

THE CONCEPT OF POLITICAL STRUGGLE IN CONSTITUTIONAL LAW

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The subject of research is the political struggle in its constitutional and legal survey.

The purpose of research is to identify the legal nature and formulate the concept of political struggle in constitutional law, as well as to determine its attributes and properties, features of the object, goals, objectives and subjects in accordance with doctrinal provisions and domestic law enforcement practice.

The research methods. To gain the results of the research the interdisciplinary approach, formal-legal method, as well as the method of system analysis of legal phenomena and interpretation of legal norms are applied.

The main results. The significance of the phenomenon of political struggle in a democratic state to ensure the solution of problems of legalization and legitimation of state power, as well as the principle effect of its replaceability is substantiated. The political struggle occurs inside the state and has a direct impact on it, and so, predetermines the consolidation of constitutional principles and limits of its implementation in the Basic Law of the state. The main constitutional and legal features of the political struggle in the Russian Federation are its open and legal nature, its principles of equality and political pluralism, the special parties involved in political activity, the existence of a special goal and legal means to achieve it. The constitutional and legal limits of the political struggle are presented in article 3 of the Constitution of the Russian Federation. By means of comparison with correlating legal concepts and categories of the conflict, competition, opposition, activity and process, it is determined that the political struggle should be attributed to the legal process in its broad sense according to formal-legal characteristics. A detailed characterization of the stages of the political struggle is given on the basis of the peculiarities of its object, goals, objectives and participants. The formulated theoretical framework is critical for effective law enforcement in the electoral and parliamentary processes.

Conclusion. The political struggle in the constitutional law should be defined as an open and legal domestic process, including a system of constitutional and legal relations associated with obtaining and preserving the state (municipal) power, as well as with the exercise of authoritative powers by the legislative (representative) body centered around the principles of equality and political pluralism, also intended to ensure the legalization, legitimation and replaceability of state (municipal) power.

1. Introduction

Currently, the conceptual and categorical framework of constitutional law continues to evolve. This is facilitated by the Constitution of the Russian Federation itself, as Judge S.D. Knyazev of the Constitutional Court of the Russian Federation rightly noted, "by consolidating the fundamental goals and core values without which constitutional ideology is simply impossible, it leaves a number of questions of constitutional and legal significance open" [1]. Undoubtedly, present-day legal phenomena and issues are emerging that require scholarly elaboration; however, there are also those that are cursorily mentioned by constitutional scholars and are considered understandable and widely accepted. A striking example is the frequent reference to the political struggle in works on constitutional law, which is, in actual fact, filled not with artistic meaning but with profound constitutional and legal content. Unfortunately, we have been unable to find comprehensive studies on the concept and essence of the political struggle specifically as a constitutional and legal phenomenon. With this consideration in mind, we believe that the present study is timely and relevant.

Generally speaking, the struggle in itself, and the political struggle as its specific type, is the subject of study in various sciences. Our objective is to formulate the concept of the political struggle within the constitutional law and, consequently, we need to reply to the fundamental questions of its legal nature and main characteristics. In this regard, we consider an interdisciplinary approach to be more effective for revealing the essence of the political struggle. The formulation of the concept itself will be aided by a formal-legal method, as well as by a method of systematic analysis of legal phenomena and interpretation of legal norms.

Within the knowledge-based system of humanities, which includes philology, philosophy, sociology and political science, a substantial theoretical body of material on the political struggle has been accumulated, which can be utilized within the scope of this legal research. To determine the semantic content, we believe it is feasible to begin with a linguo-philosophical interpretation of the concept of "struggle". According to V.Ya. Tikhonova,

the following understanding of the meaning of the word "struggle" has developed in Russian culture: struggle is an action, a source of development, the reason for being and essence of life; it is the collision of opposites and contradictions; the aim of struggle is a better life, predominance, victory, and the result is the creation and evolution; struggle is infinite, encompassing all spheres of human life and activity [2, pp. 20-21]. The outcome of struggle is predetermined; it is either victory, defeat, or compromise. A similar conception of struggle is articulated in philosophy. It refers us primarily to one of the fundamental laws of dialectics: the law of the unity and struggle of opposites. Without delving into the intricacies of this philosophical concept, we note that there are no phenomena in the world that exist outside the process of struggle as an endless upgrowth, the emergence of opposing moments within any integrity and their transformation into one another, outside the contradictory relationships between them [3, pp. 172-176]. Struggle is an internal mechanism that guarantees the development of any systems; hence, it is constant and infinite. Philosophers from various periods have regularly addressed the theme of struggle. For instance, the English philosopher Thomas Hobbes offered the following definition: "If the will of two different people produces actions that are hostile to each other, this is called a conflict. If, however, people act directly against one another, this is called a struggle" (cited by: [4, p. 114]). It would follow that the struggle always involves active actions by actors. The Anglo-German philosopher and political scientist Ralf Dahrendorf asserted that it is precisely struggle that is the source of progress, leading to the civilization and a global civil society (cited by: [4, p. 116]). Through the linguo-philosophical comprehension of struggle, we can formulate the key presumptions about it. Firstly, *the presumption of the immanence of a positive beginning*, according to which a struggle is fundamentally a positive and effective (dynamic) activity that promotes sustainable development. Secondly, *the presumption of inevitability*, which suggests that the struggle is necessary and endless, undoubtedly inevitable for any society.

2. Political struggle in constitutional law:

theory and practice

When discussing political struggle, most people consider this phenomenon to be exclusively the subject of political science. This perspective is somewhat unjust, as political struggle is often mentioned in relation to fundamental constitutional and legal categories such as the state, democracy and power, indicating that legal studies are also relevant. It is important to recognize that the political struggle occurs within the state and has a direct impact on it, which implies the necessity of constitutional and legal regulation.

Let us focus on the existing approaches. In political science, the study of the political struggle is explored in the works of A.A. Borshch and A.A. Zaikin. Without delving into the intricacies of the various theories, it is worth noting that the political struggle is typically studied as a collection of different political technologies implemented to gain political power [5, p. 15; 6].

Legal theory has also addressed the issue of understanding the place and role of political struggle within the state. Thus, N.A. Loginova¹ literally defines the political struggle as "the legal way of the competition between political forces for political power" [7, p. 7, 17], which undoubtedly demonstrates the teleological nature of power [8, pp. 6-8]. In our view, reducing political struggle to a means of acquiring power gives it a secondary, optional character. We believe this is not entirely accurate, especially concerning a democratic state, whereas political struggle, as we have already defined it, is a positive and necessary activity that contributes to the development of the state, as well as a certain internal energy of the democratic process.

In turn, we are faced with the question of what constitutes political struggle in its legal nature. To define this, we will seek to identify the characteristics of this legal phenomenon that allow us to see its structure, place, and role among other legal phenomena [9, p. 227]. We assume that such features as the invariant characteristics of the political struggle and its constants can be defined by comparing them with correlating legal concepts and categories: conflict, competition, opposition, activity and process. These

concepts and categories have been chosen deliberately due to their interrelatedness based on specific signs or parameters.

The concept of *struggle* is often defined through the notion of *conflict* due to their similar semantic connotations. At the present time, conflict as a social phenomenon is the subject of study in conflictology and its specialized (branch) theories, each of which offers its own definition. Social conflict is defined as a process in which at least two parties are in contradictory interaction or opposition to each other in order to resolve significant contradictions that are crucial to their interests [10, p. 253]. Political conflictology determines the political conflict as a breach of the existing system of rules and relationships specific to two or more parties, caused by incompatible interests and values [11, p. 69]. A legal conflict must be understood as direct or indirect opposition between legal entities, driven by contradictions in their legally significant interests, arising from the creation, implementation, application, alteration, violation or interpretation of law and resolved in a special procedural form [12]. All these definitions share the key idea of opposition among entities driven by divergent interests. It follows that, the conflict arises from the contradictory interests of the parties, while political struggle reflects a common pursuit of power among all involved. It should also be noted that the political struggle encompasses various forms of social conflicts (verbal and physical aggression, scandals, boycotts, sabotage, strikes, persecution, protests and uprisings), political conflicts (wars and revolutions) [13, p. 160], legal conflicts (electoral disputes), as well as forms of legal interaction (agreements, pacts, mediation). On these grounds, we have reason to believe that the political struggle is a broader and more complex concept than the conflict.

There is often a conflation of concepts such as *political struggle*, *political competition*, and *political opposition*. According to a Russian explanatory dictionary, the competition literally means "emulation, rivalry in some field" [14]. In the political sphere, the existence of alternative competing political entities capable of exerting a significant influence on the political decision-making process is a positive phenomenon. The following

¹ N.A. Loginova attributes political cooperation to other methods of gaining political power.

concepts have been proposed in legal science. T.A. Ospanov defines political competition as "rivalry based on the interaction of subjects of political relations, which presupposes the legitimate confrontation of various political forces in order to acquire public power based on the principles of equality, justice and free struggle in the public-legal sphere" [15, p. 9]. F.I. Dolgikh understands the political competition as "a set of social relations aimed at ensuring equal conditions for the participation of subjects of political activity in the struggle for the political power" [16]. The existence of political competition reveals the essence of the constitutional principle of a multiparty system. An integral part of the political competition is political opposition, which is the subject of study in the theory of opposition political parties. In accordance with S.A. Avakyan, opposition political parties are distinguished by a quantitative criterion as a "parliamentary minority" that is critically inclined towards the state [17, pp. 145-146]. In concordance with S.V. Vasileva, political opposition can be called as the "opponent of the government" [18]. Broadly speaking, D.R. Salikhov suggests that the opposition should be considered as any legal form of expressing disagreement, and in a narrow sense, the opposition is an organizationally separate association of citizens whose activities are aimed at opposing the government [19]. S.M. Shakhrai points out that opposition political parties have the right to freely express a position that differs from the opinion of the majority, as well as have the right to constructively criticize and to be heard [20]. The chairman of the Constitutional Court of the Russian Federation V.D. Zorkin specifies the political opposition as a peaceful, non-violent competition among political parties for participation in the exercise of state power [21]. I.A. Alebastrova evaluates the opposition as a means of preventing the ruling party or ruling bloc from making mistakes, identifying weaknesses in government activity and thereby promoting its effectiveness, that allows for a peaceful transition of political elites [22]. Thus, most scholars determinate "oppositonality" as a quality that characterizes the programmatic principles of a political party. Accordingly, the political opposition, and subsequently the political competition, define the qualitative characteristics of the actors in political struggle.

Thus, political struggle includes both conflict and competition as modes of implementation, in which opposition constitutes a qualitative characteristic of the actors in political struggle.

In reliance on the essential understanding of the political struggle as a positive, necessary, and unconditional activity, we should take note of the similarity of the political struggle to the general theoretical categories of "legal activity" and "legal process". In legal theory, the legal activity is defined as an element of the legal system of society that is carried out by authorized entities in accordance with legal norms through the application of various legal means, and is aimed at achieving socially significant goals to satisfy private and public interests [23, p. 10]. Respectively, R.V. Shagieva's classification distinguishes between public-legal activity [24, p. 33]. However, as a rule, only the state and its bodies endowed with competence and authority can be the subject of legal activity [25]. The state is not a participant in the political struggle for state power; it creates the conditions for securing the political rights exercised by actors of the political struggle in legislation, guaranteeing their implementation [26, p. 9]. In view of the above, it is necessary to distinguish between legal activity and political struggle in the theoretical and legal sense.

In our opinion, the similarity between the political struggle and *the legal process* in its broad sense [27] is more obvious. The process itself is determined as a repeating sequence of tasks. The legal process is a systematic and sequential activity regulated by legal norms, as well as legal relations that arise, exist, and terminate on the basis of and in connection with this activity [28]. According to D.N. Bakhrakh, the legal process should be classified as a power-wielding activity of authorized legal entities, which includes democratic processes, legislative processes, executive power processes, and judicial proceedings [29]. The legal process is characterized by a staged nature, where the stages do not always follow one another in chronological order. In turn, the stage is defined as "a temporally distinct set of consistently performed actions and procedures united by a local independent goal and aimed at achieving the result stipulated by the procedural norms. The result ensures the achievement of the

general goal of a given legal process, characterized by a privileged group of participants" (cited by: [30, pp. 21-22]). Thus, it is possible to make an effort to justify the staging of the political struggle based on the characteristics of its object, goals, objectives and participants.

The object of the political struggle is power, which requires some clarification. Thuswise, power initially has a conflictual nature [31, p. 48], and, whereas, it provides for the ability and possibility of the subject to ensure the subordination of the object in accordance with its intentions and interests [32]. Considering political struggle through the prism of constitutional law, it should be taken into account that a unified system of public authority functions in the Russian Federation. N.M. Dobrynin rightly noted that this approach of the constitutional legislator "is based on the recognition of the homogeneity of the nature and methods of administration in society of any forms of public authority in compliance with the application of legalized measures of coercion by the letter of the law" [33]. In legal science, the Constitution of the Russian Federation comprises the provisions that substantiate the existence of various models of public authority. Thus, according to N.S. Malyutin, public authority is realized in the forms of state authority, public authority and local self-government authority [34]. A more complex structure is presented in the studies of A.A. Yugov, where public authority includes five forms of implementation: direct public authority, public state authority, public municipal authority, public social (corporate) authority, public international and legal authority [35]. It is necessary to determine what forms of implementation of public authority undergo the political struggle. We believe, it happens in those forms that presuppose the possibility of direct governance of the state. The people as the source of power in the Russian Federation are not the subject of the struggle for it, therefore direct public authority should be excluded. Public authority is presented as the authority of civil society institutions, including public associations. It is aimed not so much at governing the state as at regulating the social life of society and is associated with satisfying the need of people for self-organization on the basis of community interests and views. Consequently, the political struggle is unfolding over state and municipal

authority. It is also important to consider the unique constitutional nature of municipal authority. According to E.P. Zabelina, the municipal authority is closely related to state authority in its purpose and content, but at the same time, it has a peculiarity that manifests itself in the absence of the municipal enforcement structures that ensure the implementation of municipal legal and regulatory acts [36]. In view of the above given, the object of the political struggle is state (municipal) authority.

State (municipal) authority implies its legality and legitimacy, meaning it relies on the law, primarily the Constitution, and aligns with the expectations and norms of society within a specific state [37]. With this context, political struggle is intended to facilitate the acquisition of these qualities by state (municipal) authority in Russia, which means it must occur strictly within the legal framework. Therefore, *the main characteristics of the political struggle must be constitutionally enshrined*. The Constitutional Court of the Russian Federation has identified the constitutional and legal characteristics of the political struggle while reviewing provisions of the Federal Law "On Political Parties."² In pursuance of its standpoint, political parties engage in open legal struggle based on the principles of equality and political pluralism, aiming to significantly influence state authority, participate in the formation of government bodies and oversee their activities. The political goal of any party is to receive the ability to govern the state and, through it, the society as a whole. This is precisely why they enter into open competition for seats in parliament³. Considering the above, the main constitutional and legal characteristics of political struggle include *its open*

²On political parties: Federal Law of July 11, 2001 No. 95-FZ (as amended on July 24, 2023). Collected Legislation of the Russian Federation. 2001. No. 29. Article 2950.

³ Regarding the case related to the verification of the constitutionality of Clause 3 of Article 9 of the Federal Law "On Political Parties" in connection with the request of the Koptevsky District Court of Moscow, the complaints of the All-Russian public political organization "Orthodox Party of Russia" and citizens I.V. Artemova and D.A. Savina: Resolution of the Constitutional Court of the Russian Federation of December 15, 2004 No. 18-P. Collected Legislation of the Russian Federation. 2004. No. 51. Article 5260.

and legal nature, the foundation on the principles of equality and political pluralism, a specific composition of participants engaged in political activities, as well as the existence of a particular goal and legal means to achieve it. It is also important to note that the constitutional and legal limits of political struggle are established in Article 3 of the Constitution of the Russian Federation, which states that no one can seize power in the Russian Federation, and any attempt to capture power or appropriate authority is punishable under federal law. In these circumstances, military law studies the forms of political struggle that go beyond these limits, such as political extremism [38] and war [39]. The rivalry among political forces must not exceed constitutional boundaries.

Another significant aspect should be highlighted. *Political struggle contributes to the realization of the principle of power alternation.* It ensures competitive participation in elections by representatives of various parties and movements, allowing for a non-violent alternation of power while simultaneously maintaining its continuity and the stability of sovereignty [40]. This principle helps resolve contradictions between the people and the governing authority, preventing the alienation of power from the populace [41], which further legitimizes state (municipal) authority.

The primary aim of political struggle is to obtain and maintain state (municipal) authority, as well as to implement it within a collegial body: either in parliament or in the representative body of a municipal formation.

The acquisition and retention of state (municipal) authority are achieved through the election to the position of the head of state, the head of a constituent entity of the Russian Federation or the head of a municipal entity⁴, and through the acquisition of a deputy seat. In this case, the actors of political struggle, by virtue of legislation, are political parties and candidates. The legal means to achieve this goal is the participation in the electoral process and other electoral procedures. The exercise of state (municipal) authority by an individual holding an

elective office is carried out within the limits of his or her competence and powers, which does not involve political struggle.

In the legislative (representative) body, due to the specifics of the decision-making process, the political struggle continues through the parliamentary process and participation in the work of representative bodies of municipal entities. In this case, the actors of political struggle include deputies, deputy associations (factions), and political parties.

3. Conclusion

To summarize, it is deemed possible to consider political struggle in constitutional law as one of the types of legal processes consisting of two interdependent stages: the stage of the acquisition and retention of state (municipal) authority and the stage of its realization in the legislative (representative) body. Each stage has its own specific goal, legal regulation, and range of subjects, but, overall, addresses a single constitutional and legal task: ensuring the legalization, legitimation, and alternation of power in a democratic state.

In conclusion to our study, we propose the following definition of a political struggle in constitutional law. *Political struggle in constitutional law should be defined as an open and legal domestic process that encompasses a system of constitutional and legal relations involved with the acquisition and retention of state (municipal) authority, as well as with the realization of the legislative (representative) body's powers in accordance with the principles of equality and political pluralism intended to ensure the legalization, legitimation and alternation of state (municipal) authority.* Further study is required in relation to the constitutional and legal principles of political struggle, its stages, as well as to the legal means and methods of its implementation.

⁴It should be noted that there are other models for electing the head of a constituent entity of the Russian Federation and the head of a municipality, other than direct elections. It impacts the political competition.

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