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rector@utmn.ru

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**DIVISION OF POWERS IN THE RUSSIAN FEDERATION  
AS THE MAIN CONSTITUTIONAL PRINCIPLE IN THE FUNCTIONING  
OF THE LEGAL DEMOCRATIC STATE**

*SUMMARY.* This article touches upon some features of the division of powers in the Russian Federation in the modern period. The author analyses levels and forms of division of the united power of the people through referendum and free elections; through activities of public authorities and through municipal government. The division of federal and regional powers in a federative state is considered as a special form of the division of powers. The article discusses the legal problems of relations between the central government and regional governments in complex-structured regions. The need to strengthen all branches of state power, to increase the powers of the Federal Assembly of Russia, to regulate the constitutional order of the exercising President's powers, the organization and functioning of the state bodies formed by the President of the RF is observed. The implementation of the constitutional principle of municipal independence is analyzed.

*KEY WORDS.* Separation of powers, forms of democracy, presidential power, relations between the central government and regional governments, complex-structured regions of the Russian Federation, municipal government.

The classical theory of powers was generally structured in the sixteenth century, although the conditions for its creation began to form much earlier. Starting with John Locke and Charles de Montesquieu, among the general, long-standing theories we can distinguish a number of postulations.

In every country proclaimed democratic, the legislative, executive and judicial powers are not only interconnected by the integrated state mechanism, but are also relatively independent. There is a certain balance and a system of checks and balances between the upper state bodies, exercising legislative, executive and judicial functions. Each of the three powers has, as a rule, a permanent legal basis. We can mention the termination of the unlawful seizure of all state powers by a single person (or by a group of people) and the maintaining of the state mechanism and social integrity as the prior and final targets of the separation of powers' practical implementation.

The above-mentioned items are brought about in concrete states through a number of factors:

- a) the form of government;
- b) the form of state structure;
- c) the political regime;

- d) the existence of historical, national, political traditions
- e) the established political practice.

With due regard to the configuration of the above-mentioned factors, the classical theory of the separation of powers, providing the division of unified state power into the legislative, executive and judicial, when implemented in a certain state, may be modified due to certain historical conditions. For instance, in addition to the legislative, executive and judicial powers there is electoral power (in Spanish, *poder electoral*) in the Constitution of Nicaragua and control power in the Constitution of Sweden. There are certain bodies proclaimed to accomplish the correspondent functions [1; 237-238].

In the dissertation devoted to the practical implementation of the constitutional principle of the separation of powers in the Russian Federation, the author presents his opinion on the matters the functioning and interaction of powers [2; 86-96].

The separation of the legislative, executive and judicial powers, to our mind, has several levels, but this separation, realized in a certain structure of the legislative, executive and judicial bodies, is derivative or secondary in comparison to the primary, "root" powers separation, defined in Article 3 of the RF Constitution in force, according to which the initial source of powers is the cosmopolitan Russian nation. The people of Russia can exercise power in several forms, which is the first, primary or "root" separation of powers.

The RF Constitution offers the following levels and forms of the people's power:

1. The direct exercise of the people's power by referendum and free elections. The author totally agrees with the scientists, who consider this form of people's power to include the law-making initiative of the people, when the bill of law, signed by a certain number of people, is introduced by the people to the legislative body, which should consider it and take a decision on it.
2. The exercise of power through state bodies. The constitutional principle of the separation of powers finds its secondary or derivative realization of the people's power in the framework of this second form of the exercise of power.
3. The exercise of people's power through local authorities.

The analysis of the constitutional status of the governmental bodies, their interaction, the actual position and role of the RF president, having distinct authorities in the matters of all state power coordination, fifteen years ago led us to the conclusion that there is a separate presidential power in the Russian Federation [2: 134-157]. A number of publications, which confirm and develop this conclusion, appeared recently. Nowadays the president exercises this power on a full scale with the help of the majority parliamentary party.

As S.A. Avakyan points out that, in Russia besides the president, there are such governmental bodies as the Public Prosecution Office, the Central Bank, the Accounts Chamber, the Central Electoral Commission, Ombudsman for Human Rights in the Russian Federation, which cannot be situated in the triad of the separation of powers.

The existence of such bodies gives us, besides the legislative, executive and judicial powers, separate new branches of power, which are as follows:

- constituent power (the enactment of the Constitution by the people of Russia); the people's power (enacting laws and solving problems through referendum, only if we do not speak about today's Constitution);
- presidential power, the prosecutor's power, electoral power and finance-banking power [3:356].

According to Khabrieva T.Y. and Chirkina V. E., it should be formulated in the Constitution as follows: "state power is unified and separated into two branches – legislative and presidential (the provision on presidential power relates to the president-parliament)", executive, judicial and controlling power with their special state bodies in charge.

The power of the Russian president is above all other powers. Meanwhile, the objective to build a democratic, lawful society inevitably supposes the realization of check and balances system, i.e. the realization of the separation of powers to the fullest extent. The separation of powers is one of the most important stabilizers in the political system of the society. This derives from the fact that not a single body can concentrate all the powers in his/her hands. The powers of the state or a single person should be balanced, as it is necessary for the civilized democratic society.

In relation to this, the urgent task for science and political practice, as we see it, is the strengthening of all branches of power. The necessity to strengthen the verificatory function by the Federal Assembly of the President's activities has been explained many times in legal literature. Some authors offered to change the procedure of the Federal Assembly pertaining to the direct elections of senators, to strengthen the judicial system and the independence of judges. The president of the RF V.V. Putin has many times evoked the necessity of democratic reforms of the political system [4]. Some of the proposed actions have been partially taken. For instance, the the formation of the Federal Assembly was altered. In particular, a candidate for obtaining the authorities of the Federal Assembly member who should be the representative of the legislative or executive governmental body of the RF region can only be a deputy of this body, in other words a Russian native, elected by the people to the legislative governmental body of the region [5].

Together with the democratization of the formation and functioning of the Federal Assembly, there is one more long-overdue need: to define by means of the Constitution the role and the position of the President and the presidential bodies in the system of the state's authority. The RF constitution in force, defining the main functions and directions of presidential power, does not specify the concrete legal forms of its realization, the limits of its spread, nor constitutional guarantees providing for the detachment and independence of other branches of state power. Therefore, it seems that similarly to the Federal constitutional law "On the RF Government" a Federal constitutional law "On the RF President" should be adopted to regulate the President's authority, including the formation of the President's Administration, State Council, Security Council, and the appointment and dismissal of the Plenipotentiaries of the

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President in the federal regions. The place in the structure of powers and the legal force of the President's orders to the RF Government and other bodies of the state power should also be determined.

According to the RF Constitution, the people's authorities are realized not only through the bodies of state power, but also by the local governmental bodies, which are not included in the system of state power bodies due to article 12 of the RF Constitution. This provision of the RF Constitution confirms the division of powers into state and municipal. However, in practice such division is rather conventional. There is almost no use in trying to differentiate legally state and municipal authorities, as there are always many matters which are appertain to both state and municipal authorities. Moreover, the state governmental bodies transfer to municipal bodies some powers which are under the state's control. For instance, in the Tyumen region there is a regional law "On Granting the local governmental bodies state powers for 2012-2014" which provides the local bodies with 38 state responsibilities, including civil registration, the organization and the delivery of health care by means of municipal health services, and so on [6]. The state widens its authorities to the local level. It is impossible to provide minimum budget economic security for local problem-solving without allowances and subsidies from the state's budget.

All the above-mentioned facts let us doubt the actual realization of the principle of the independent nature of local governmental bodies. There is also doubt about the separation of state and municipal powers. To our mind, municipal power should be considered state power at a local level, and the local authorities as the local bodies of state power. If we speak about the above-mentioned situation, we should recall the RF Constitution, in accordance with which local authorities are not bodies of state power, but soon it can be changed as a new Constitution will be adopted. Dwelling upon the democratic local powers and the participation of people in problem-solving, we would like to mention that there is some territorial public self-administration, which in fact is the link between state power and civil society.

The independent form of the separation of powers in the framework of the integrated federative state is the division of powers between the subordinate entities of the Federation and the Federation itself. The federative form of the Russian state is aimed at the establishment of the best balance for the state as a whole and its parts, which allows to overcome the negative consequences of both superfluous centralization and separatism or atomism, and to make state power and administration closer to every group of the population and every citizen.

The separation of powers between the federative bodies of state power and the correspondent bodies of the subordinate entities of the Federation is far from ideal, and needs many constitutional problems to be solved. For instance, as a result of the formation of federal districts, not declared by the Constitution, and the creation of Presidential Plenipotentiary Envoys to the Federal Districts, who have vast authority in the coordination of the bodies of state power of the subordinate entities of the Federation within the federal district, the monitoring of their activities, the interaction between the federative bodies of state power and the subordinate entities of the

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Federation bodies of state power underwent substantial transformation. According to the Enactment of the Presidential Plenipotentiary Envoy to the Federal District, the latter should organize the interrelation between the federative executive bodies of state power and the subordinate entities of the Federation bodies of state power, local government authorities, political parties and religious units, as well as other tasks.

There are also some legal problems in the separation of authorities between federative bodies of state power and those of the complex-structured regions, as well as between the bodies of state power of the Tyumen region and those of the independent units included in it, such as Khanty-Mansiysk Autonomous District, Yugra, or Yamalo-Nenets Autonomous Okrug. The formation of such “Russian nested doll” type units stemmed from the signing in 1992 by territories and regions and, on the other hand, by autonomous districts included in them, of federative contracts on the subordination of competences and authorities between the federative bodies of state power and the correspondent bodies of Federation entities such as territories, regions and autonomous okrugs. That meant that the autonomous okrugs, included at that time in the territories and regions, declared their independency. Not coincidentally, during the session of the Constitutional Committee, the participant of which I used to be on behalf of the Tyumen region, a heated dispute arose on the above-mentioned matter. The absence of a provision on the inclusion or existence of the autonomous okrug within the territory or region in the first draft of the Constitution meant, in fact, the expulsion of the autonomous okrug from the territory or region without the contest of its population or the population of the territory or region. Therefore, the representatives of the regions with the autonomous okrugs aimed to maintain territorial integrity, proposing to include a provision on the regulation of relations between the autonomous okrugs and the territories or regions by means of the federal law and a contract between their bodies of state power.

We should point out that there were serious grounds for anxiety about territorial division of the territories and regions. For instance, on the 16th of October 1990 during the second session of the Council of People’s Deputies of Yamalo-Nenets Autonomous Okrug, part of the Tyumen region, the Yamalo-Nenets Republic of the Russian Soviet Federative Socialist Republic was declared, and a declaration on sovereignty adopted. However, even after the Constitution of 1993 was enforced, the problem of the legal status of regions and autonomous okrugs within their territories was not eliminated, despite the adoption by the Constitutional Court of Provision №12-P on the matter of interpretation of the Provision from Part 4 of Article 66 of the RF Constitution of July 14th 1997 on the inclusion of the autonomous okrug in the territory or region [7] and the contract between the three units.

That is why authors continue to carry out research on the anomalous constitutional situation, when two independent units are included in a third. Such a situation is an obstacle for the realization to the full extent of the constitutional authorities of the governmental regional bodies, without an additional contractual way of regulating the relations between the regions and autonomous okrugs. This situation also produces new levels of federative structure, which means another (vertical) type of separation of powers. Professor Sulakshin thus proposed a variant of a new model of the Russian

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Constitution in which there would be no longer regions, territories and autonomous okrugs within the territory of the RF, but all units would be called lands, among which there would be Tyumen, Yamalo-Nenets and Khanty-Mansiysk [8]. Thus, the future destiny of the complex-structured unit of the RF depends on the perspective of reforming the units' structure within the territory of Russia, the new legal status of the units declared in the new RF Constitution, or amendments to the existing Constitution on this matter.

Having analyzed the above-mentioned ideas, one may come to the conclusion that the principle of separation of powers declared by the RF Constitution is not realized to the fullest extent in the political and legal realm of today's Russia. At the same time, there is a strong need for correction of the mechanism of checks and balances, as well as the amendment of the functioning of state power. To this end, the government should not only improve the legislative basis, but also provide the realization of the principle of separation of powers, with constant monitoring. The estimation of constitutional legitimacy, including the realization of the principle of separation of powers, can be accomplished by the Constitutional Court of the RF with a further report on the results of its work to the Federal Assembly of the Russian Federation.

#### REFERENCES

1. Habrieva, T.Ja., Chirkin, V.E. *Teorija sovremennoj konstitucii* [Theory of modern constitution]. Moscow: Norma, 2005. 320 p. (in Russian).
2. Chebotarev, G.N. *Princip razdelenija vlastej v gosudarstvennom ustrojstve Rossijskoj Federacii* [Separation of powers principle in the state unit of the Russian Federation]. Tyumen: TSU publ., 1997. 220 p. (in Russian).
3. Avak'jan, S.A. *Konstitucionnoe pravo Rossii* [Constitutional law of Russia]. In 2 vol. Vol. 1. Moscow: Jurist publ., 2005. 719 p. (in Russian).
4. Putin, V.V. Democracy and the quality of government. *Kommersant — businessman* No. 20. 6 February 2012 (in Russian).
5. Federal Law of 3 December 2012 No. 229-FZ «O porjadke formirovanija Soveta Federacii Federal'nogo Sobranija Rossijskoj Federacii» [«The order of formation of the Federation Council of the Federal Assembly of the Russian Federation»] (in Russian).
6. Law of the Tyumen Region of 9 November 2011. No. 71 «On the authorization of bodies of local self-government with separate state powers in 2012 and for the planning period of 2012-2013». *Tjumenskie izvestija — Tyumen news*. No. 200. 11 November 2011 (in Russian).
7. Decree of the Constitutional Court of RF, of 14 July 1997. No. 12-II on the case of interpreting the provision of chapter 4, art. 66 of the Constitution RF on joining of an autonomous okrug with a kray, oblast. *Vestnik Konstitucionnogo Suda RF — Bulletin of the Constitutional Court of RF*. No. 5. 1997 (in Russian).
8. Sulakshin, S. Collected videos «Nauchnyj maket novej Konstitucii Rossii»
9. («A scientific miniature of the new Constitution of Russia») from the cyclus «Faktozy Vozrozhdenija» («Factors of Revival») with Stepan Sulakshin. Available at: <http://sulakshin.ru>. Center of Problematic Analysis and State-and-Administration Designing. Moscow: Nauchnyj Jekspert publ., 2011 (in Russian).