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**ANALYSIS OF WAYS TO IMPROVE CONSTITUTIONAL REGULATION
IN THE RUSSIAN FEDERATION**

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Abstract

The factor that has led to the analysis of various problems of constitutional regulation is the lack of systematic scientific knowledge about the existing theoretical and legal problems of the phenomenon in focus and the ways of its improvement. This has posed a task of specifying the existing technical, legal, logical, grammatical inconsistencies, gaps and defects of the Constitution of the Russian Federation and working out effective ways to overcome them. Among such problems is the presence in the text of the Russian Constitution of a large number of hidden terms that implying a different content, the non-observance of the logical sequence of the use of terms, the inaccurate use of verbal moods. The purpose of the present article is to analyze the ways to improve the constitutional regulation of the Russian Federation as a political and legal phenomenon. The leading method of research is the comparative legal method that makes it possible to identify the urgent theoretical and legal problems of constitutional regulation. The result of the study consists in the description of effective ways to overcome problems of constitutional regulation in the Russian Federation. In particular, it is proposed to organize on a continuing basis activities aimed at including in the legal dictionaries and doctrinal comments the terminology that reveals the content of constitutional regulation, and to work on the diversification of its methodology. The materials of the article can be useful for the representatives of the legal science of the countries of the Romano-Germanic legal family, scholars in the field of constitutional comparative law, and students of law schools.

Keywords

Constitutional regulation – Norms – Normative legal acts – Legal technique – Regulation

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PH. D. RASHIT NURMAGAMBETOV

Introduction

On December 12, 1993, an important event took place in Russian society: as a result of the popular vote, the current Constitution was adopted. The difference between the Constitution of the Russian Federation and other normative legal acts is that it first proclaimed in its norms the way to build a legal, democratic (Article 1) and a social state (Article 7). Over the past twenty-four years of its functioning, it has radically changed the conditions of the existence of the individual, society and the state, as well as the nature of relations between them. There has been a revolutionary transition from relations based on state ownership of the means of production to a market type of production relations¹. This could not but lead to changes in the state-legal superstructure, which in the most visible form have been reflected in the implementation of constitutional norms. In these conditions, the analysis of theoretical and practical problems connected with a comprehensive reviewing of certain issues of constitutional regulation, searching for possible ways and forms of improving this process by including various types of social relations in it, providing the functioning of society and the state under new conditions, acquires particular importance. This is very important, since according to the viewpoint prevailing in the science of constitutional law, constitutional regulation is the most important means ensuring the effectiveness of implementing constitutional norms.

The formulation of the question of the study of constitutional regulation at all times has been of practical importance for the development of constitutional legislation. This aspect is pointed out by many authors². Despite the considerable amount of scientific knowledge, at present the category of constitutional regulation has been filled with new content. This circumstance has necessitated a comprehensive analysis of the political and legal foundations of constitutional regulation, in particular, of its concept, features, subject, limits, methods, the mechanism of constitutional regulation, as well as problems and ways to improve it. It should be noted that the substantive aspect of all the existing problems of constitutional regulation is largely connected with violations of legal techniques. It seems that the main areas of activity should be the elimination of technical and legal inconsistencies, gaps and defects of the Constitution of the Russian Federation. All these factors have increased the importance of constitutional regulation, have led to exposures of the circumstances that prevent its effective implementation.

First of all, it is necessary to dwell on the technical and legal problems of the text of the Constitution of the Russian Federation, which reduce the potential for constitutional regulation. The problems of legal technology are manifested in the presence in the text of the Constitution of the Russian Federation of a large number of hidden terms that imply a different content, in the non-observance of the order of the presentation of legal terminology throughout the entire text of the Constitution of the Russian Federation, the wrong use of verbal moods, the use of declarative sentences, the frequent use of pronominal adjectives,

¹ S. A. Avakyan, "The Constitution of the Russian Federation: the results of development", Constitutional and municipal law, num 23 (2008): 4-9 y V. A. Grigorieva, "Principle of effectiveness of the social state as an element of the realization of its constitutional and legal status in the economic sphere". Constitutional and municipal law, num 10 (2014): 37-39.

² A. Blankenagel, Gaps in the Constitution of the Russian Federation and the possibility of its improvement. Gaps in the Russian Constitution and the possibility of its improvement. Ed. comp. K.G. Gagnidze (Publishing Center Konst, Research of the Ministry of Education and Science, 1998) y E. I. Farber, "Constitutional regulation in Soviet society". In: Problems of the constitutional law, Issue 1 (2) (Saratov university publishing house, 1974).

and the presence of incomplete synonyms. Below, there is a number of practical examples confirming this idea.

The title of Chapter 2 of the Constitution of the Russian Federation "Human and Civil Rights and Freedoms" can be referred to such inaccuracies. The analysis of its content shows that in Articles 38, 44, 57, 58, 59 of the Constitution of the Russian Federation constitutional obligations are fixed along with constitutional rights and freedoms. The use of pronouns ("everyone") extends the boundaries of constitutional regulation, broadens the meaning of the subject in relation to which the influence is exercised. This happens when characterizing the civil constitutional rights and freedoms, where the pronoun ("everyone") refers not only to the person and the citizen, in relation to whom the list of rights is established, but also to other types of legal subjects whose list is not specified. For example, in Part 2, Article 6 of the Constitution of the Russian Federation, it is established that "every citizen of the Russian Federation possesses on its territory all rights and freedoms and bears equal duties provided for by the Constitution of the Russian Federation". The result of the inaccuracy is a poor understanding by the subjects of legal relations of the goals and ideas of constitutional regulation. The Constitution of the Russian Federation, as the basic law of the country, must be logically correct and legally accurate in the formulations put forward. In the Constitution of the Russian Federation, a controversial terminology is used in some cases. A separate issue are the gaps in the Constitution of the Russian Federation.

Unfortunately, the Constitution of the Russian Federation has a number of gaps that need to be eliminated. These gaps are located in various chapters of the Constitution. For example, the Constitution of the Russian Federation establishes the right to life (Part 1 of Article 20 of the Constitution). Then, it is reasonable to raise the issue of the right to death. In the opinion of a number of authors, it is also necessary to establish the constitutional right to death, which is expressed, in particular, in the lifting of the ban on euthanasia³. One of the obvious types of gaps is in the focus of attention of B.A. Strashun, who points out that in "Article 79 of the Constitution of the Russian Federation it is stated that Russia can participate in interstate associations. The forms of such associations are not specified in the Constitution. It is in such cases that the generality and abstractness of certain provisions of the Basic Law are manifested, and this is its peculiarity"⁴. One of the gaps is the absence of separate constitutional norms referring to the Commissioner for Human Rights in the Russian Federation, the Commissioner for the Rights of Children in the Russian Federation, and to the Commissioner for the Protection of the Rights of Entrepreneurs in the Russian Federation. These constitutional norms could clarify the definition of their constitutional status and place in the system of separation of powers in the Russian Federation.

Materials and Methods

When investigating the problems and searching for ways of improvement, the author of the paper used a variety of general and special methods of research. Among them are the principles of dialectics and the following methods: system method, the methods of analysis, synthesis, modeling, etc. The system method provided a holistic, consistent vision of the problems of constitutional regulation. The method of analysis and synthesis facilitated a detailed consideration of constitutional regulation, its various elements, and the

³ N. N. Balagurova, The effect of the Constitution of the Russian Federation: theoretical and legal research: Diss. Candidate of Sciences (Chelyabinsk, 2012).

⁴ O. A. Lupandina, Constitutional (state) law of the Russian Federation: a textbook (Taganrog: Publishing house of TIT SFedU, 2009).

identification of the relationship between them. The comparative legal method made it possible to identify the problematic issues of constitutional regulation, to determine the effect and effectiveness of proposed theoretical and practical ways of improvement, the expediency and optimality of their application in the modern period of state development. The method of modeling made it possible to simulate the effect of constitutional regulation on public relations in the future.

Results

The solution of theoretical problems includes a set of measures aimed at creating a uniform understanding of constitutional regulation.

First of all, in order to solve the urgent problem of defining the concept of constitutional regulation, its role in the categorical apparatus of the constitutional law, in the clear system definition of key concepts in the theory of constitutional regulation, it is proposed to organize at the system level the activity of including in legal dictionaries the terminology that discloses the content of constitutional regulation. This activity should be carried out on an ongoing basis. This would solve several pressing problems at once: the terminology would be adequate to the current legal reality, would not allow for its arbitrary interpretation, would establish uniform standards of constitutional regulation. The state has all necessary resources to carry out this work. It would be advisable to issue an order of the Minister of Education and Science of the Russian Federation "On the supplementation of educational literature and teaching aids by the "Constitutional regulation" section. Below, the content of some types of such terms is considered.

The constitutional regulation of social relations is the orderly impact of the Constitution of the Russian Federation on various types of social relations in the sphere of the foundations of the constitutional system, human and civil rights and freedoms, the organization of state power and the interaction of the Federation with its subjects of local self-government, implemented through a system of specific constitutional means, methods and regulatory mechanisms.

The object of constitutional regulation is the fundamental principles in the sphere of the foundations of the constitutional system, of the functioning of the state and its bodies, the basis of the legal status of man, etc., which determine the direction of the regulatory impact of the Constitution of the Russian Federation.

The subject of constitutional regulation is the totality of the various types of social relations that are established in the Constitution of the Russian Federation, subjected with the help of a special system of legal means, methods, and techniques to constitutional regulation in terms of establishing the order of interaction between citizens and the state, state bodies, and federation with its subjects.

The method of constitutional regulation is a combination of means (ways) of influencing the participants of public relations, which are the subject of constitutional regulation and correspond to the level of the evolutionary development of the state.

The limits of constitutional regulation are the boundaries legislatively outlined by the Constitution of state intervention in various spheres of social relations based on objective laws of the development of the state and society, as well as on the need to introduce order in public relations. They establish the framework of specific subjective rights.

Their types include the establishment of boundaries in the existing articles of the Constitution, their consolidation in the generalized sense, the use in various declarations and international legal acts. The limits of constitutional regulation are fixed mainly in the form of verbal symbols, i.e. by written signs of the natural language (words, sentences).

The mechanism of constitutional regulation is understood as the set of constitutional means with the help of which the influence on the objects of constitutional regulation is exercised with the aim of streamlining, normal functioning, development and protection of the fundamental social relations in accordance with the tasks of society and the state established in the constitution.

Secondly, an important direction in eliminating the existing theoretical problems of constitutional regulation is the diversification of its instruments. In science, the need to address this issue is connected with the solution of the pressing problem of bringing to light those constitutional regulators that have long been factors influencing the public relations. These include constitutional incentives and permissions. The practice of functioning of the Constitution of the Russian Federation shows a clear lack of incentives and permissions in the system of constitutional regulation. In many respects, their long absence has objectively led to an increase in the use of non-legal means of regulating public relations – the norms of morality and customs. The author of the present paper considers it justified to add a constitutional incentive in paragraph 1, Article 19 of the Constitution of the Russian Federation "Everyone is equal before the law and the court. The state, in order to ensure the interest of the subjects in the implementation of this provision in its policy, will encourage actions of citizens aimed at suppressing violations of this norm by subjects of legal relations." Another innovation is the introduction of the constitutional incentive in paragraph 3 of Article 44 of the Constitution of the Russian Federation, which should be edited in the following way: "Everyone is obliged to preserve the historical and cultural heritage, to preserve monuments of history and culture. The state in its policy will encourage the actions of subjects aimed at preserving the historical and cultural heritage." It is also necessary to supplement paragraph 3, Article 6 of the Constitution of the Russian Federation with the following norm: "A citizen of the Russian Federation cannot be deprived of his citizenship or the right to change it. The state recognizes the existence of the citizen's right to freely choose the citizenship of another state."

The solution of practical problems is connected with the adoption of the following types of federal constitutional laws: "On the Constitutional Assembly of the Russian Federation", "On the Political System of the Russian Federation", "On the Civil Society of the Russian Federation", "On the Federal Districts of the Russian Federation", "On the National and Regional Policies of the Russian Federation", "On the electoral system of the Russian Federation", "On the subjects of the Russian Federation", "On the fundamentals of the legislation of the Russian Federation." It is important to introduce the practice of observing the rules of legal technology into legal matter. To a great extent, this process will be supported by constitutional monitoring aimed to ensure that constitutional regulation conforms to the development trends of the legal system, to uniform requirements, to the signs of scientific validity, orderliness, consistency, etc. The monitoring will allow to identify and find ways of solving "chronic mistakes of the legislative body", the gaps and defects of the constitutional regulation that need correction. But the role of constitutional monitoring cannot be reduced only to the identification and resolution of political and legal gaps and defects in the Constitution of the Russian Federation in general and constitutional regulation in particular. It is certainly wider. The constitutional monitoring is likely to reveal the hidden reserves of the constitutional regulation, which in the future will serve as benchmarks for the

constitutional development of the Russian Federation. The author of the paper believes that the resolution of issues related to the constitutional reform cannot be carried out arbitrarily.

Along with the current Decree of the President of the Russian Federation of May 20, 2011 No. 657 "On Monitoring Law Enforcement in the Russian Federation", it is important to supplement paragraph 5, Article 125 of the Constitution of the Russian Federation with the following: "The Constitutional Court of the Russian Federation, upon the request of the President of the Russian Federation, the Council of the Federation, the State Duma, the Government of the Russian Federation, the legislative bodies of the constituent entities of the Russian Federation, provides interpretation of the Constitution of the Russian Federation and conducts constitutional monitoring of the norms of the Constitution of the Russian Federation." The addition of this provision will make it possible to constitutionally fix the beginning of a complex systematic work in the Russian Federation aimed to collect, summarize and analyze information on the effectiveness of the provisions of the Constitution of the Russian Federation. In order to implement the constitutional norm, it is important to develop a plan for carrying out constitutional monitoring for 2018-2022.

Discussion

In the scientific literature of recent years, certain aspects of the improvement of constitutional regulation under the conditions of a new socio-economic and political-legal reality are singled out and investigated. These attempts are made in the scientific works N.A. Bogdanova, N.V. Vitruk, V.D. Zorkin, V.I. Kruss, Yu.A. Dmitriev, M.P. Avdeenkova, V.Ya. Tatsiy, J.I. Ovsepyan, E.V. Nevinskaya, M.F. Malikov, A.V. Petrov and many others⁵.

Among foreign authors, the problems of improving constitutional regulation have been covered in the works of G. Sapargaliev, M.T. Baymakhanov, G.A. Vasilevich, K.K. Aitkhozhin, E.T. Sersenbaeva, V.V. Malinovsky, Yu.N. Todyka, V.Ya. Tatsiy, L. Brandon Garrett, D. Beinoravičius, G. Mesonis, M. Vainiutė, M. Florczak-Wątor, et al.⁶

⁵ N. A. Bogdanova, General and especial in the methodology of constitutional law and the methodology of its teaching. Constitutional law and constitutional comparativistics in the system of Russian legal education: Collected papers (Moscow: Institute of Law and Public Policy, 2009); N. V. Vitruk, "Prospects for the development of modern national science of constitutional law", State power and local self-government, num 11 (2010): 3-5; V. D. Zorkin, "Value approach in the constitutional regulation of rights and freedoms", Journal of Russian Law, num 12 (2008): 3-14; V. I. Kruss, "Russian constitutional axiology: relevance and prospects", Constitutional and municipal law, num 2 (2007): 7-14; Yu. A. Dmitriev, "Presidential Initiatives and Constitutional Regulation: Issues of Correlation", Right and Life, Independent legal journal, num 29 (2000): 5-14; V. Ya. Tatsiy, "Problems of the constitutional regulation of public relations in Ukraine", Juridical science and education, num 1 (2008): 97-107; Zh. I. Ovsepyan, "The main features of the constitution are: formal legal and political and legal signs. The subject (limits) of constitutional regulation", The North-Caucasian legal bulletin num 1 (2001): 3-16; E. V. Nevinskaya, System-forming function of the Constitution of the Russian Federation. Diss. for the Candidate of legal science degree (Ekaterinburg, 2008); M. F. Malikov, Fundamentals of the constitutional law of the Russian Federation: tutorial (Ufa, 2003) y A. V. Petrova, Basic functions of the Constitution of the Russian Federation (theory issues). Diss. for the Candidate of legal science degree (Mosocow, 2004)

⁶ G. Sapargaliev, Constitutional law of the Republic of Kazakhstan: Academic course. Ed. 3rd, with add (Almaty, 2007); M. T. Baymakhanov, "Some questions of the theory of constitutional law at the present stage", Bulletin of KazNU, A series of legal, num 2 (27) (2003) y G. A. Vasilevich, "Constitutional principles and norms are the most important components of the legislative regulation of public relations", Bulletin of the Polovtsian State University, A series of economic and legal sciences, series D (2004).

In the above works, ways to improve constitutional regulation are considered along with an analysis of other categories of the science of constitutional law. Let us note in part the validity of the judgments of authors expressing opinions in favor of understanding the constitution of a country as a reflection of a certain historical period of social development, as its product. Therefore, as is pointed out by M.T. Baimakhanov, "the role of various components of the legal system in choosing the ways of its development is not the same. The first place here by right belongs to the constitution and constitutional legislation, which, while making up the core of legal regulation, take on the orienting and guiding functions in relation to all other components. Usually, the constitution or some acts of the constitutional law fix the main landmarks of legal development or its milestones"⁷.

In the era of further democratization of the political and legal system of society that is taking place in modern Russia, we should share N.S. Bondar's position, who writes: "As you know, there are no ideal constitutions. Neither there is and cannot be an ideal text of the Russian Constitution, which does not allow ambiguous interpretations. The following scientific fact has long been established: the possibility of an ambiguous interpretation of any text derives from the fundamental properties of the human language. Even today, even in the most democratic countries with rich constitutional traditions, philosophers and jurists are increasingly forced to explain this to politicians"⁸.

However, N.S. Bondar's position, in the opinion of the author of the present paper, does not mean that there is no need to introduce amendments and additions to the Constitution. The reforms of many spheres of political and legal life of the state and society is an objective, natural process of the development of the state. With regard to such a category as constitutional regulation, the essence of reforms lies in the greatest possible convergence of law enforcement practice and political and legal reality. Ideally, constitutional regulation should reflect the real state of the structure of social relations and determine the effective guidelines for its development. V.V.Nevinsky in this connection draws attention to the fact that recently "the attitude towards the role of the constitution in the life of an individual, the whole society and, accordingly, in the mechanism of legal regulation of social relations has changed significantly"⁹. But is it really so? It seems that the answer to this question is obvious.

At the present stage of the state-legal development of the Russian Federation, it is necessary to take a set of measures to ensure the real effectiveness of the constitutional

K. K. Aitkhozhin, Theoretical issues of the Constitution of the Republic of Kazakhstan. Diss. for the Candidate of legal science degree (Almaty, 2008); V. Malinovsky, "The Science of Constitutional Law and the Further Establishment of Constitutionalism in the Republic of Kazakhstan", Sanger, num 7 (2010); V. Ya. Tatsiy, "Problems of the constitutional regulation of public relations in Ukraine", Juridical science and education, num 1 (2008): 97-107; Brandon L. Garrett, "The Constitutional Regulation of Forensic Evidence" (February 8, 2016). Washington and Lee Law Review, Vol: 73 num 20 (2016). Retrieved 4.04.2018 from SSRN: <https://ssrn.com/abstract=2729435>; D. Beinoravičius: G. Mesonis & M. Vainiutė, "The Role and Place of the Preamble in Lithuanian Constitutional Regulation", Baltic Journal of Law & Politics, vol: 8 num 2 (2015) y M. Florczak-Wątor "Regulation of the horizontal relation in the constitution of the republic of Poland". Teisé, num 96 (2015): 251.

⁷ M. T. Baymakhanov, "Some questions of the theory of constitutional law at the present stage", Bulletin of KazNU, A series of legal, num 2 (27) (2003).

⁸ N. S. Bondar, "Constitution, constitutional control and social contradictions of modern society", Journal of Russian Law, num 11 (2003): 24.

⁹ V. V. Nevinsky, The legal properties of the Russian Constitution: the test of time. Nevinsky. Constitution as a symbol of the era: 2 tons. Volume 1. Ed. By S.A. Avak'yan (Moscow, 2004).

regulation. It should act as the core of the entire legal system of the country, establish the basic principles of regulation for all branches of law and legislation.

Conclusion

The indicated ways of theoretical and practical improvement of constitutional regulation will help resolve several methodological problems. Firstly, it will help bringing the text of the Constitution of the Russian Federation in general and constitutional regulation in particular in line with the existing real social relations. Secondly, the introduction of changes and additions to the constitutional regulation of the fundamental spheres of constitutional regulation, supplementing them with relevant constitutional norms, thus filling the gaps and defects that have been repeatedly pointed out by lawyers in their work. The result of this process should be the formation of a new understanding of constitutional regulation and the ways of its development. Constitutional regulation of the future is a coordinated process that completely compensates for the gaps and conflicts of constitutional norms, thereby ensuring the stability of their functioning.

The materials of the present article are of value to the representatives of the legal science, state bodies, and the scientific community.

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