

SOVEREIGNTY, DEMOCRACY AND HUMAN RIGHTS IN THE MODERN STATE

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Abstract

One of the principal attributes of a sovereign state organization of society in modern Russia, in its underlying, is constitutionally democracy, where the rights and freedoms of human beings are proclaimed as supreme value. Analysis of political and legal ideology in the part that relates directly to constitutionalism should refer to the concepts of popular sovereignty and democracy, civil liberties, control methods of public authority and mechanisms of participation in its work.

Legal formalization questions of the fundamental legal values of freedom, equality and justice in the constitutional regulation are becoming increasingly important in the modern legal reality of Russia.

Constitution of the Russian Federation, approved by nationwide referendum in 1993, in Part 1 of Article 3 guarantees that the holder of sovereignty and the only source of authority in the Russian Federation is its multinational people. Democratic governing idea involves response to the two key questions: who and how to exercise power in a democratic state. "Right legal capacity" of people, nation, small nations, i.e. the possibility to be the subject of authority relations.

The analysis of Federal legislation, regulatory legal acts of federal subjects, acts of local authorities, doctrinal sources in the field of consolidation and implementation of sovereignty, constituent power of people, civil rights and collective subject in the sphere of democratic governing was conducted using methods of comparative law, analytical method of comparative law, generalization method and legal simulation.

The analysis result was the conclusion of the author that the initial demonstration of the constituent power can be the right of the people to the referendum; the right to adopt the basic law in the referendum and the right of statutory option to change it.

It is concluded that effectiveness of implementation of the state national policy of a sovereign Russian state should be provided with continuous and coordinated activity of central and local self-authorities, civil society institutions with complex political, legal, institutional, socio-economic, and informational and other measures.

Keywords: Sovereignty, democracy, people

GENERAL SECTION

Constitutional theory and practice distinguish between concepts and phenomena of «constitutional system of people's rule" and "constitutional system of government" as reflected in the Constitution of the Russian Federation. It connects constitutionally the concept of "popular sovereignty" and "source of power". These concepts and phenomena are in symbiotic connection; their constitutional recognition is an expression of the democratic essence of the Russian state. This constitutional formula represents continuity of world constitutional experience. Keynote of many democratic constitutions of the world contains the formula: "sovereignty belongs to the whole nation," "all power emanates from the people".

Sovereignty of people is the constitutional principle of organization and functioning of people's power. People, acting as sovereign in all areas of life, decide how to organize rule. It is performed using the constitution. We agree with V. T. Kabyshev that the basis of people's power is their will, which is realized through various forms, such as state and non-state [Kabyshev V. T. Constitutional system of government in modern Russia // Bulletin of the Saratov State Academy of Law. 1998. No. 3. Ar. 3-11]. That is why the constitutional expression: "...the only source of power in the Russian Federation is its multinational people" is not coincidence. People's will gives quality of legitimacy of state power in all its forms: legislative, executive, judicial. Specification of the constitutional provision as the source of power helps to emphasize its fundamental principle.

According to O. E. Kutafin "People have the constituent power... to solve basic, fundamental questions... in particular people have the right to adopt the constitution and to establish the foundations of social and state structure through it, which people choose for themselves" [Kutafin O. E. "Russian constitutionalism"// "NORMA", 2008].

One of the functions of the constituent power, according to M. V. Baglaya, is the change of the Constitution [Baglaya M. V. Constitutional law of the Russian Federation. Textbook. 6th edition, amendments and additions - M.: Norma, 2007. p. 772]. Constituent power, according to B. S. Ebzeev, can be exercised not only by people themselves, but by their extraordinary representatives, i.e the Constitutional Assembly; these representatives, acting on behalf of people, are not affiliated in any order; herewith, people's representative, exercising constituent power, the constitutional assembly should only establish the constitution, i.e. to draft the new constitution of the Russian Federation, which is adopted by the Constitutional Assembly by two - thirds votes of the total number of its members or submitted to the national referendum, or they confirm the invariability of the Constitution of the Russian Federation...[Ebzeev B. S. Man, people, government in the constitutional system of the Russian Federation. 2nd edition. M. Prospekt, 2013. P. 329].

Constituent power is defined as "natural, inalienable, self-restricted right of people to establish or change the state system, its certain institutions, exercised directly through public authorities, particularly through a specially created constituent bodies" [Shishkin O. E. Constitutional Assembly of the Russian Federation as a body of constituent power. Dissertation. ... Candidate of legal Sciences. Yekaterinburg, 2004. - 238 p.].

Demonstration of the primary constituent power can be the right of people to the referendum; the right to adopt the basic law in the referendum and statutory option to change it [Komarova V. V. Constituent power and fundamental law // Lex Russica. - M.: Moscow State University of Law, Publishing house, 2013, No. 12. - P. 1374-1382.]. An example of the derived constituent power may be the constitutional assembly.

Constitutional system of government is generally considered only as a constitutional system of public authority. Category of "public authority" is introduced in the legal reality of Russia by the Decision of the Constitutional Court of the Russian Federation of 24.01.1997 N 1-P "In the case of checking constitutionality of the Law of the Udmurt Republic of 17 April, 1996 "About system of public authorities in the Udmurt Republic". Traditionally, this concept includes state authority and local self-government.

Nowadays there are different forms of public authority in the constitutional and legal science. [Questions of the theory and practice of public authority. Multi-authored monograph/ Bendurina S. V. Vydrin I. V., Zakharov I. V., Kokotov A. N., etc.; Edition: Kokotov A. N. - Yekaterinburg: publishing house of Ural State Academy of law, 2005. - 232 p.], including corporate form of public power, restricted from other forms of public authority [Yugov A. A. Public power and territorial foundation of its functioning: constitutional principles of legal regulation. // Russian Law Magazine of Yekaterinburg, 2004 No. 1 (41) p. 15-25. Ar. 21.]. In particular there are: the first legal organizational form of public power that is called as a direct public or public plebiscite power, exercised through institutions of direct democracy. The next form of public power is public state power. The third legal form of public authority is public municipal authority. The fourth legal form of public authority is public corporate power, where the participants are institutions of civil society and their permanent bodies are members of different public associations, exercising direct governing, and representation of exercising power through various forms of participatory democracy.

Argument in favor of the corporate form of public authority are provisions of the Federal law concerning public associations of 19 May, 1995, article 19, which establishes the rule that state authorities and local self-government bodies may not be founders, members and participants of public associations, and also the argument about the presence of corporate public authority's own spatial forms. Example of corporate public authority is public association, media and other civil society institutions.

Political scientists, theorists and practitioners, mainly develop the concept of the constitutional system of state authority. Division of state authority in the vertical direction is problems of federalism, delineation of authority between the Federation and the constituent entities are under study.

People's sovereignty is expressed primarily in the fact that people have the constituent power. It is necessary for people to solve the basic, fundamental questions, which exercise the legislative power. Constitutional recognition of obligations of the Russian state to recognize, to respect and to protect the rights and freedoms of man is an expression of the essence of the new constitutional system in which the constituent power is in hands of the sovereign, i.e multinational people. [Yugov A. A. Constitutional principles of public authority: Russian dimension // Russian law magazine. 2005. p. 43 - 53. Ar. 49.]

Division of constituent and constituted power is studied in modern constitutional and legal science for a long time. However, the question of the active development of the theory of constituent power by native constitutional law, which is followed in its constitutional practice by many States, has become quite topical only recently. Objective of this interest is primarily in its practical application. Practical application of theoretical structures in the Russian legal reality is primarily in the need for development and adoption of the Federal constitutional law concerning the constitutional assembly provided under the constitution.

The thesis of two types: original and derivative are appeared with development of the idea of constituent power in constitutional law

According to O. E. Kutafin "Constituent power could not be exercised by people directly. It is assigned to the special constituent assembly that is assembly of elected extraordinary representatives for this purpose [Kutafin O. E. "Russian constitutionalism"// "NORMA", 2008]. Without denying belonging of the constituent authority of the constituent assembly, I think, constituent power can be exercised by people. People cannot develop the basic law, but they, of course, can perform its adoption, i.e. act of constituent power.

The right of Russian citizens to manage affairs of the state de jure ensures their inclusion in the sphere of the policy, as a legal expression of the sovereignty of the people and an exercise of its constituent power.

In a dissenting opinion, judge of the constitutional court of the Russian federation, V. O. Luchin stated: "People who established the foundations of constitutional system, are entitled at all times with power, that is Supreme over the power of any (elected and unelected) bodies, to change these fundamentals. Therefore, only people (through **the referendum**) can decide when and on what issues may or may not hold the referendum. The right to the referendum is an inalienable right of the people, the most important practical instrument for implementation of its sovereignty".

Demonstration of the constituent power, according to the author, may be the right of the people not only to adopt the basic law in the referendum, but also legislated opportunity to change it (legislative, constitutional referendums).

At the Federal level, adoption of the Russian Constitution by the referendum is provided if Constitutional Assembly puts the draft to the referendum. Legislators expanded the forms of public participation in adopting and changing the Constitution (Charter) in constituent entities of the Russian Federation. We see two ways: the first is the ability to initiate amendments, revisions, changes to the Constitution (Charter) of the subject; the second is the adoption of the Constitution (Charter) of the subject by referendum.

The right to propose amendments to the Basic law of constituent entity of the Russian Federation is enshrined in the legislation of Moscow, Penza, Irkutsk regions.

An example of the constituent entity in which the people can initiate not only change of the basic law, but the new draft, maybe Irkutsk oblast. The statutory right of the legislative initiative is in the form of introduction to the Legislative Assembly of the Irkutsk region: draft legislation concerning amendments to the Constitution; amendments to the new draft legislations; amendments to draft laws concerning amendments to the Charter, draft of new Charter adopted in first and subsequent readings, prior to their adoption in the final reading ["Constitution of the Irkutsk region" of 17.04.2009 N 1 // "Vedomosti ZS of the Irkutsk region", N 9, 14.05.2009.].

It should be noted as well that there are constituent entities in which there are no direct forms of public participation in adopting and changing of the Constitution (Charter) of the federal subject (for example, in the Kaliningrad region) [See: Komarova V. V. Institute of people's legislative initiative (concept, types, legal foundations) // Lex Russica (Scientific works of Moscow State Academy of law). 2006. No. 4. p. 46.].

Derived forms of constituent power can include specially created bodies for developing, in some cases, and adopting of the basic law.

At the Federal level it is constitutional assembly, federal constitutional law which has not yet been adopted, the status is not resolved. There are different points of view about this novel in the Russian legal reality [See: Elenin N. V. "Constituent Assembly: political and legal nature." Dis. Candidate of legal sciences. M., 1998; Shishkin, O. E. Constitutional assembly of the Russian Federation as a body of constituent power. Dis.

Candidate of legal sciences.. Yekaterinburg, 2004. etc.].

Constitutional assembly should likely be representative of the Federal state governmental authority with a limited validity period, special status and special competence. Question of the representation of its members and the need for separate representation of constituent entities of the Russian Federation remains open [See: Shishkin O. E. Theoretical bases of the constituent authority and debate about draft legislation concerning the constitutional assembly // Russian law magazine. 2002. No. 4. P. 33 - 36.], nevertheless, the representative character and the collective nature of making decision makes it clear. Issues of professionalism, efficiency and impartiality are important and require the best consideration, despite the fact that they seem mutually exclusive of each other. [See: Pershin, E. V. Problems of state building /Analytical Vestnik of the Council Federation of the Federal Assembly of the Russian Federation. - 2002. – No/ 12 (168). - p. 43-59.]

There is analogic institute of specially created body for development and adoption of the Constitution in the constitutions of some constituent entities. The example can be the Republic of Dagestan ["Constitution of the Republic of Dagestan" of 10.07.2003 (ed. of 03.02.2009) // "Collection of legislation acts of the Republic of Dagestan", 31.07.2003, N 7, article 503; 13.02.2009, No. 3, article 74.], Kabardino-Balkar Republic.

The Constitution of the Republic of Tuva provides Constitutional Commission only with the right to draft the new constitution, which the House of Representatives shall put to the referendum of the Republic [Constitution of the Tuva Republic of 06.05.2001 (edition of 10.07.2009)// "Tuvan truth", 15.05.2001; N 93, 30.07.2009.].

The constitutional Commission of the Republic of Khakassia, after considering the proposals to amend the Constitution can only encourage the Supreme soviet to confirm invariability of the Constitution of the Republic of Khakassia, or to make changes and additions [Constitution of the Republic of Khakassia of 25.05.1995 (ed. of 13.04.2007) // "Vestnik Khakassii", N 56, 14.11.2005; N 26, 19.04.2007.].

The Constitutional Assembly of the Republic of Mari El was excluded from the Constitution of the Republic of 29 June 2005.

The constitutional commission of the Republic of Bashkortostan is a deliberative body created for arranging and carrying out scientific and legal expertise, development of draft legislations for introduction in the state assembly, i.e assembly of Republic of Bashkortostan by legal entities for making amendments and additions to the Constitution of the Republic of Bashkortostan [Law of the Republic of Bashkortostan of 28.04.2004 No. 76-z (ed. of 07.11.2006) "About procedure of making amendments and additions to the Constitution of the Republic of Bashkortostan"// "Bulletin of the State Assembly - Assembly, president and government of the Republic of Bashkortostan", 2004, No. 10 (184), Ar. 527.].

Constituent entities of the Federation, in some cases, settled the question of the formation of this constituent body. The constitutional assembly of the Kabardino-Balkar Republic, for example, is consisted of deputies of the State Duma and members of Council of Federation of the Federal Assembly of the Russian Federation in the Kabardino-Balkar Republic, deputies of the Parliament of the Kabardino-Balkar Republic and deputies of local self-government bodies at all levels of the Kabardino-Balkar Republic [Law of the Kabardino-Balkar Republic of 10.07.1999 N 26-RZ (ed. of 06.12.2003) "About the procedure of adoption and entry into force of the amendments to the Constitution of Kabardino-Balkar Republic"// "Kabardino-Balkarian Pravda", N 139-140, 15.07.1999.].

Procedure for formation and activities of the Constitutional Commission of the Republic of Khakassia is determined by the Law of the Republic of Khakassia of 26.03.2003 "About the Constitutional Commission of the Republic of Khakassia" [Law of the Republic of Khakassia of 26.03.2003 No. 12 "About the Constitutional Commission of the Republic of Khakassia" // "Vestnik Khakassii", N 24, 04.04.2003.].

It should be noted that the practice of creating coordinating and deliberative bodies (the Republic of Bashkortostan, Zabaykalsky Krai) replaces and emasculates the idea of constituent body. The constitutional Commission of the Republic of Bashkortostan, being a deliberative body, is organized by the decree of the President of the Republic of Bashkortostan from representatives of state authority bodies of the Republic of Bashkortostan, local self-government bodies, political parties, other public associations, trade unions, religious associations [Law of the Republic of Bashkortostan of 28.04.2004 No. 76-z (ed. of 07.11.2006) "About procedure for introduction of amendments and additions to the Constitution of the Republic of Bashkortostan"// "Bulletin of the State Assembly - Assembly, president and government of the Republic of Bashkortostan", 2004, No. 10 (184), article. 527.].

Commission for draft development of Charter for Zabaykalsky Krai, being coordinating body, organized to develop a draft of Charter of the newly formed Zabaykalsky Krai and its structure was approved by the

governor of Zabaykalsky Krai [Governor's order of Zabaykalsky Krai of 12.05.2008 No. 191-R " About commission for draft development of Charter for Zabaykalsky Krai and symbolic of Zabaykalsky Krai "// " Zabaykalsky worker", N 87, 14.05.2008.].

Russian scientists distinguish initial and established constituent authority. "The first expresses movement from politics to rights, i.e. the birth of the constitutional legal system, the second system is already inside fully developed system" [M. Baglay. V. A. Tumanov. Small encyclopedia of constitutional law. – Moscow: Publishing House Bek, 1998. Article. 469.].

There is initial and institutionalize constituent power in French constitutional doctrine [Jacques J.-P. Constitutional law and political institutions. M., 2002. P. 108.]. According to the J.-P. Jacques "...the original constituent power in time of formation of a new legal order is unconditional" [Jaques J.-P. Constitutional law and political institutions: Textbook/ Translated from French. M., 2002. P. 108].

Thus, the initial demonstration of the constituent power, can be the right of the people to the referendum; the right to adopt the basic law in the referendum and statutory option to change it.

Derived bodies of constituent power can include specially created and constantly functioning bodies (elected).

In conclusion, I would like to emphasize that the classical division theory of powers belongs to state authority, but not to the "constituent power". Constituent power is the basis for public authority.

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