IMPERFECTION OF THE MODEL OF DIFFERENTIATION OF POWERS AND SUBJECTS OF JURISDICTION BETWEEN FEDERAL AND REGIONAL EXECUTIVE BODIES IN THE RUSSIAN FEDERATION

INTRODUCTION

Research on the organization and activities of executive authorities is devoted to the scientific works of N.Y. Khamaneva, O.E. Kutafin, V.V. Grib, L.Y. Grudtsyna, L.P. Rasskazov, V.E. Chirkin and several other authors. These scientific works provide the basis for the analysis of the theoretical content of the executive branch in relation to its social essence. However, the share of research devoted to the study of modern problems of the organization and functioning of the model of separation of powers between Federal and regional executive bodies in the Russian Federation is extremely small. In this regard, the main purpose of this research is a comprehensive study of the model of delimitation of powers between Federal and regional executive authorities in the Russian Federation, the identification of its shortcomings, as well as the development and justification of proposals for their elimination, and the subject of the study is the regulatory framework and the functioning of the executive system abroad and in the Russian Federation, as well as scientific views on problems and prospects for improving bound power-sharing model.

METHODOLOGY

This article in the process of cognition of state-legal phenomena were used: a) General scientific methods (formal-logical, systemic, structural-functional, concrete-historical); b) General logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); c) private scientific methods (technical and legal analysis, specification, interpretation, etc.) (ZALESNY, GONCHAROV, 2019: 129-142; ZALENSY, GONCHAROV, 2020: 1-6).

RESULTS

One of the main problems in the formation and functioning of the system of executive power in the Russian Federation is the imperfection of the existing model of differentiation of powers and objects of jurisdiction between Federal and regional executive bodies. The difficult way of building relations between the center and the regions was accompanied by a weakening of the Federation’s influence in the field of administrative administration, which left to the subjects a solution to many crucial issues for the country as a whole, randomly concluding a huge number of agreements on the division of powers, creating inequality in the status of different regions (SERGEEV, 2003: 6-12), then the adoption of the Constitution of 1993, which for the first time consolidated the foundations of building relationships in the field of executive power.
in the country (CHERNOV, 2004), then centralization the work of the state apparatus, which revived the economy of our country, began the fight against corruption in the ranks of state authorities and local self-government and broke the backbone of regional separatism (FEDOSOV, VALENTEY, SOLOVEY, LYUBOVNY, 2002: 159-184).

The whole multidimensionality of this complex path has been widely studied in the domestic scientific literature (ROYER, 2004: 128-129; GERASIMOV, ELISEEV, SHORNIKOVA, 2002; PLATONOV, 2010). Federal bodies of state power and bodies of state power of the constituent entities of the Russian Federation interact in the field of legislative, executive and judicial power (Article 10 of the Constitution of the country). However, within the framework of the judicial and legislative (representative) authorities, neither mechanisms of interaction are constitutionally or legislatively fixed. So, for example, courts of general jurisdiction and arbitration courts within their competence form judicial systems that are not procedurally interconnected and operate completely independently of each other.

The legislation does not provide for the possibility of appealing against court decisions outside this judicial system. The Federal Assembly of the Russian Federation and regional parliaments, in turn, carry out lawmaking and other constitutionally and statutory certain powers independently, without interfering with each other’s competence. Moreover, recognition of the law as unconstitutional (at the Federal level), and contrary to Federal Law (at the regional level) is carried out in court (by applying to the Constitutional Court of the country and the constitutional (charter) courts of the constituent entities of the Russian Federation). In the field of executive power, one can single out the interaction of the President of Russia with the heads of executive power of the constituent entities of the Russian Federation (heads of regions), as well as the interaction of the Government of the country and executive bodies of the regions. However, this interaction is accompanied by a number of problems, including those stipulated by the Constitution of Russia (BEZRUKOV, 2001: 110-117; KLIMOVA, 2018: 115-119).

Firstly, Part 2 of Article 77 of the Constitution of the Russian Federation establishes that the federal executive bodies and executive bodies of the constituent entities of Russia form a single system of executive power in the Russian Federation; however, it is not clear from the text of the Constitution who heads it. Article 78 deals only with the fact that the President and the Government of the country ensure, in accordance with the Constitution of the country, the exercise of the powers of state power throughout the country. Moreover, Article 71 of the Constitution refers to the jurisdiction of the Russian Federation only the establishment of a system of Federal authorities and the procedure for their organization and activities.

In addition, the country’s Constitution limits the possibility of a unified system of executive power to the jurisdiction and powers of the Russian Federation and joint subjects of competence of the Russian Federation and regions. However, the complex and heterogeneous structure of both the powers themselves and the bodies that exercise them (especially at the regional level) creates a lot of problems and legal conflicts (OPRYATOV, 2006; CHEREPANOV, 2004; CHEPRASOV, 2014: 89-94).

So, for example, some executive bodies in regional administrations are created to carry out public administration both in the subjects of jurisdiction of the subject of Russia and in joint management with the Federal center. In this case, the limits of federal control and the possibility of interference with the exercise of powers by this body are controversial, and the acts issued have a conflict of law content (Smirnova, 2006), because the executive bodies of the regions carry out their own legal regulation on subjects of their own jurisdiction (Paragraph 4 of Article 76 of the Constitution of the country) and have all full state power (Article 73 of the Constitution). Thus, the intra-system relations for the exercise of executive power require serious optimization (KRAVCHENKO, 2005).

Secondly, any interaction of the Russian Federation and its subjects in the field of executive power implies the possibility of delegation of authority; Parts 2 and 3 of Article 78 of the Constitution of the country provide for the possibility of transferring such powers by concluding agreements between Federal and regional government bodies. However, as A.N. Kokotov notes,
[...] in the literal interpretation of the link of Article 71, 72 and 73 of the Constitution of the Russian Federation, all new subjects of competence automatically fall within the purview of the subjects of the Federation. Lists of issues of exclusive Federal jurisdiction and joint jurisdiction of the Federation and the subjects of the Federation in Article 71 and 72 are given as closed, and all other issues of state activity by virtue of Article 73 are assigned to the jurisdiction of the Federation. However, new subjects of jurisdiction may also have national significance, require a single national regulation. Therefore, the newly emerging objects of competence should be attributed to the competence of the Federation, constituent entities of the Federation or their joint jurisdiction, depending on their tendency to these issues already established constitutionally (KOKOTOV, 2002: 27-33).

The solution to this problem is possible in two ways: either it is necessary to take advantage of the experience of a number of foreign states (in particular, Germany) in this issue and establish the competing competence of the Federation and its constituents in the Constitution instead of the existing model of joint jurisdiction, when the subjects of Russia will be able to legislatively resolve these issues insofar as, since they are not regulated and not indicated by federal law; or the list of issues that are the exclusive responsibility of the Russian Federation and the joint jurisdiction of the Federation and its constituents should be expanded in Articles 71 and 72. So, Article 71 of the Constitution of Russia should be supplemented with paragraph y) of the following content:

y) the solution of other issues of national importance, or requiring a single national regulation.

Article 72 of the Constitution of the Russian Federation requires a more detailed delimitation of the list of issues jointly administered by Russia and its subjects.

Thirdly, despite the fact that Part 1 of Article 78 of the Constitution of the country directly establishes the possibility of the creation by Federal bodies of executive power for the exercise of their powers of territorial bodies and the appointment of appropriate officials, the heads of the constituent entities of the Russian Federation often create their own decisions without authorization, regional structures of Federal ministries and departments. So, for example, the Governor of Primorsky Region by his resolution dated 04.04.1995 № 158 “On the establishment of the Primorsky Branch of the State Registration Chamber under the Ministry of Economy of the Russian Federation” created the Primorsky Branch of the State Registration Chamber under the Ministry of Economy of the Russian Federation and approved the regulation on it.

However, as established by the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation in its determination dated 07.07.2002 №56-G02-13 in accordance with the decrees of the Government of the Russian Federation dated 06.06.1994 № 655 “On the State Registration Chamber under the Ministry of Economy of the Russian Federation” and dated 05.09.1998 № 1034 “On the transfer of the State Registration Chamber under the Ministry of Economy of the Russian Federation to the Ministry of Justice of the Russian Federation”, the State Registration Chamber is defined as statehood establishment organ of the federal government. The argument of the cassation appeal of the Primorsky Region administration that the right to establish this institution was delegated to the Territory in accordance with Article 78 of the Constitution of Russia was not confirmed by the existence of an agreement between the Ministry of Economy of the Russian Federation and the Administration of Primorsky Region. As rightly noted D.N. Kozak,

Part 2 of Article 78 of the Constitution allows transferring to the constituent entities of the Russian Federation some executive and administrative powers on the basis of agreements on the transfer of the exercise of part of the authority ... However, there is no direct and obvious need to carry out such a transfer ... in any case, the transfer of the exercise of authority in those areas where it would lead to the actual weakening of the Federation in solving national tasks (defense, security, customs, and so on) (KOZAK, 2002: 3-11).

Nevertheless, in recent years, the trend of transferring authority from the center to the regions for managing social sectors has intensified under the influence of the opinion of the head of...
state, which has led to a change in the current legislation. But it seems that this process should be balanced. Firstly, the transfer of the exercise of these powers should be carried out strictly within the framework provided by law. The effectiveness of the exercise of the transferred powers should be fully verified by both the Federal executive bodies that delegate the powers and law enforcement agencies. Secondly, the consequence of the transfer of powers should not be the strengthening of separatist tendencies in the regional executive branch, since the second "parade of sovereignty" of the Russian Federation as a sovereign, independent and integral state is unlikely to survive.

Therefore, it is necessary to consolidate in the Constitution of the country a list of executive powers relating to the exclusive jurisdiction of the federation and prohibit their delegation to executive bodies of the constituent entities of Russia. In this regard, the proposal of A.N. Kokotov clarify the content of the institution of dual subordination and the status of bodies of general competence, primarily in terms of their control and coordination functions (KOKOTOV, 2002: 27-33).

In addition, it should be legislatively provided for the possibility of careful parliamentary control of the Federal and regional parliaments (directly or through parliamentary control bodies) over all processes of delegation of authority by Federal executive bodies of the regional executive branch and vice versa. First of all, a system of parliamentary control over the implementation of the financing of delegated powers should be developed (ZAITEVA, 2004). Indeed, often the transferred funds (especially to the republics of the North Caucasus) are plundered by the regional elite. For this, it is necessary to secure for the Accounts Chamber of the Russian Federation not only the possibility of financial audits, but also a number of powers to seize funds (accounts), suspend financing, and apply other interim measures until the issue is resolved by the appropriate court.

The most important task of interaction between the President of Russia and the heads of the executive branch of the constituent entities of the Russian Federation (heads of regions) is, on the one hand, to ensure the rule of law, and on the other, the responsibility of the regions for violation of the law; however, a number of problems arise in this regard.

Firstly, according to Part 2 of Article 85 of the Constitution, the President of the country has the right to suspend the acts of the executive authorities of the constituent entities of the Russian Federation in the event of a conflict of these acts with the Constitution of Russia and Federal Laws, international obligations of the Russian Federation or violation of human and civil rights and freedoms until this issue is resolved by the appropriate court. This right of the head of state stems from Part 2 of Article 80 of the Constitution of the country as a guarantor of the Constitution of Russia, the rights and freedoms of a person and citizen.

But at the same time, Article 80 of the Constitution arbitrarily extends the prerogative of the President of Russia in this matter, whereas in accordance with Part 6 of Article 76 of the Constitution of the country, in the event of a conflict between Federal Law and a normative act of a constituent entity of the Russian Federation, issued within the jurisdiction of the constituent entity of the Federation, a normative legal act of the subject of Russia is in effect. According to Article 73 of the Constitution, the subjects of the Russian Federation possess the fullness of state power within their powers.

As rightly notes M.S. Salikov, the Constitution leaves room for voluntary and involuntary arbitrariness in relation to the subjects of the Federation (PROBLEMS, 1998). The way out of this situation, according to A.V. Bezrukov is an exception to the provisions on the inconsistency of regional acts with Federal Laws from Part 2 of Article 85 of the Constitution of Russia (BEZRUKOV, 2001: 110-117). Other authors propose a more radical option: to remove Part 2 from Article 85 of the Constitution of the country, leaving only Part 1, which provides for the possibility for the head of state to use conciliation procedures to resolve disagreements between Federal and regional state bodies (PROBLEMS, 1998). It seems most correct to state Part 2 of Article 85 of the Constitution of Russia in a new version, specifying that the President of the country has the right to suspend acts of executive authorities of the constituent entities of the Russian Federation, with the exception of those issued in accordance with Article 73 of the Constitution of the country.
Secondly, Article 29.1 of the Federal law “On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power in the Russian Federation” establishes the responsibility of the head of the region in the event that he issues a normative legal act that contradicts Federal law or evades it from being brought into conformity with Federal legislation of its normative legal act after its suspension by the head of state and appeal to the court. In this case, the head of state has the right, following the procedure established by federal law, to remove the highest official of the subject of the Russian Federation from office. In addition, the above law in Paragraph 4 of Article 29 provides for the possibility of temporary removal of the head of a constituent entity of the Russian Federation from office by the head of state upon motivated submission by the Prosecutor General of the country if he is charged with a grave or especially grave crime.

It seems that these powers of the head of state, granted to him by Federal Law, require constitutional consolidation in the form of an additional part in Article 85 of the Constitution of Russia, and a reference to Article 80 in support of the president’s right to remove the head of the executive branch of a constituent entity of the Russian Federation is insufficient.

CONCLUSIONS

1. The problems of the imperfection of the model of separation of powers between Federal and regional executive bodies in the Russian Federation are caused by the socio-historical conditions of the formation and development of Russia as a Federal state.

2. These problems require amendments and additions to the Constitution of the Russian Federation and federal legislation both in terms of detailing the concept of a unified system of executive power, and in terms of determining the optimal principles for its organization and activities.

3. The development of a model of separation of powers between Federal and regional executive bodies in the Russian Federation should contribute to the centralization of the executive system in Russia, without which it is impossible to maintain its state sovereignty, independence and territorial integrity.

4. However, the centralization of the system of executive power in the Russian Federation should not infringe on the constitutional rights of the Russian regions, as well as the rights and freedoms of a person and citizen.

REFERENCES


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Imperfection of the model of differentiation of powers and subjects of jurisdiction between federal and regional executive bodies in the Russian Federation

Este artigo se dedica à análise dos problemas modernos associados à imperfeição do modelo de separação de poderes entre os órgãos executivos federais e regionais na Federação Russa. Nesse sentido, foi elaborado e justificado no trabalho um sistema de propostas para a solução desses problemas. Essas propostas otimizarão a organização e o funcionamento do sistema de poder executivo na Rússia. Além disso, a otimização do modelo de separação de poderes entre os órgãos executivos federais e regionais do país deve ter como objetivo a preservação da soberania estatal, independência e integridade territorial da Federação Russa.


Abstract
This article is devoted to the analysis of modern problems associated with the imperfection of the model of separation of powers between Federal and regional executive bodies in the Russian Federation. In this regard, a system of proposals for resolving these problems has been prepared and justified in the work. These proposals will optimize the organization and functioning of the executive power system in Russia. Moreover, the optimization of the model of separation of powers between federal and regional executive bodies in the country should be aimed at preserving the Russian Federation’s state sovereignty, independence and territorial integrity.

Keywords: Separation of powers. Subjects of jurisdiction. Executive branch. Russian Federation.

Resumo
Este artigo está dedicado al análisis de los problemas modernos asociados con la imperfección del modelo de separación de poderes entre los órganos ejecutivos federales y regionales en la Federación de Rusia. En este sentido, se ha elaborado y justificado en el trabajo un sistema de propuestas para la solución de estos problemas. Estas propuestas optimizarán la organización y el funcionamiento del sistema de poder ejecutivo en Rusia. Además, la optimización del modelo de separación de poderes entre los órganos ejecutivos federales y regionales en el país debe tener como objetivo preservar la soberanía estatal, la independencia y la integridad territorial de la Federación de Rusia.