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Constitutional Justice in Circumstances of Public Authority Limits

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Abstract

The article considers the bodies of constitutional justice as a significant subject of legal relations in the sphere of limited activity of public authority. The principle of separation of powers as universal is taken as a basis of classification. In modern states, the bodies of constitutional justice, exercising their special powers, are subject to limiting legal regulation, like any other public authority. The completeness and quality of functioning of various constitutional justice bodies guarantee the rule of law in the state. In addition to state-oriented tasks, the bodies of constitutional justice are an important link in the human rights system, ensuring the rights and freedoms of the individual. Within the framework of this work, the authors characterize the subjects of limiting legal relations taking a special place in the systems of state power bodies of the developed countries of the modern world.

Keywords: Constitutional justice, Constitutional control, Authority limits, Public authority limits.

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Introduction

The system of legal relations subjects in the sphere of public authority limits [1] is characterized by a wide specific variety. Taking the principle of separation of powers (which, we believe, is largely universal for many modern states) as a basis of classification, within the framework of this work the authors characterize such subjects of limiting legal relations as the bodies of constitutional justice that take a special place in the systems of state authority bodies of developed countries of the modern world.

Within the framework of the American system of constitutional control, an unconstitutional norm is perceived as non-existent, and the matter is considered without taking it into account. There is no special mandatory procedure for cancellation of such a norm [2].

The European model is characterized by recognition of the constitutional justice autonomy from other elements of the justice system. Constitutional control is carried out within the framework of a special procedure by authorized entities [3].

The bodies of constitutional justice are of a significant interest in the theoretical and legal analysis of relations in the sphere of limiting regulation of public authorities due to the wide variety of approaches to rather complex systems of their organization and functioning as well as due to the fact, in accordance with which, the qualitative characteristics of the process of activities of constitutional justice state bodies are an essential measure of the role of the modern democratic state [4; 5; 6] as a guarantor implementing the "rule of law" category [7; 8].

Methodology

In the process of research, the classical methodology of qualitative analysis of systems and processes was used, in particular, the system-analytical approach to the study of objects of research. In addition, the research methodology is represented by modern instrumentation. The study was carried out on the basis of dialectical, general scientific (analysis, synthesis, induction, deduction, analogy) and particular scientific methods of reality cognition. The application of general scientific methods allowed the authors to comprehend the development of scientific ideas about the role and place of constitutional justice in the system of public authorities, to determine the factors affecting the content of the declared subject, to formulate provisions relating to the subject and meeting the requirements of modern conditions.

The application of private scientific methods contributed to the study of the subject in order to systemize the sources of the constitutional justice bodies as a subject of restrictive legal relations. The use of the method of a specific socio-legal study, as well as the historical and legal method, made it possible to reflect the experience of the formation of the constitutional justice mechanism. The use of such special methods as the comparative-legal method and legal forecasting method made it possible to comprehend comprehensively and reveal the subject of work. In addition, the fundamental provisions of the theory of systems, structural-functional analysis, legal hermeneutics, phenomenology were used. In addition, the use of the system method allowed us to logically generalize the claimed phenomenon from the actual positions.

Results and Discussion

Let us again pay attention to the fact that within the framework of this work we are looking into the species diversity of subjects of relations that arise and function in the system of public authority limitations, in the context of the principle of separating the latter into functional branches. Accordingly, only subjects that are carriers of public authority will be considered.

In this principle, legal (formal-legal consolidation) and political aspects (actual separation of state power) are singled out. Undoubtedly, there is often a lack of identity between them, and this is demonstrated in the constitutional legislation of many states.

In world practice, there is a different depth of separation of state power and, accordingly, unequal "dosing" of the powers of state authorities. Most legal scholars believe that the complete separation of state power is absurd, since it is opposed to the prospect of the survival of the state and the preservation of the political system. This testifies not to the separation of state power, but to the careful and cautious implementation of the relevant principle, excepting excessive administrative pressure and political extremes. Otherwise, the necessary interconnections and interactions between branches of power are lost and its unity is broken.

The principle of separation of state power does not deny its unity, but rejects "autocracy". The sense of this is to prevent concentrating all powers within the framework of one branch. This basic statement needs to be ensured by legal guarantees and mechanisms - a system of controls and balances. And in this system, we will select precisely the bodies of constitutional justice as an integratively fastening element, a certain "guarantor" of statehood.

Undoubtedly, during its existence, the doctrine and practice of separation of powers underwent changes and the stated basic position received new interpretations and additions in a number of aspects:

- Mainly in judicial practice (originally American), a provision on balance, mutual deterrence, control of branches of power was formulated;

- The thesis on the interaction of branches of state power was established;

- A scientific provision on the possible subsidiarity of the actions of the branches of power was made. This principle has several sides, it is spread to various spheres. In relation to the branches of state power, it means: 1) power authority is exercised at that level and by those bodies which have the best conditions for this; 2) subsidiarity is a state of preparedness, not a permanent practice; it is involved only in necessary cases; 3) subsidiarity is applied if one branch of government or any state body requires assistance of another branch or state bodies to implement their special function, necessary for the integrity of public administration; 4) one branch of government, its bodies can provide assistance not only on its own initiative, but at the request of the relevant branch of government for assistance or, at least, when there is no objection from the authority or body to be assisted; 5) assistance is possible if the law of the state allows it; 6) the application of subsidiarity should be based on the unity of actions of all branches of power on the fundamental, vital issues of state management of society.

We agree with the widespread opinion that as democratic countries move further along the path of legal statehood, the stronger the tendency to increase the function of the judiciary as a guarantor of the "rule of law" and legitimate interests of citizens. Conversely, when the judiciary loses its independence the authoritarian power is inevitably established.

Polystructural, polyfunctionality and polyvariance in development should be distinguished as the main characteristics of judicial systems. Basing on a comparative analysis, we can conclude that judicial systems of states are regarded as plural, multifaceted, multi-alternative and characterized by a plurality of conditions. As the judiciary has its own goal-setting mechanisms, judicial systems can independently form their goals, lines of action and plans. Among other things, judicial systems are characterized by adaptability, preservation of their authenticity.

Organizational structure of the judicial system is variable. It can include a set of systems of the federal center and the subjects of the federation functioning in parallel to each other (USA). Judicial system is also characterizes by disintegration of specialized courts (Russia, Germany). However, the first type of organization of the judicial

system may also suggest the possibility of disintegration of its individual elements due to the formation of specialized courts (USA).

In the process of legal systems development, several models of constitutional judicial control have emerged. In theory, the American and European models of constitutional judicial control are singled out.

American judicial control is peculiar because courts administer general jurisdiction, there isn't a specialized body in this field; the entire judicial apparatus has functions of judicial control, since all cases, whatever their nature, are resolved by the same courts and, in fact, under the same conditions. Constitutional issues can be touched in any disputable cases and do not require any special treatment [9].

The subject of constitutional control are laws, other regulations and orders of all levels of state authority. Abstract constitutional control is not within the authority of the Supreme Court, that is, lower courts do not apply to the Supreme Court of the United States for a specific case, but independently decide on the constitutionality of the law. In the United States there is no special institution for an individual constitutional complaint, which can be submitted to the Supreme Court, therefore citizens have the right to apply for protection of their subjective rights (one of the most pressing issues of our time [10; 11; 12]) in lower courts. As an essential feature of American constitutional control, it should be noted that courts interpret the unconstitutional norm as non-existent and do not take it into account when making an appropriate judgment on the merits of the dispute. At the same time, there is no specific act or mandatory procedure for repealing the unconstitutional norm under the American model of constitutional control.

The first constitutional judicial body in Europe was established in 1919 in Austria. Its legal status was enshrined in the Basic Law of Austria in 1920. Subsequently, judicial bodies of constitutional control modeled on Austria were established in other European countries (Czechoslovakia - 1920, Greece - 1927, etc.).

Specific features of the European model is that constitutional justice is recognized as autonomous from the system of general justice, and dispute resolution is carried out with the participation of judges having special qualifications. Constitutional control is carried out either by the supreme courts or their special chambers under a special procedure. But in any case it is centralized and, as a rule, abstract constitutional control (but not always, for example, in Russia there is a specific constitutional control).

The following types of judicial constitutional control bodies are distinguished in the European model:

1) Constitutional courts (Albania, Belarus, Hungary, Russia, etc.);

2) Centralized constitutional control carried out by the supreme courts;

3) Quasi-judicial bodies of constitutional control (France, Kazakhstan, Morocco, Tunisia). Their formation occurs, as a rule, without the participation of the judiciary. Considering a case, the judicial procedure is used only partially [13, p. 20-21].

It should be noted that a number of countries adopt a mixed model of constitutional justice which is characterized by a combination of different forms and types of control, as well as its implementation by courts of general jurisdiction and specialized bodies of constitutional justice, which play an important role in the system of implementation of actual legal principles and in the mechanism of legal responsibility [14], such as Greece and Portugal. It should be noted that in a unitary state usually there is only one body of constitutional justice, whose jurisdiction extends to the entire territory of the country. In countries with a federal form of government, in particular cases, along with a national body of constitutional control, their own analogous bodies can be established in any subject of the federation. However, even in this case, an integral system of constitutional justice is not organized, since the most important functioning direction of the constitutional justice body (at the federal level) is to control the legal acts correspondence to the federal

constitution, and the competence of such public bodies of the federation subjects is to ensure correspondence of legal acts adopted in a particular subject, its constitution.

In the general theory of law regarding systems of judicial constitutional control in federations' subjects there are also discussions about two models. The first one is the "American model" characterized by the fact that the subjects almost completely reproduce the mechanism of federal judicial constitutional control, but are not controlled or depended on the center. In the United States, the role of state supreme courts is very significant when we talk about the interpretation of constitutions and the assessment of states' legislation in connection with lawsuits or complaints which the state supreme courts consider and affect administrative decisions in some extent. It seems obvious that there are no special judicial (or quasi-judicial) bodies of constitutional control here.

The second system is the "European" system. It is distinguished by its great diversity, including quasi-judicial bodies of constitutional control.

The remark made by Yu. A. Yudin and Yu. L. Shulzhenko seems to be fair. The essence lies in the fact that among all federations with the European model of constitutional justice, the FRG and Russia is of the greatest interest [15, p. 19].

In history of Germany, just as in today's Russia, there was a period (60-70s of the last century) when the declared bodies were called "excessive luxuries". Then there was a tendency to turn land courts into instances, almost entirely subordinated to influence of federal courts. Nevertheless, this situation was resolved. Along with the reunification of Germany in the late 20th century, the actual authority of the above-mentioned bodies was expanded and their status was risen in general. At the level of states, "regional" constitutional courts became the only non-party, impartial, independent bodies and thus a symbol of statehood [16].

Conclusions

In modern states, the bodies of constitutional justice, exercising their special powers, are subject to limiting legal regulation, like any other public authority. The completeness and quality of functioning of various constitutional justice bodies guarantee the rule of law in the state. In addition to state-oriented tasks, the bodies of constitutional justice are an important link in the human rights system, ensuring the rights and freedoms of the individual.

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