific research. The method of dialectics contributes to the generalization of constitutional and legal views on the nature of public relations, the power organization at different levels, as well as its compliance with the legal and current Constitution. The method of materialistic dialectics promotes the study of public relations in the unity of empirical and theoretical material, as well as in its connection with the economic basis of the state and its impact on the development of the state and society as a whole. The structural-functional method is aimed at identifying the structural elements in the system of public authorities, as well as studying their role, functions and interaction. Formal-legal and comparative-legal methods provide the study of the specified problems in terms of comparison and correlation of normative-legal regulation and practice of implementation of the relations in question.

6. Findings

Public authority and the mechanism of its implementation are a complex constitutional and political-legal institution. There are two key features of the public power system formed under the Constitution of the Russian Federation. First, the Russian Constitution established a new model of social and political union, where the organization of public power is based on human and civil rights. Second, for the first time the legal foundations of public power are enshrined.

At present, there is no common point of view in the academic literature regarding the principles of public power functioning. It has been noted that such principles are: the rule of law, the unity of the system of public authority, transparency (Kabyshev et al., 2020), independence and autonomy, responsibility (Mal'ko & Markunin, 2019), as well as the priority of human and civil rights and freedoms. It is also necessary to distinguish the principles of harmonization of public authority such as subsidiarity, differentiation, proportionality, and stability of the form of government (Medushevskiy, 2019). In our opinion, scientific approaches are based on different aspects of formation and organization of public authority and can complement each other. Most of the principles are derived from constitutional provisions, which are initially aimed at ensuring the stability of the public authority system. Another level of legal regulation of the principles of the public authority system is federal legislation, in particular, the framework law 184-FZ, which enshrines the principles of organization and activity of public authorities of the constituent entities of the Russian Federation. As a rule, fundamental laws of the constituent entities of the Russian Federation duplicate the federal principles in the sphere of public relations in question at the regional level, but there are a few exceptions. Thus, the Constitution of the Republic of Sakha (Yakutia) enshrines such principles as democracy, social justice, and a combination and harmony

of universal and national values. The Regulations for the Sverdlovsk Region claim that state power is exercised for the common good, for the protection and security of the people.

Let us consider the content and follow-up mechanism of the fundamental principles of Russia's public authority system and their transformation.

The system of public power is based on the principle of the unity of public power or the unity of its source. The foundations for the people to exercise constituent power are represented in the Constitution of the Russian Federation. Thus, the unity of the public power source implies that all public authorities should be guided in their activities by national interests. The initiative to strengthen the unity of the public power system and to consolidate its principles proceeds from the necessity to take into account the common interests of the people by the constituent entities of the Russian Federation exercising public power at all levels (Ivanov, 2019). The Federal Law "On the State Council of the Russian Federation" of 2020 for the first time enshrined the concept of "a uniform system of public authority", but in this interpretation, the people who represent national sovereignty and are the source of power in the country do not belong to the system of public authority.

The principle of legitimacy is interrelated with the principle of the unity of the source of public power and is related to the mechanism of empowering public authorities. The leading form of legitimization of public authority, in our opinion, is only free, universal, equal and direct elections by secret ballot.

The principle of legality (legitimacy) of public power implies certain limits of public-power activity. On the one hand, the implementation of the principle of legality allows for a more effective management of society and, on the other hand, does not allow infringement of individual rights and freedoms.

The sovereignty (supremacy) of public power derives from the preceding principles, as it must be supported by the people, be formed and act within the limits established by law (Bezrukov & Kondrashev, 2020). Sovereignty is held only by the federal state power, which represents the entire multinational Russian people and has the right to limit the power of other public legal entities and has unconditional supremacy within the country and beyond its borders. The constituent entities of the Russian Federation do not have sovereignty.

The power in Russia, which comes from a single source, is divided into branches to prevent its usurpation and to ensure balanced relations for the development of the country (Chirkin, 2018). Since the adoption of the Russian Constitution, its provisions concerning the status and powers of the public authorities have been only slightly amended (for example, the presidential term was increased to 6 years), but meanwhile, over the past more than a quarter century, the balance of relations between various bodies and branches of power has changed, according to some laws (Shashkova, 2020). Therefore, the constitutional reform of 2020 is, among other things, aimed at increasing the efficiency of interaction between the branches of government in Russia.

The activity of authorities of constituent entities of the Russian Federation is based on principles of state and territorial integrity of Russia; supremacy of legislation in the whole territory of the state; delimitation of competence and power between the Government of the Russian Federation and the authorities of constituent entities of the Russian Federation; and independent exercise of the powers

entrusted to constituent entities of the Russian Federation. The basic principles of public authorities' work at the local government level are the principles of organizational autonomy and independence in solving local issues (Avakyan, 2015).

The principle of the people's authority is fundamental, and it underlies the democratic development of the country and the formation of the state governed by the rule of law (Rudenko, 2020). It is necessary to note the trends in the development of electoral legislation in Russia, namely, legal consolidation of the elements of openness and publicity of all electoral actions; legal consolidation of the right for all citizens of Russia to exercise active suffrage through digital technologies; political pluralism in the election process. However, the minimum numerical requirements for political parties (500 members) are not basically democratic. In order to strengthen Russian statehood and form a stable party system, it is advisable to revise the requirements that concern the number of members in each political party and set the demand to increase it up to 10,000 members.

The activities of the authorities of the constituent entities of the Russian Federation are based on the following principles: the state and territorial integrity of Russia; the supremacy of legislation on the entire territory of the state. These also include delimitation of competences and powers between the Government of the Russian Federation and the constituent entities of the Russian Federation; independent exercise of powers by the authorities of the constituent entities of the Russian Federation. The basic principles of the public power activities at the local government level are the principles of organizational autonomy and independence in solving local issues.

An important distinguishing feature of the contemporary model of public authority in Russia is that the purpose of the public power activities is determined by human and civil rights and freedoms which are recognized to be the highest value. Accordingly, the entire system of public authority shall be based on the mechanism that takes the interests of the people into account. The foundation of state power in Russia is popular sovereignty. The constitutional and legal mechanism for exercising popular sovereignty permeates all units and levels of the Russian public authority system. It is wrong to assume that people's sovereignty is an attribute of a legislative branch. Popular sovereignty, which is an element of Russia's constitutional order, implies that democracy principle shall be followed by executive authorities at all levels, and Russian courts. The most important component necessary to realize the principle of grass-roots democracy in the executive system of Russia is the activity of councils that engage public representatives. Moreover, the system of executive power in Russia is subject to public control. In judiciary, supervision is provided through arbitration system and jury trials. The enshrinement of the relevant constitutional rules entails responsibilities on public authority bodies at all levels. The constitutional reform of Russia of 2020 increased the priority of fundamental human and civil rights and freedoms and, as a result, the accountability of the entire public authority system to the country's population.

7. Conclusion

The principles of public power, enshrined in law and confirmed in practice, determine the most important essential processes in the system of public power. The analysis of the amendments to the Constitution of the Russian Federation, in our opinion, should be conducted on the basis of the category

of constitutionalization, which implies granting constitutional force to the provisions which were previously regulated by laws and by-laws.

Taking into account the need to develop the democratic foundations of the Constitution of the Russian Federation and to improve the legal and regulatory consolidation of the principles of public authority functioning in Russia, it is necessary to expand the concept of "a uniform system of public authority". Public power is not only a system of state authorities and local self-government as a constituent element, this system should include the mechanism for implementing people's sovereignty, enshrined in the Constitution, include social control institutions and public councils working at public authority bodies. From the perspective of the constitutional principle of people's power implemented in the public authority mechanism work, it is necessary to constitutionally fix the citizens of Russia as the subjects of legislative initiative at the federal level.

References

- Avakyan, S. A. (2015). Problems of Local Self-Government at the Present Time. *Law. Journal of Higher School of Economics*, 2–3, 67–69.
- Bezrukov, A. V., & Kondrashev, A. A. (2020). Sovereignty in a Federal State: Theoretical and Legal Bases and Practice of Implementation in Russia. *Journal of Siberian Federal University. Humanities and Social Sciences*, 13(1), 13–26. <https://doi.org/10.17516/1997-1370-0536>
- Chirkin, V. E. (2018). Articles 10 and 11 of the Russian Constitution: Are there three or four Branches of State Power in Russia? *State and Law*, 9, 124–128. <https://doi.org/10.31857/S013207690001522-6>
- Ivanov, S. V. (2019). Constitutional Legal Support of the Modern Russia's State Unity and Territorial Integrity (Socio-economic Aspect). *Law Enforcement*, 3(1), 44–54. [https://doi.org/10.24147/2542-1514.2019.3\(1\).44-54](https://doi.org/10.24147/2542-1514.2019.3(1).44-54)
- Kabyshev, V. T., Zametina, T. V., & Kombarova, E. V. (2020). Transparency of Public Authorities of the Republic of Crimea in the Conditions of the Information-oriented Society. *Tomsk State University Journal of Law*, 37, 57–74. <https://doi.org/10.17223/22253513/37/5>
- Mal'ko, A. V., & Markunin, R. S. (2019). The Significance of System Approach in Study of Public Bodies Liability. *Law. Journal of Higher School of Economics*, 2, 4–21. <https://doi.org/10.17323/2072-8166.2019.2.4.21>
- Medushevskiy, A. (2019). Russian Constitutional Development: Formal and Informal Practices, *BriCs. Law Journal*, 6(3), 100. <https://doi.org/10.21684/2412-2343-2019-6-3-100-127>
- Rudenko, V. N. (2020). Prospects of Democracy in Modern Constitutionalism. *Herald of the Russian Academy of Sciences*, 90(3), 259–266. <https://doi.org/10.31857/S0869587320030202>
- Shashkova, A. (2020). On Modifications to the Constitution of the Russian Federation in 2020. *Russian Law Journal*, 8(1), 60–83. <https://doi.org/10.17589/2309-8678-2020-8-1-60-83>
- Vetrenko, I. A. (2020). The Beginning of a Large-scale Political Reform in Russia: a New Turn in 2020. *Law Enforcement*, 4(1), 14–20. [https://doi.org/10.24147/2542-1514.2020.4\(1\).14-20](https://doi.org/10.24147/2542-1514.2020.4(1).14-20)