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Functional Self-Limitation of State Authority

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Boris V. Makogon *
Aleksej M. Gogolev **
Andrey B. Novikov ***
Andrey P. Peterburgskiy ****
Irina B. Khakonova *****

Abstract

Based on the analytical and synthesis study of a wide range of published documentary sources, the article presents the authors' approach to the issue of self-restriction of state power. General theoretical aspects, historical and oriented to the current state of the problem were considered in order to analyze the self-limitation of the authority of the State in theory and in concrete reality. Methodologically, it is a study that uses in equal conditions the qualitative analysis of the systems and processes that emerge from the exercise of the authority of the State, with the hermeneutic reading of the legal doctrine that accounts for the matter. It is concluded that, in the considered context of the Russian Federation, the problem of the constant and continuous improvement of the system of separation of state power often seems to manifest itself satisfactorily. Theoretically, at first sight, once regulated, the corresponding system a priori acquires a constant and stable character, however, there is still a long way to go to achieve the foundation of a sustained dynamic of self-limitation and self-regulation of state power in in line with the principles of the rule of law.

Keywords: state power; public powers in Russia; separation of powers; restriction of state power; self-limitation of state power.

* Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia. ORCID ID: https://orcid.org/0000-0003-2922-342X. E-mail: Makogon@bsu.edu.ru

** Federal state budgetary educational institution of higher professional education «Perm state national research University», 15, Bukereva Street, Perm', 614990, Russia. ORCID ID: https://orcid.org/0000-0001-9621-2988. E-mail: A.M.Gogolev@gmail.com

*** St. Petersburg state University of Economics, St. Petersburg, 21 Sadovaya street, 191023, Russia. ORCID ID: https://orcid.org/0000-0002-6820-5665. E-mail: A.B.Novikov@gmail.com

**** Belgorod State University, 85 Pobedy Street, Belgorod, the Belgorod region, 308015, Russia. ORCID ID: https://orcid.org/0000-0001-7154-8485. E-mail: A.P.Peterburgskiy@gmail.com

***** Adyghe state University, 208, Pervomayskaya Street, Maikop, 385000, Russia. ORCID ID: https://orcid.org/0000-0003-4456-2155. E-mail: I.B.Khakonova@gmail.com

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Autolimitación funcional de la autoridad estatal

Resumen

Basado en el estudio analítico y de síntesis de una amplia gama de fuentes documentales publicadas, el artículo presenta el enfoque de los autores sobre el tema de la autorestricción del poder estatal. Se consideraron aspectos teóricos generales, históricos y orientados al estado actual del problema con el objetivo de analizar la autolimitación de la autoridad del Estado, en la teoría y en la realidad concreta. Metodológicamente se trata de un estudio que empleo en igualdad de condiciones el análisis cualitativo de los sistemas y procesos que emergen del ejercicio de la autoridad del Estado, con la lectura hermenéutica de la doctrina jurídica que da cuenta sobre la materia. Se concluye que, en el contexto considerado de la federación rusa, el problema de la mejora constante y continua del sistema de separación del poder estatal a menudo parece manifestarse satisfactoriamente. Teóricamente, a primera vista, una vez regulado, el sistema correspondiente *a priori* adquiere un carácter constante y estable, no obstante, aun falto mucho camino por recorrer para el logro de sentar las bases de una dinámica sostenida de autolimitación y autorregulación del poder estatal en consonancia con los principios del estado de derecho.

Palabras clave: poder estatal; poderes públicos en Rusia; separación de poderes; restricción del poder estatal; autolimitación del poder estatal.

Introduction

It is recognized that the system of power separation is the brainchild of the so-called "mixed constitution" concept, separating the executive power of the monarchical system and the legislative power belonging to the people. Under such conditions, prerequisite appear for the genesis and development of an independent court system, including constitutional justice, which is on a par with the legislative and executive systems, and the classical separation of powers acquires three organizational and functional branches that establish mutual control in order to achieve state balance, which appears as a socio-political asset (Makogon *et al.*, 2018).

In modern times, having perceived and developed these ideas that took shape in antiquity, John Locke and Charles Louis Montesquieu raised from them one of the pillars of the rule of law in its modern sense. For an authority that is elected by the people and adopts generally binding abstract prescriptions (laws), its associations with executive and administrative power and, especially, direct identification with the latter are unacceptable.

Incarnated in the system of executive bodies, this administrative power externally acts through individual and specific measures regulating a particular case as an expression of specificity sign, and the measures relating to a clearly defined number of subjects. In the event of a contentious situation within the context of whether an adopted act implements (expresses) the legislator's will, independent courts are responsible for its resolution.

Montesquieu was the second European author who worked at the turn of the Middle Ages and the New Age on the issue of guaranteeing freedom within the state, although, it seems, both scientists were most likely mistaken about the exemplary separation of powers that had prevailed in Britain at that time, which ensured such freedom. With a clear legal division of state power, initially understood as absolutely unified, into three branches-parts, a state-power entity receives moderate statehood with fairly firm guarantees of freedom. Thus, during registration of all catalogs of fundamental rights and freedoms, their guarantee does not become as important as the achievement of that very moderate statehood, which is the ultimate goal. Montesquieu in his opinions was so bold that he saw a certain higher and universal freedom in the mutual blocking of the power branches, which, perhaps, could lead to active statehood paralysis in its extreme form.

If the presence of power separation system was still not clearly presented as one of the main signs of a rule of law state in the work "On the Spirit of Laws" (Montesquieu, 1949), (which, however, is not surprising, because the term "rule of law state" was absent in scientific terms), then during the nineteenth century, in the conditions of the constitutional monarchy, almost no one had any doubts about this. The fact became obvious, as the sanction of the law and control by an independent court became unchanged satellites of the monarch's intervention in the bourgeois sphere of rights.

1. Methodology

During the study process, they used the classical methodology of a qualitative analysis of systems and processes, in particular, a system-analytical approach to the study of research objects. Besides, the research methodology is presented by modern tools. The study was conducted on the basis of the dialectical, as well as the widespread use of general scientific (analysis, synthesis, induction, deduction, analogy) and private scientific methods of reality cognition. The use of general scientific methods allowed the authors to comprehend the development of scientific ideas about the functional self-restriction of state power, to determine the factors affecting the content of a claimed subject, to formulate provisions regarding the subject and meeting the requirements of modern conditions.

The use of private scientific methods contributed to the study of the subject in order to systematize the source array regarding the factors of public authority self-restriction. The use of such special methods as comparative legal method, the method of legal forecasting allowed us to comprehend and reveal the work subject comprehensively.

2. Results and Discussion

It is noteworthy that states with different forms of government tried to unambiguously implement the principle of separation of powers one way or another, however, they received certain differences in this area as was expected. For example, if the separation of powers is especially clearly defined in the US Constitution that provides the president with the highest executive power, then in the parliamentary republics the above separation is less defined. In this regard, the jurisdiction and activities of administrative courts, which partly make up for a possible lack of resources of the rule of law, are of great importance.

Since the time of the French Revolution, the horizontal separation of powers has been supplemented and accompanied by a vertical one, which implies the establishment of a special level called "municipal authority" under the level of the central state. Although, to be fair, let's note that the basic idea regarding this level of power appeared long before the French Revolution, as evidenced by the emergence and development (in Germany in particular) of two types of communities: urban and rural.

So, the functioning of the branches of power only within the framework of a certain sphere is their fundamental purpose in accordance with the principle of separation of powers. A state body belonging to a particular branch of power cannot solve the tasks (exercise authority) of another branch, acts strictly within the framework of the relevant competence. In this vein, a complex of determinate constraints is drawn up (Makogon *et al.*, 2019).

In particular, the legislative process has been legally established for the legislative power, including the legal regulation of its stages. The system of executive authority is characterized by restrictions within the framework of departmental rulemaking, as well as special prohibitions on legal act adoption that invade the exclusively legislative subject of legal regulation. In solidarity with A. V. Malko (2004), we also note here the statutory deadlines for the president to exercise his power, the fixed procedures for his removal from office, for a vote of nonconfidence expression in the government, etc.

At the same time, the state-legal systems with legal and de facto separation of competences between the bodies belonging to different branches of

government, have also a significant number of "checks and balances". However, it should be noted that, recognizing the division of competences between the highest bodies of different branches of government, the state can implement the principle of state power unity, denying the traditional separation of powers (for example, as it was in Jacobin France, the Soviet Union) (Muravsky, 2010).

Overbalances or limitations appear to be the result of the mutual influence of decision and existence autonomy. If the executive branch has the ability to legislate within a certain subject, if it is able to impose its will on the legislative power, if the latter cannot effectively realize its will through lawmaking, it does not matter how "delimited" it is.

In the framework of "checks and balances" concept within the current legislation of states, there are often the norms that give authority to make decisions on the creation of separate judicial bodies, on the appointment of judges (without the authority to remove these judges), and other branches of government. Although the judicial authorities in their current activities, in general, are not dependent on the legislative and executive authorities, they nevertheless operate within the framework of the "game rules", which are established by other branches. Similar features can be seen in relation to each of the power branches.

In modern federations, for example, in Russia, there is the limitation of vertical power. It should be noted that Russian federalism, which took shape in accordance with the current Constitution, goes through an important stage of its development during the modern period of Russian statehood development. Having gone through the centuries-long phase of conceptual searches, many decades of verbal-declarative recognition with almost complete rejection of state-building practice, the most difficult cardinal transition to a completely new value system in a multinational country, Russian federalism has moved on to the stage of its improvement (Butko *et al.*, 2017).

The principles of the rule of law impose imperative requirements for the continuous delineation of reference subjects at all stages of federal construction in order to create an optimal state structure. However, given that the rule of law state is in development (Duguit, 1917), it has not yet been possible to do everything possible to include the full range of its resources in the process of federalization of Russia.

The federalization process, of course, seems to be the factor of the rule of law improvement, because all measures that serve the implementation of federalism are carried out within the framework of the legal field. Accordingly, the distinction between the federation and its subjects of jurisdiction opens up opportunities for the development of the rule of law to the same extent, like perfectionism (not idealism) in the field of separation

of powers, problem area identification of power structure functioning, the competence of bodies and officials of law enforcement agencies. A more complicated situation, also in practice, is emerging with the issues related to the subjects of joint jurisdiction, which will continue to cause controversy until the mechanism of the federal structure acquires the necessary, stable inertia.

It should be noted that the influence of federal relations has certain specificity on the formation and development of the rule of law at the regional level.

Conclusions

In the considered context, the problem of constant, continuous improvement of state power separation system often seems to be manifesting itself. Theoretically, at first glance, once regulated, the corresponding system a priori acquires a constant, stable character.

However, when a multi-aspect, multi-factor transitional period comes along with the transformation of legal forms of state activity in globalized world to become a full-fledged federation of a multinational state, the situation changes. The formation of the federal structure, the emergence of new authorities, general socio-economic metamorphoses - all this causes a chain of transformations in the systems of state legal principles and institutions.

During such a period, all the subjects of the Federation deeply feel this on themselves in relation to all three traditional spheres of power. This is a sign of a crisis transition period in state-legal development, overcoming of which is seen as a priority area of public-power policy.

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