

The Comparative Analysis of the Law Policy of Parliamentary Responsibility of the Executive Government of the Russian Federation and Foreign States

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Abstract

The article makes generalization about domestic and foreign constitutional experience of parliamentary responsibility of the government in the comparative analysis of the ongoing legal policy in certain foreign countries. The conducted analysis of practice of law makes it possible to identify both advantages and disadvantages of the Russian model of parliamentary responsibility of the government, which makes it possible to formulate proposals concerning the raise of the level of government responsibility in Russia. Based on the general analysis, the author substantiates practical proposals for improving Russian legislation and summarizes theoretical approaches to the formation and development of the policy of law in foreign countries. In the process of analyzing the sources describing the implementation of the mechanism of executive responsibility in European countries, the author's research interest was aimed at studying the heterogeneity and diversity of laws in the legislation of many countries regulating the mechanism of parliamentary responsibility of the government, as well as the proximity of certain norms of legislative regulation of the mechanisms of responsibility of foreign states and the Russian Federation. The article focuses on general theoretical issues of law policy, including the analysis of the distribution of the burden of constitutional responsibility between the members of government in foreign countries, the correlation of constitutional and political responsibility, pays special attention to the problems of applying sanctions against the persons belonging to the Government of the Russian Federation and foreign countries, analyzes the foreign experience of ministers' responsibility and draws attention to the development of law policy in the sphere of formation of parliamentary responsibility of the government in Russia.

Keywords: Law policy; Parliament; Responsibility; Executive power.



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1. Introduction

The content of the term "law policy" has numerous interpretations, in which, depending on various circumstances, certain properties of this important social phenomenon come to the forefront. However, with all the differences in the approaches to its definition, the policy has its subject, which is a vast circle of social relations. One cannot but agree with the opinion of A.V. Malko, who believes that the law policy is primarily a systemic activity to optimize the resource of law. Serious attention in this connection should be given to the responsibility of the Government of the Russian Federation, since the legal consolidation and implementation of juridical policy in Russia is directly linked with the executive power and its collegial body – the Government of the Russian Federation, and also with the search for the optimal balance of interests of the individual and public (state) interests (Luneev, 1996).

The practice of government responsibility testifies that, in the basis of discontent of the State Duma of the Federal Assembly of the Russian Federation, the Government of the Russian Federation is displeased with the work of a concrete minister, to whom the legislature has great claims in the form of a will to pass a vote of non-confidence. However, the parliament has no effective mechanisms and instruments of pressure or suspension toward such minister in Russia. That is why the practice of individual responsibility, that is realized in a number of foreign countries (first of all in Europe), that enables to identify and personify the guilt of government members, should serve as a model for the Russian legislator, since the introduction of an individual, personified responsibility of ministers in our country will make it possible to avoid confrontation between the government, parliament and the head of state, as well as a large-scale government crisis, while preserving the existing administrative apparatus of the entire Government of the Russian Federation, as well as democratizing the procedure of parliamentary responsibility of the Russian government.

2. Methods

Various methods of cognition were used in the research. The dominant role among them is given to general scientific methods: the dialectical method (in the aspect of the interrelation between “the general” and “the special”, “the abstract” and “the concrete”), the system-structural method, and the methods of abstraction, analysis and synthesis. An important role belongs to the following methods, such as: functional, concrete-historical, formal-legal, comparative-legal, sociological, statistical. The paper also uses the system-structural method of cognition. It enables to determine the mechanism of the impact of legal policy on the work of the state and society in general.

3. Results and Discussions

Chapter 6 of the Constitution of the Russian Federation “The Government of the Russian Federation” contains only 8 articles defining the legal status and the main powers of the responsibility of the Government. The Federal Constitutional Law of December 17, 1997 №2-FCL “On the Government of the Russian Federation” more completely discloses the powers of the Government of the Russian Federation, by supplementing and developing certain provisions of the Constitution of the Russian Federation. The world practice usually distinguishes two main models for organizing the work of the executive: monistic and dualistic. The monistic model assumes the assignment of an executive function to a sole authority – the president or the monarch (the USA, Brazil, Mexico and others). The dualistic model divides the separate functions of the executive power between several persons and the executive bodies. Alongside the national chief executor (president, monarch) there is also a collegial body – the government or the cabinet of ministers (Arslanov and Khabirov, 2017).

Revealing the problem of the relationship between the state and citizens in conditions, it should be taken into account certain structures, disorientation of state power on the part of citizens, under such conditions, important positions of constitutional sovereignty are being touched upon, loyalty to political ideals and values is being tested. The model, enshrined in the Constitution of the Russian Federation, is rather peculiar. On the one hand, the President of the Russian Federation is not a part of the system of executive authorities, or any authority at all, and, on the other hand, he actually heads the executive branch and can directly influence the legislative branch (through the dissolution of the State Duma or the formation of the Federation Council), as well as the judicial branch (the President of the Russian Federation appoints all judges of federal courts, and the judges of the final judicial authorities – the Supreme Court, the Court of Final Arbitration and the Constitutional Court – are appointed by the Federation Council after submitting by the President of the Russian Federation for the candidacy for the position of judge). The powers of the President of the Russian Federation in relation to the executive power are determined in paragraph “6” of Article 83, part 1 of Article 112; control over the activities of the government, and accordingly, responsibility is exercised by the President in line with Article 117 of the Constitution of the Russian Federation; as well as a number of other norms, both the Constitution and other legal acts. With this background, in case of the President’s strong power, the Government of the Russian Federation can be considered as “a technical body” that implements policies, including legal, exceptionally pro-presidential views. On the other hand, with a strong figure of the Chairman of the Government of the Russian Federation and his holding legal policy at his own discretion, the creation of a conflict situation and contradictions in the actions of the President and the Government of the Russian Federation becomes possible (Akimzhanov *et al.*, 2016).

To resolve this situation, the Constitution of the Russian Federation vests the President of the Russian Federation with greater powers than the Chairman of the Government of the Russian Federation, it is only sufficient to turn to Part 3 of Article 115 of the Constitution of the Russian Federation, which directly stipulates that decisions and orders of the Government of the Russian Federation in case of their contradiction to federal laws and decrees of the President of the Russian Federation can be reversed by the President of the Russian Federation. This model carries unresolved problems not only in the line between the interaction of the President of the Russian Federation and the Chairman of the Government of the Russian Federation, but also with regard to the responsibility of coercive ministers for their actions before the Chairman of the Government of the Russian Federation and the entire Government of the Russian Federation. The problem is that the Russian practice has taken the path of further intensifying such contradictions. So, the Government of the Russian Federation comprehends two blocks of ministries, services and agencies, the President of the Russian Federation controls the activities of ones, and the Government of the Russian Federation controls the activities of others, and, accordingly, there occurs the division of personal responsibility of the respective heads of ministries, services, agencies, subject to their governing (Larionov and Filisyuk, 2018; Malko, 2001).

In practice of foreign countries for individuals holding public positions of influence at the highest level, one differentiates “political” (the government employees are replaced with the leader of the country and are responsible for the general policy course of the managed body) and “management” (non-replaceable professional civil servants) levels. The political level should be represented by the heads of those bodies that represent the directions of the corresponding legal policy as a whole: they are the Chairman of the Government of the Russian Federation, the deputies and federal ministers. The heads of other federal executive bodies (services, agencies) should form a stable managerial level, with personal responsibility for the given sphere of activity in the implementation of managerial policy. These persons should not be replaced with a change in political leadership. To our great regret, the current Constitution of the Russian Federation does not stipulate this distribution of powers and the principle of organization of the executive branch, which in many respects leads to instability in the implementation of legal policy (Malko, 2012).

Referring to the issue of the responsibility of individual ministers or government members as one of the directions of legal policy, we note that, unlike Russia, the ministerial responsibility to the Prime Minister or Parliament is possible in a number of the European countries such as Italy, Germany, Poland, etc. The essence of the current policy of responsibility of senior officials of the executive power is reduced to the impeachment of the minister by the parliament or by the requirement to resign because of disagreements on principal issues with the head of government or parliament. Thus, in the parliamentary republics and in the monarchical states (the UK, Spain, Italy, Monaco) the head of the executive branch selects the ministers who depend entirely on him, in turn, the prime minister depends on the parliament or the head of state, and, as a consequence, forces the ministers to resign rather on the political grounds than for the committed unlawful acts. Individual responsibility of the ministers of Austria, Denmark, Greece, Latvia, and Poland takes place as an additional, subsidiary one. So, the Constitution of Austria reads that the National Council (Parliament) may make a decision of a vote of non-confidence in the Federal Government or its individual members (Article 74). And the Constitution of Finland stipulates that every minister participating in the case consideration in the State Council is responsible for the decision taken if he has not made a declaration of his disagreement entered on the record (§ 60 of the Constitution).

The ministers in many European countries bear primarily political responsibility, which is expressed in the resignation of the entire government. This joint responsibility is common to many countries with the Roman-German legal system, including Russia. At the same time, the distinction of European legislation from Russia is that “the ministers in European countries, alongside parliamentary responsibility, which is enshrined in constitutional legislation, bear criminal and civil responsibility, which is also enshrined in constitutional and legal acts of many European countries” (Spain, France, Italy, Poland, Hungary, the Netherlands, etc.). Criminal responsibility is connected with the commission of a criminal offense proper or a criminal offense in the line of official duties, as for instance, in Spain. The third book in the Criminal Code of France covers property crimes. Civil responsibility is applied in accordance with the relevant legislation of the state and is connected with the application of liability measures arising on the basis of a civil offense (Netherlands). In the author’s opinion, the institution of responsibility in criminal and administrative crimes and offenses should be reflected in Russian legislation with respect to senior officials of the executive branch. The application of this responsibility can also be initiated by the country’s parliament (Doherty, 1998).

It should also be noted that this is a feature of European legislation affecting a bloc of parliamentary confidence in the government, as a procedure for deferring voting in parliament when requesting parliamentary confidence from the government. The Constitution of Slovenia, Article 117 provides for the rule that at least forty-eight hours must pass from the moment of the request for confidence in the government before voting. In fact, the purpose of this procedure is the same as the delay of voting in the expression of non-confidence. The legislation of Albania provides for casting a vote of confidence that cannot be held earlier than three days after its introduction (Part 3 of Article 104 of the Constitution). German law provides for a period of forty-eight hours between the application for the expression of confidence and voting (Part 2 of Article 68 of the Constitution).

4. Summary

Responsibility of executive bodies should be one of the basic principles that are “an integral component of the content of general legal regulations in the sphere of executive power”. With the purpose of creating real legal mechanisms for consolidating and realizing the principle of parliamentary responsibility, the following measures must be taken, namely a systemic combination in the implementation of legal regulation: the power of the restricting measures (civil control, institutions of democracy, justice), including the measures of forming of and responding to the interests of citizens in the activities executive power; compulsory legal measures of legal liability; measures of legalization and individualization of authority; more open and transparent regime of the executive branch (Villalobos-Antúnez, 2015; Zorkin and Lazarev, 2010).

5. Conclusion

At the same time, the issues of the Russian legal policy concerning implementing it by the Government of the Russian Federation in our science have not been clearly worked out yet, especially at the general theoretical level. That is why, in our invincible belief, the formation of a system of legal policy should be based on the responsibility of the Government of the Russian Federation, both personal and individual, i.e. of each member of the Government, first of all, before the Russian parliament, and be brought to the responsibility for:

- Implementing and protecting of the Constitution of the Russian Federation, implementing of federal constitutional and federal laws, decrees and orders of the President, resolutions and orders of the Government of Russia;
- Ensuring external and internal security of Russia, including ensuring information security, and sustainable development of Russia;
- Ensuring the development and implementation of common standards for the quality of life of Russian citizens in the subjects of Russia;
- Ensuring the legality of the activities of the officials of executive state bodies of all levels;
- Organizing scientific management of public administration;
- Managing federal property;
- Ensuring the legality, rights, duties and responsibilities of citizens, protecting public order, fighting corruption and crime;

- Conducting a unified state policy in Russia in the field of: a) taxes, finances, credits, prices, trade and other financial and banking activities; b) information law.

In conclusion, it should be mentioned that the existing mechanisms of the government's parliamentary responsibility as an element of legal policy in foreign countries differ in their heterogeneity, and in many respects even in diversity.

1. Many mechanisms of parliamentary responsibility that exist and are implemented in practice in the European countries can also be adopted through a minor transformation into our Russian constitutional practice, for example: the individual responsibility of the ministers, expressed in the form of non-confidence vote by the parliament over the decisions (Austria, Poland, Greece); the institution of resolution of censure related to the resignation for unlawful acts of a member of the government (Germany); the procedure for voting non-confidence in the government should be initiated by both chambers of parliament, such as in Belgium, Italy, the Netherlands, Sweden, France; initiation of the procedure of government's resignation by both the parliament and the government, which can raise the question of confidence in itself will not be possible several times over any period, for example, a parliamentary session.

2. Having considered the differences in legislative regulation of parliamentary responsibility in Russia and foreign countries, including in the development of legal policy, we also note that in Russia there is a combination of its historical features of legal regulation of the institution of executive responsibility before the legislative and the introduction of a number of new advanced ideas existing in the countries of Europe. Such idea can comprise the amendments made to clause «B» of Article 103 of the Constitution of the Russian Federation, according to which the jurisdiction of the State Duma of the Russian Federation includes hearing of the annual reports of the Government of the Russian Federation on the results of its activities, including on the issues raised by the State Duma.

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