SEPARATION OF POWERS AS A PRINCIPLE OF ORGANIZATION AND ACTIVITY OF EXECUTIVE AUTHORITIES IN THE RUSSIAN FEDERATION: CONSTITUTIONAL AND SOCIO-ECONOMIC ANALYSIS

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INTRODUCTION

The institute of executive power in Russia is thoroughly investigated in the works of I.A. Umnova, I.A. Polyansky, S.A. Avakyan, A.A. Karmolitsky, V.V. Komarova, N.Yu. Hamaneva, O.E. Kutafin, M.S. Baglay, L.Yu. Grudtsyna, Yu.A. Tikhomirov, V.E. Chirkin, T.Ya. Habrieva, and several other authors. These works provide the basis for the analysis of the theoretical content of the public administration system in Russia in relation to its social essence. However, the share of research that highlight the problems of the implementation of the principle of federalism in the organization and activity of executive bodies in the Russian Federation is extremely small.

In this regard, the main purpose of this research is a comprehensive study of federalism as a principle of organization and activity of executive authorities in the Russian Federation, in order to expand and clarify the conceptual and categorical apparatus of the science of constitutional law in the sphere of public administration, forming an integral concept of optimal organization and the exercise of executive power in Russia, and the subject of the research is legal framework enshrining the above-mentioned principle of organization and activity of Executive bodies in the Russian Federation, as well as scientific views on the resolution of problems associated with its implementation.

METHODOLOGY

This article in the process of cognition of state-legal phenomena were used: a) General 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; ZALESNY, GONCHAROV, 2020: 1-6).

RESULTS

The fundamental principle of the formation and functioning of executive bodies in Russia is the principle of separation of powers. Historically, it was alien to our state (both during monarchical rule and during the sovereignty of the Soviets), and only a consistent modernization of the system of state power in the country, the rejection of the political dominance of one party, the emergence of the post of head of state, the consolidation of the independence and
independence of the judiciary led to the formation of a system of independent branches of power in the country.

Understanding of this principle, according to many scientists, given the world experience of state building, it is impossible to reduce only to the functional separation of state power between independent state bodies at the federal and regional levels, it is necessary to fix the priorities of the branches of government and a certain mechanism of mutual checks and balances in the country's Constitution (USANOV, 2005: 13-22; SHARAPOV, 2001). In the Russian Constitution, the principle of separation of powers was enshrined as one of the foundations of the constitutional system (Article 10), according to which state power in the country is exercised on the basis of separation into legislative, executive and judicial. However, Article 11 of the Constitution introduces a contradiction: along with the Federal Assembly, the Government and the courts of the Russian Federation, the President of Russia has been singled out by the Constitution as an independent subject of power. This idea is confirmed by the fact that Chapter 4 «The President of the Russian Federation» precedes chapters devoted to individual branches of government.

It seems that the concept of «separation of powers» in the Constitution of the country conditionally and inaccurately reflects the content of this principle of organization and activity of state power. So, S.V. Privalova notes that when applying Article 10 of the Constitution, some scientists and practitioners mistakenly understand that this norm refers to «separation of powers»; this should not be a matter of «separation of powers» (there is one power in Russia, and the bearer of sovereignty, its only source is the multinational people), but the separation of the exercise of state power is not shared by the essence of power, but by the structures and mechanisms for its practical implementation (PRIVALOVA, 2000: 88-98). A.F. Maly, V.A. Cherepanov and several others (CHEREPA NOV, 2003; MALY, 2001: 97-99; KOSIKOVA, SHINDAIWA, 2018: 24). The principle of separation of powers should exclude the possibility of concentrating all power in one body (official) and establishing a dictatorship, and not eliminate the unity of power. According to A.P. Fokov, each of the branches of government characterizes, or rather, personifies a certain sphere of application of power (FOKOV, 2000: 51-56).

In addition, as some authors note, «the separation of powers also has an additional goal - the determination of the functions of each of the branches of government, their differentiation, as well as the determination of the powers and competencies of the constituent authorities» (POLYANSKY, KOMAROVA, 2001: 33-36). So, the Parliament of the Russian Federation, as a legislative body, along with the implementation of its main function - the adoption of laws - also performs other functions: participation in the general leadership of the country (for example, in the formation and implementation of domestic and foreign state policy, as well as approval of the budget); the formation independently or jointly with other authorities, other government bodies, and the appointment of their officials; by the representation of the people; parliamentary oversight.

A clear drawback of the Constitution of the Russian Federation should be considered a limited set of control powers of the parliament in relation to executive authorities. In accordance with the Constitution, they are reduced to monitoring the implementation of the federal budget (in this matter, the parliament can rely on the Accounts Chamber), resolving the issue of trust in the government as a whole and ratification of international treaties. In the practice of foreign countries, as V.E. Chirkin, there are more diverse forms of parliamentary control: questions to the government and directly to the prime minister, debates on the general government policy and individual issues, interpellation, raising the question of distrust or introducing a censure resolution, parliamentary hearings, parliamentary investigations, control over delegated legislation and many others (CHIRKIN, 1998: 360).

However, the Federal Constitutional Law «On the Government of the Russian Federation» dated 17.12.1997 № 2-FCL provides for an insufficient number of forms of parliamentary control over the activities of the Government of Russia: resolving the issue of confidence, a vote of no confidence, parliamentary inquiries and questions, provision of information by the Government on the implementation of federal of the budget, written appeals of committees and commissions of the chambers of the Federal Assembly to members of the Government.
and heads of federal executive bodies (Articles 37-41) (On, 1997, 5712), that excludes the possibility to operate effectively Parliament control based on the required regular interaction and cooperation with the executive.

True, Federal law dated 27.12.2005 № 196-FL «On the Parliamentary Investigation of the Federal Assembly of the Russian Federation» supplemented the list of control forms with the possibility of conducting parliamentary investigations (ON, 2005: 7). A specific form of parliamentary control in Russia is the possibility of removal from office of the head of the Russian state. V.E. Usanov proposes, as a form of parliamentary control of the government, the parliamentary principle of forming the Government of Russia, when the President approves the candidatures proposed by the State Duma for the post of Chairman of the Government of the Russian Federation (2005: 21). The Russian Government itself is in a low position regarding the head of state:

- firstly, in accordance with the aforementioned law, the head of state is directly subordinate to the power ministries and departments, which leads to a certain dualism in the management of the executive branch;
- secondly, the President is entitled to independently decide without resignation on the resignation of the Government and, in accordance with part «b» of Article 83 of the Constitution of the Russian Federation, presides over government;
- thirdly, normative legal acts adopted by the Government of Russia have less legal force and are at a lower level in the hierarchy of legal acts than decrees of the head of state.

The functions of the court, in turn, are to ensure and support the entire system of legal regulation of public relations, in particular the rights and freedoms of citizens, by resolving disputes and conflicts arising in the application of laws and other legal norms (TOPORNIN, 1992; GONCHAROV, POYARKOV, 2016: 5-9). Among the most important functions of the Constitutional Court of the Russian Federation, for example, one can single out the definition of the boundaries of power among various state bodies and between the state and private individuals. His task, according to V.V. Boytsova and L.V. Boytsova, to find a balance between the emerging political reality and the provisions of the Constitution, to adapt it to the needs of modern life (BOYTSOVA, BOYTSOVA, 1996: 48-58). Each state body, belonging to one of the three branches of state power, interacts and restricts the others, which makes up the organization of state power in a democratic state, often referred to as a system of checks and balances. At the Federal level of the organization of state power in Russia, this scheme is as follows:

a) the Federal Assembly is engaged in lawmaking, creating the legislative basis for the functioning of the entire system of power in the country, exercises parliamentary control over the executive branch, for example, by raising questions about trust in the government, or by expressing distrust to it because of disagreement with the government’s policy of leading the executive branch in participating in the formation of the government and the judiciary of the country;

b) the Government of Russia exercises its powers by implementing the current legislation, but can actively influence lawmaking by exercising its right to legislative initiative. In addition, bills requiring the allocation of additional funds from the federal budget can be adopted only subject to the availability of an appropriate conclusion from the government. The influence of the parliament on the fate of the government by expressing distrust to the latter is compensated by the head of state’s right to dissolve the State Duma and the appointment of the Government of the country in this case by presidential decree;

c) the Constitutional and Supreme Courts of the Russian Federation, in accordance with Article 104 of the Constitution of the country, have the right of legislative initiative in matters of their jurisdiction, considering within their competence specific cases to which various Federal and regional government bodies are parties.
The most important and controversial issues in the implementation of the principle of separation of powers in the Russian Federation are, according to several authors: determining the place and role of the head of state in the power system and the mechanism of checks and balances; the special role of public authorities with special powers in the separation of powers and, above all, the Prosecutor's Office of the Russian Federation; the problem of non-inclusion of local authorities in the system of public authorities of the country; the extreme complexity and underdevelopment of the judiciary in Russia (NIMATULAEVA, MAGOMEDOVA, 2018: 36-38; PANOV, 2018: 56-67; POBEGIMOVA, 2018: 54-58). The question of the place of the President of Russia in the system of separation of powers seems complicated and confusing for a number of reasons:

a) the evolution of the content and scope of powers of the head of state was more than tumultuous and was accompanied either by executions of the Supreme Council, then by mass amendments to the previous Constitution of the RSFSR of 1978, then by popular referendum;

b) the Constitution of the Russian Federation itself quite unclearly determined the place and role of the President in the system of power, without attributing him to any branch of power;

c) there is no consensus in the literature on the issue of the place of the head of state in the state mechanism (SUVOROV, 2000; BEZUGLOV, CHEBOTAREV, 1997; CHMYREV, 2019: 263-265; TSELIKova, 2019: 5-8; ROSSINSKY, 2018: 3-9);

d) there is no parliamentary responsibility of the head of state and responsibility for violating the Constitution of the country, as well as for causing harm to the interests of the Russian state and people, improper performance of their presidential duties;

e) the head of the state, although he does not formally head the Government, but, having considerable authority to form it, submitting to the State Duma of the Federal Assembly the candidacy of the Chairman of the Government, direct leadership of a number of ministers, diminishes the significance of the figure of the head of the Russian Government;

f) changing the procedure for the formation of the Council of the Federation, along with the complication of the procedure for electing the heads of the executive authorities of the regions directly by the population, provided the head of state with practically unlimited powers.

So, G.N. Chebotarev, highlighting, along with the three traditional branches of power, the presidential power as an independent one, puts it at the forefront (BEZUGLOV, CHEBOTAREV, 1997). This position is of some interest but is only supported by the hypertrophy of the power of the head of state (including in the formation of the judiciary), the established practice of publishing the President of the country decrees on issues within the competence of the Federal Assembly and the Government of the Russian Federation (for example, on social benefits) (On, 1994: 589), due to the fact that there is no list of issues to be regulated solely by the law (NIKOLAEV, 2000: 12-13).

More correct is the point of view of some authors that the form of government in Russia is a super-presidential republic, and the head of state actually leads the system of executive power (FISH, 2000). The big problem is the lack of consolidation in the country's Constitution of the status of a number of federal state bodies with special powers (Bank of Russia, the Accounts Chamber, etc.); some scientists combine them into a special group (and even power) - control and supervision (DEMIN, 2001: 23-30; CHIRKIN, 1993: 10-18), although in this group there is no unity and subordination to each other. However, in part 1 of Article 11 of the Constitution of the Russian Federation, an exhaustive list of subjects of power is established: control and supervision and other federal bodies of state power, unlike the President of Russia, are not mentioned there.

Obviously, along with the evolution of public life, the types and directions of state activity change and improve; in this regard, the interpretation of the separation of powers as the
delineation of functions of the three types of state bodies (STOLYARENKO, 1999), mutually restraining each other, currently does not cover the diversity of elements in the system of state bodies. It seems unreasonable and unreasonable not to include local self-government bodies in the system of state authorities in accordance with the Constitution of the country. Arguments can be made in favor of including local governments in the system of separation of powers:

- Firstly, the Constitution establishes such forms of power as its direct exercise by the people through referenda and free elections, as well as through representative bodies and implementation through local governments. In this context, their isolation from the state mechanism is not justified.
- Secondly, as N.V. Varlamova notes: «The Constitution proceeds from the non-state concept of local self-government, carried out in addition to state administration in administrative-territorial units. However, Federal Law gives local governments the power of government in the respective territory. In this case, their separation from a single system of public authorities seems not quite logical» (PRIVALOVA, 2000: 92).
- Thirdly, if the executive bodies of local self-government are not included in the country’s executive power system, control over the execution by the latter of decisions on individual state powers delegated to them due to the independence of local self-government in virtue of the Constitution of the Russian Federation is limited (Articles 130-133).

A significant problem in the system of separation of powers is the complexity, complexity and lack of unity in the judiciary. Chapter 7 of the Constitution of Russia «Judicial Power» and the Federal Law «On the Judicial System of the Russian Federation» enshrined the existence of a single judicial system, however, in practice, at least five independent autonomous subsystems can be distinguished within its framework: courts of general jurisdiction; arbitration courts; Constitutional Court of the Russian Federation; constitutional (charter) courts of the constituent entities of Russia; magistrates’ courts. There is a fair opinion that this weakens the judiciary, reducing its effectiveness (CONSTITUTIONAL, 1999).

One of the ways out of this situation can be either the creation of a specific judicial body, consisting of members delegated by various judicial bodies (for example, the Senate formed by the highest judicial bodies in Germany to resolve issues of uniformity of judicial practice), or the creation of a new judicial body, whose competence combines various judicial functions are combined (similar functions can be vested in the Constitutional Court of Russia). For example, in the USA, such a single supreme judicial body is the Supreme Court, which, along with the administration of general justice, exercises constitutional oversight, cancels (suspects) regulatory acts of other authorities (IVANOV, 2000: 80-84). Alternatively, it is necessary to legislatively consolidate the mechanism of mutual judicial control of the highest judicial bodies, linking them into a single system. The first step towards such transformations has already been made by abolishing the Supreme Arbitration Court of the Russian Federation.

The rules of relations between the three authorities are also reproduced at the level of the subjects of the Federation (Article 77 of the Constitution). According to the Federal Law “On the Principles and Procedure for Separating the Terms of Reference and Powers between the Government of the Russian Federation and the Government of the Subjects of the Russian Federation”, the principle of separation of powers is enshrined in relation to the separation of power between the subject of the federation and Federal state bodies. As V.E. Chirkin notes, the essence of the federation is the problem of separation and interconnection of the state power of the federation and the state power of its subjects (CHIRKIN, 2000: 5-12).

In this regard, Article 11 of the Constitution of the Russian Federation establishes the delimitation of powers and objects of jurisdiction between state authorities as a whole along the vertical of the system: between federal and regional government bodies. This separation of powers should be considered «vertical». The mechanism of separation of powers at the regional level is represented by the following blocks of state bodies: 1) regional administrations, which are headed by senior officials of a constituent entity of the Russian Federation, or by heads of supreme executive bodies of state power of a constituent entity of Russia; 2) regional parliaments, which may be unicameral or bicameral; 3) constitutional
(charter) courts, which are created in many constituent entities of the Russian Federation and play a significant role in the regional power system and make crucial decisions for the regional executive branch; 4) regional state authorities with special powers (for example, the role of the Accounts Department is significant in the regions' chambers of regions) (WITHOUT, 2005).

CONCLUSIONS
The application of the principle of separation of powers should not serve to weaken power, but to the cooperation and cooperation of all its branches. In this regard, to implement the principle of separation of powers, it is necessary to carry out the following measures:

1) To exclude the possibility of legislative powers being appropriated by other state authorities and, above all, by the President and the Government of Russia, having constitutionally determined a list of issues subject to regulation exclusively by law (for example, the veto’s head of state, which is practically unlimited, as some authors suggest, should be put in stringent procedural framework by adopting an appropriate federal law) (USANOVA, 2005: 22);

2) to strengthen parliamentary control over the by-law rulemaking of the executive branch by providing a mechanism of checks and balances between the legislative and executive branches of government to avoid concentration of power in one of its branches;

3) to strengthen the independence of the judiciary by increasing their powers to control the executive branch, primarily at the regional level;

4) to exclude the possibility of interference of one branch of government in another, and especially merging with it, or its substitution;

5) resolve competency disputes only within the framework of constitutional (legal) procedures (through constitutional justice);

6) to develop a constitutional system of deterrence of each government by establishing mutual balances for all authorities.

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Separation of powers as a principle of organization and activities of executive authorities in the Russian Federation: constitutional and socio-economic analysis

Separação de poderes como princípio de organização e atividades das autoridades executivas na Federação Russa: análise constitucional e socioeconômica

Separación de poderes como principio de organización y actividades de las autoridades ejecutivas en la Federación de Rusia: análisis constitucional y socioeconómico

**Resumo**
Este artigo é dedicado à análise constitucional do princípio mais importante de organização e atividade das autoridades executivas na Federação Russa: separação de poderes. Os autores desenvolveram e justificaram o conceito de uma compreensão ampliada do princípio da separação de poderes, com sua redução não apenas à separação funcional do poder do Estado entre os vários níveis de governo (inclusive dentro do Poder Executivo), mas com o desenvolvimento de um mecanismo de freios e contrapesos e a necessidade de alterar o equilíbrio constitucional de prioridades dos poderes públicos.


**Abstract**
This article is devoted to constitutional analysis of the most important principle of organization and activity of executive authorities in the Russian Federation - separation of powers. The authors developed and justified the concept of an expanded understanding of the principle of separation of powers, with its reduction not only to the functional separation of state power between various levels of government (including within the executive branch), but with the development of a mechanism of checks and balances and the need to change the constitutional balance of priorities of the branches of government.

**Keywords:** Separation of powers. Executive Branch. Russian Federation. Principle.

**Resumen**
Este artículo está dedicado al análisis constitucional del principio más importante de organización y actividad de las autoridades ejecutivas en la Federación de Rusia: la separación de poderes. Los autores desarrollaron y justificaron el concepto de una comprensión ampliada del principio de separación de poderes, con su reducción no solo a la separación funcional del poder estatal entre varios niveles de gobierno (incluso dentro del poder ejecutivo), sino con el desarrollo de un mecanismo de frenos y contrapesos y la necesidad de cambiar el equilibrio constitucional de prioridades de los poderes públicos.

**Palabras-clave:** Separación de poderes. Rama ejecutiva. Federación Rusa. Principio.