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Constitutional-Legal and Political Responsibility of Political Parties in the Russian Federation to Electors

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Abstract

The processes of development of government institutions in the Russian Federation have required the introduction of new mechanisms of legal responsibility of subjects of power relations in legislation. In recent times, the most significant practical interest is the problem of the early termination of the exercise of power of elected officials in legislative positions. The objective of the article is therefore to analyze the legal and political responsibility of the officials of the democratically elected state before their voters. In the process on the subject of the study, the formal-legal and comparative-legal methods were used, which allowed to formulate the following conclusions. The subjects of the above responsibility may be elected officials of the legislative (representative) bodies of state power. The constitutional status of elected persons exercising public authority on behalf of individuals suggests the possibility of terminating their powers as sanctions only on the basis of the rules of law enshrined in the relevant acts and establishing clear reasons and procedures for liability. The current legislation of the Russian Federation provides for various types of constitutional and legal sanctions. They consist of depriving elected officials of their powers.

Keywords: political parties in Russia; constitutional responsibility; political responsibility; removal of an elected person; Constitutional state.

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Responsabilidad constitucional, legal y política de los partidos políticos de la Federación de Rusia ante los votantes

Resumen

Los procesos de desarrollo de las instituciones gubernamentales en la Federación de Rusia han exigido la introducción de nuevos mecanismos de responsabilidad legal de los sujetos de las relaciones de poder en la legislación. En los últimos tiempos, el interés práctico más significativo es el problema de la terminación anticipada del ejercicio del poder de los funcionarios electos en cargos legislativos. El objetivo del artículo consiste, en consecuencia, en analizar la responsabilidad legal y politca de los funcionarios del estado democraticamente electo por sus votantes.En el proceso sobre el tema del estudio, se utilizaron los métodos formal-legal y comparativo-legal, que permitieron formular las siguientes conclusiones. Los sujetos de la responsabilidad anterior pueden ser funcionarios electos de los cuerpos legislativos (representativos) del poder del Estado. El estado constitucional de las personas elegidas que ejercen la autoridad pública en nombre de las personas sugiere la posibilidad de terminar sus poderes como sanciones solo sobre la base de las normas de derecho consagradas en los actos pertinentes y establecer motivos y procedimientos claros para la responsabilidad. La legislación actual de la Federación de Rusia prevé varios tipos de sanciones constitucionales y legales. Consisten en privar a los funcionarios electos de sus poderes.

Palabras clave: partidos políticos en Rusia; responsabilidad constitucional; responsabilidad política; destitución de una persona elegida; Estado constitucional.

Introduction

In theoretical studies of constitutional law attention is often drawn to the problem of responsibility especially in recent years V.V. Lazarev believes that constitutional law by its definition should check arbitrary power. M.I. Baitin emphasizes that “democracy, the constitutional state have nothing in common with anarchist self-will, legal nihilism, licentiousness, permissiveness”. All these facts predetermine the need to single out the constitutional legal responsibility in the system of legal liability of the subjects of legal relations (Lazarev, 1999; Bajtin, 2002).

When identifying signs of constitutional responsibility, difficulties arise in the delimitation of this type of responsibility, firstly, from political responsibility, which is not always a legal responsibility at the same time, and secondly, from other types of legal responsibility. Thus, the resignation of the Government of the Russian Federation, which occurred due to an erroneous political course, falls under the signs of political responsibility, but is not, caeteris paribus, constitutional responsibility, since there is no sign of wrongfulness. The recall of a deputy of a legislative (representative) body of a subject of the Federation by voters, which occurred due to violations of his duties, is a measure of both political and legal constitutional responsibilities. Finally, the removal of the highest official of the subject of the Federation from office on the basis of a violation of the Constitution of the Russian Federation established by the court is a measure of exclusively constitutional responsibility, which does not possess signs of political responsibility.

1. Review of publications

It is also noteworthy that a constitutional offense entails not only constitutional and legal sanctions, but also political sanctions, which should not cast doubt on the existence of the constitutional delict. One cannot agree with D.A. Lipinsky that "when we single out individuals as subjects of constitutional responsibility, there is a confusion of constitutional responsibility with other types of legal responsibility: criminal, civil, tax, disciplinary" (Lipinskij, 2003). In this aspect, the preferred point of view expressed by N.M. Kolosova and L.S. Mamut that when differentiating the types of social responsibility, the subject of responsibility matters, but this is not the main criterion in distinguishing the types of legal responsibility (Kolosova, 1997; Kolosova, 2000; Mamut, 1999). Deputies, members of election commissions and other individuals, as subjects of constitutional relations, are subject to constitutional responsibility along with other subjects to which the requirements of constitutional norms are addressed (Kalmykova, 2018).

The point of view expressed by A.A. Ivanov is interesting. On the one hand, the author says that "legal responsibility is an interdisciplinary institution of law," including constitutional law, on the other, he considers three principles of legal responsibility common for all branches of law: legality, inevitability and individualization of responsibility. Unfortunately, the principle of inevitability of constitutional responsibility is of theoretical rather than practical significance today. As for the individualization of constitutional responsibility, such signs as the degree of public danger, the identity of the individual, circumstances mitigating and aggravating

responsibility are not always applicable, especially when it comes to the responsibility of collegial bodies consisting of deputies (Ivanov, 2003).

O.A. Snezhko argues that "the institution of constitutional responsibility for the violation by the state of its obligations in Russia practically does not function" (Snezhko, 2002). According to S.G. Solovyov, at present, "a real mechanism of bringing to responsibility the collegial bodies" has not been worked out in the Russian legislation. These fair criticisms confront the constitutional and legal science with the task of developing a system of effective measures to ensure constitutional legality in the activities of people's representative offices on the basis of a mechanism of legal responsibility (Solov'ev, 2003).

The Federal Law "On Political Parties" stipulates the duties of a political party (Article 27). First of all, political parties are obliged to comply with the Constitution of the Russian Federation, federal constitutional laws, federal laws and other statutory legal acts of the Russian Federation, as well as the charter of political party. Every year they have to submit to the registration authorities information on the number of members of a political party in each of the regional offices, on the continuation of their activities, indicating the location of the permanent governing body. They also have to provide copies of the consolidated financial report of the political party and financial (accounting) reports of its regional offices and other structural divisions with the rights of a legal entity to tax authorities of the Russian Federation. Political parties are obliged to admit representatives of registration authorities to public events (including congresses, conferences or general meetings) held by the political party.

In addition parties must notify in advance the election commission of the appropriate level about organization of events connected with the nomination of its candidates (lists of candidates) for deputies and for other elective offices in the bodies of state power and bodies of local self-government and admit representatives of the election commission of the appropriate level to these events.

2. Discussion of results

Responsibility of political parties is expressed in the form of three types of sanctions: prevention, suspension of activities and liquidation by court decision. It is worthwhile to come over to opinion that the assertion that there is no constitutional legal responsibility of political parties in Russia on the grounds that the measures of responsibility (prevention, suspension and termination of activities) are not applied by the Supreme Court of the Russian Federation and therefore, they are measures of administrative and legal responsibility (Kondrashev, 2006; Kondrashev, 1999).

According to item 1 of Article 38 of the Federal Law "On Political Parties", justice agency may issue a political party or its regional branch a written warning in the event of activities contradicting provisions, goals and objectives provided by the charter of a political party, the Constitution of the Russian Federation, federal constitutional and federal laws . If we talk about the suspension of a political party, the Federal Law "On Political Parties" establishes two procedures: one (simplified) - in case of violation of the Constitution and federal laws and the other (complicated) - for violations of statutory goals and objectives. In the first case, the suspension of activity occurs by a decision of the Supreme Court of the Russian Federation (for the party) or the court of a constituent entity of the Russian Federation (for the regional branch of the party) for a period of six months, subject to one written warning and non-fulfillment of its requirements from two months (for the party) up to one month (for the regional office). In the second case, two written warnings are required, provided that they have not been appealed or if they have not been recognized by the court as statutory. In both cases the suspension may take place upon the appeal of the judicial authorities only in a judicial proceeding.

Liquidation of a political party is possible by decision of the Supreme Court of the Russian Federation, which means a ban on its activities. It is noteworthy that the authors of the Federal Law "On Political Parties", indicating the absence of regional branches with at least five hundred members in at least half of the Federation subjects and the absence of the necessary number of members of the political party, as grounds for the liquidation of the party, provided an exception for parties admitted to the distribution of seats in the State Duma (within five years from the date of voting at the relevant elections). In addition to discrimination in the legal status of political parties, it should also be noted that so far there is no objective method of identifying the real number of party members or members of regional branches, especially since such a method has not been defined by law. Therefore, any attempt to liquidate a party on this basis will be perceived as a political elimination of an electoral competitor with the help of a state executive body.

An important element in the system of legal regulation of the organization and activity of political parties in the system of representative democracy is the responsibility for their representatives, nominated and elected to public authorities. If such a person commits acts that result in his or her removal from office, the political party that nominated him for election should also be responsible for such a person. In turn party leaders must be held accountable to the parties that nominated them. At the same time the Federal Law "On Political Parties" does not clearly formulate the mechanism of responsibility of the leadership of political parties, for example, for inappropriate use of party property (collected membership fees, business income). On the example of individual parties, it can be

seen how some party leaders use the funds of the party in the interests not directly connected with the constitutional tasks of the party. At the same time it is doubtful that any of the rank-and-file party members will be able to file civil charges against their political leader. In order to avoid violations the leaders of the party, their highest executive bodies should be responsible for the inappropriate use of property belonging to political parties by law. In practice there are often situations where it is difficult and sometimes impossible for a non-official leader (as well as other leaders) of a party to be held accountable for offenses related to his party activities under the Political Parties Act. Today the party leader can be responsible for his wrongful acts only as an individual. One of the possible solutions to this problem could be the adoption of a special law on officials in the Russian Federation, the list of which could include individual leaders of party organizations, including their leaders (Boris et al., 2019; Vinogradov, 2000; Zrazhevskoj, 2002; Wettstein, 2010).

Unfortunately, the Federal Law "On Political Parties" also does not provide for financial sanctions for non-fulfillment of the obligation to return donations received from prohibited sources or in excess of the maximum allowable amounts. This provision is enshrined in the Code of Administrative Offenses, providing for a fine of one hundred thousand to three hundred thousand rubles for violation of the deadline for returning an illegal donation. The legislation of foreign states provides for similar sanctions. For example, in Germany for receiving donations from prohibited sources, a political party pays a fine of double the amount of illegally received donations. Czech law also provides for the imposition of a fine on a political party at double the size of the unacceptable donation, if the party has not returned the money within the prescribed period (Sivoplyas, 2018; Rudolph, 2003).

We believe that in order to strengthen responsibility for violations of the procedure for financing political parties, it is necessary to establish the following legislative measures: not to return all funds from an illegal donor to his account, but to withdraw them to the state; establish a special form of payment order used for transferring donations to the account of political parties, in which it is noted that the donor does not have the restrictions provided for by item 3 of article 30 of the Federal Law "On Political Parties".

The processes of development of government institutions in the Russian Federation have necessitated the introduction of new mechanisms of legal responsibility of subjects of power relations into legislation. In recent times the most acute practical interest is the problem of the early termination of the powers of elected officials of state power and local self-government as a form of their responsibility for non-performance or improper performance of their duties. The subjects of this responsibility may be deputies of legislative (representative) bodies of state power and representative bodies

of local self-government, elected officials of state power and representative bodies of local self-government, as well as persons holding other elective state and municipal positions stipulated by the legislation or regulatory acts of municipalities.

The constitutional status of elected persons exercising public authority on behalf of the people implies the possibility of terminating their powers as a sanction for unlawful behavior only on the basis of the rules of law enshrined in the relevant acts and establishing clear grounds and procedures for liability. The current legislation of the Russian Federation provides for various types of constitutional legal sanctions, which consist in depriving elected officials of their powers.

In the first case, the early termination of the powers of elected representatives is possible in the form of their recall by voters. The recall of elected representatives is a form of direct democracy, which is not directly provided for by the Constitution of Russia, but it is not denied by it. It should be noted that the institution of recall cannot be replaced by other institutions of direct democracy. Thus, the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" prohibits to submit to the referendum the issue of early termination of powers of state bodies, local governments and, accordingly, exercising power of elected persons.

The validity of this prohibition is confirmed by the Constitutional Court of the Russian Federation. It seems that if there is an institution for recalling a person who has received his powers as a result of free elections, it is unacceptable to have any other simplified mechanisms for terminating their powers by the will of the voters that do not provide for universal, equal and direct will by secret ballot. According to part 3 of Article 3 of the Constitution of the Russian Federation, elections are the highest direct expression of the power of the people. Consequently, no other form of direct democracy should detract from this legal institution, allowing the cancellation of election results in a simpler manner than that established for the expression of will.

The constitutional principles according to which legal mechanisms for recalling senior officials (heads of the highest executive bodies of state power) of the subjects of the Russian Federation and elected officials of local self-government are established were formulated by the Constitutional Court in resolutions of June 7, 2000 and of April 2, 2002.

As the Constitutional Court of the Russian Federation emphasized, recall should not be used to destabilize electoral institutions of power, the facilitated recall procedure is unacceptable both at the regional and at the municipal level. However, the specific criteria that must be met by the mechanisms for the recall of relevant persons were defined differently by

the Constitutional Court of the Russian Federation, although in both cases we are talking about public officials elected by the people on the basis of the same principles and performing essentially similar functions.

In accordance with Article 19 of the Federal Law "On General Principles of Organization of Legislative (Representative) and Executive Authorities of the Subjects of the Russian Federation", the powers of the highest official (head of the highest executive body of the state) of a subject of the Russian Federation were earlier terminated in case of its recall by voters of the subject of the Russian Federation, in accordance with federal law and legislation of the subject of the Russian Federation. Constitutions (charters) and laws of a number of subjects of the Russian Federation provided for such a possibility and regulated the procedure of revocation. The specified Federal Law does not provide for the possibility for voters to recall a deputy of a legislative (representative) body of a subject of the Russian Federation, a member of another elected body that is a part of the system of state power bodies of a subject of the Russian Federation in accordance with its constitution (charter). However, this possibility may be provided for by the law of the subject of the Russian Federation.

In addition, according to the conclusions of the Constitutional Court of the Russian Federation the basis for the recall of a highest official of a constituent entity of the Russian Federation could only be his illegal activities, i.e. a specific offense, the fact of which the person has established in a proper jurisdictional order.

However, the above reasoning on the admissibility of the procedure for recalling deputies by voters does not apply to cases of their election on party lists. First, the recall by voters of individual deputies elected from political party lists is difficult in terms of organization and law. Secondly, such an institution could lead to a violation of the constitutional rights of political parties themselves and the equality of rights of candidates running for election lists. It seems more expedient to early recall the deputies by the decisions of the political parties themselves, with the guaranteed possibility of appealing against such actions in court.

Conclusion

It is necessary to join the point of view of T.D. Zrazhevskaya that State Duma should prepare and adopt regulatory documents governing the organization and activities of political parties in the Russian Federation. In particular, in the new edition it is necessary to adopt laws "On financing of political associations", "On political advertising", "On guarantees of opposition activities". As for the control over the activities of parties, we

believe that it should be not only state-owned (Bobrova and Zrazhevskaya, 1985). However, in order to exclude the possibility of arbitrary approach by state bodies to the activities of various political parties, it would be correct to give the right to go to court with relevant statements not only by the prosecutor or, say, registering bodies, but also by other political parties, which would contribute to more effective control for their activities.

Thus, the main emphasis in the legal regulation of the responsibility of political parties is made on their interaction with the government. The constitutional and legal sanctions provided for in the legislation poorly encompass the responsibility of political parties to the electoral corps. Due to the increasing influence of the ballot mechanism of candidates in party lists, the institute of early recall of deputies by voters loses its constitutional value, and political parties are given the opportunity to early recall deputies and replace them with new deputies from the list of candidates at their discretion. Therefore, the responsibility of political parties to the electoral corps is mainly ensured by periodically held and credible elections based on the principles of universal, equal and direct suffrage by secret and voluntary ballot. Under the conditions of constitutional democracy, this is a promising way for the further development of the political system of Russia. However, in order for it to be directed to the constitutional track, additional guarantees of a multiparty system, political pluralism, competition and democratic rivalry of various political forces are necessary (Ivanova, et al., 2019; Nesmeyanova, et al., 2018; Makogon, et al., 2017).

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