

The Institute of Head of the State in the mechanism of strengthening state unity and the rule of law (theoretical-historical and constitutional-legal interpretation)

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The subject. The article investigates historical legal, theoretical-methodological and constitutional-legal problems of the formation and functioning of the institute of the head of state.

The purpose of the study is to show how the constitutional functions of the head of state concretize his powers.

The study is based on the use of methods of analysis and synthesis, historical legal, formal legal, comparative legal methods, scientific abstraction.

The main scientific results. The authors summarize that the historical and legal analysis shows the key role of the head of state in the mechanism of ensuring state unity and law and order. Reality testifies the fact that the role of the President of the Russian Federation creates sufficient constitutional and legal grounds and conditions for the consolidated work of all state authorities, including law enforcement agencies, in the direction of ensuring the unity of state power and constitutional law and order. The indicated directions are in many ways identical, organically interrelated and interdependent, systematically define the main lines of activity of the head of state, contributing to the improvement of the constitutional and legal mechanism for ensuring the rule of law in general. Firstly, the Constitution of the Russian Federation contains only the basic powers of the President of the Russian Federation, which are substantially expanded by the legislator and presidential decrees. Secondly, the President has so-called "hidden", discretionary powers that are not directly enshrined in the Constitution of the Russian Federation, implicit in it and stem from the sense of presidential functions that manifest themselves in unforeseen extraordinary circumstances. Thus, the constitutional design of a strong presidential power allows the President of the Russian Federation to ensure the unity of the executive power and the exercise of the powers of the federal government throughout the territory of Russia (Part 4 of Article 78 of the Constitution of the Russian Federation). Such presidential power is carried out through the issuance of its decrees and orders, the adoption of operational and administrative decisions.

Conclusions. The authors noted that the effectiveness of the work of the head of state is especially evident in the state unity and the constitutional and legal mechanism for ensuring the rule of law, which is developed in the constitutional doctrine.

Keywords. Head of state, president, form of government, law and order, unity of power, discretionary powers, coordination

Информация о статье:

Дата поступления – 30 января 2018 г.

Дата принятия в печать – 10 февраля 2018 г.

Дата онлайн-размещения – 20 марта 2018 г.

Article info:

Received – 2018 January 30

Accepted – 2017 February 10

Available online - 2017 March 20

Introduction. The Institute of the Head of State is the oldest political and legal institution, importance of which cannot be overestimated. Its legal forms, as well as the representations of

individual we from the castles about the most optimal qualities of it, throughout the whole period of existence were very diverse. For example, in Sparta there were two kings, in Rome and Carthage - two elected officials, in Athens from 594 BC. - elected collegiate body.

Plato in his "Laws" and "State" [1], Aristotle in the "Athenians" [2] focused not on the discovery of the concept of "head of the state", and allocation characteristics of the ideal form of government.

Aristotle concludes that "... the state apparatus, who have in mind the common good, are correct" [2, p. 305], the satisfaction of social needs of the person is possible only under a monarchy, aristocracy and polity, Representative governing in the best form of government. At the same time, the public peace cannot be established with the worst models of the organization of public power, such as tyranny, oligarchy and democracy [2, p. 106].

The concept of "head of state." To date, there are many approaches to determining the content of the concept of "head of state." Most are caused by differences in the conditions and causes of this institution, rights of vym status means employed exposure president for public relations.

Thus, I.P. Ilyinsky and M.A. Krutogolov determined head of state as "officer holding the highest place in the hierarchy of governmental institutions and exercising the supreme leadership of the country in the political life and in relations with other nations" [3, p. 112-115]. O.E. Kutafin, understands under the head of the state "the highest official or state body legally occupying the highest place in the world with the theme of state bodies" [4, p. 6]. In the legal encyclopedia edited by M. Yu. Tikhomirov studied the concept is revealed as "highest official and the supreme representative of the state in foreign relations" [5, p. 54].

A. S. Avtonomov determines the head of state as "institute representing the state" [6, p. 313]. V.V. Maklakov reduced the concept of "head of state" to "a higher official, representing the State internally and externally and ensure its sustainability in the international arena and within the state" [7, p. 316].

According to M.V. Baglay, the head of state is "an official who ensures the constitutional order, stability and continuity of the mechanism of power, as well as exercising the highest representation in the mechanism of power" [8, p. 388]. L. M. Entin defines the head of the state as the "official (body) holding, as a rule, formally the highest place in the hierarchy of state institutions" [9, p. 256].

Summarizing it can be concluded that, under the head of state should be understood a senior official, board of such persons, or state in the endowment authority, as well as a person whose power is hereditary holding, as a rule, formally the highest place in the hierarchy of org a new state power and exercising representation of the state both inside the country and abroad and (or) acting symbol of the unity of the nation.

Form of government. Current approaches to the institute of the president are closely related to the analysis of the method of empowerment of the head of state.

The form of government, as the organization of higher bodies of state power, the procedure for their formation and relations with other state bodies and society as a whole, is of fundamental importance for studying the specifics of the organization and functioning of the state in general, and the head of state in particular.

Within the framework of the modern theory of the state two main (classical) forms of government are distinguished: the republic (power is exercised by elective bodies - as a rule, parliament, head of state) and monarchy (a person who inherited power).

Being the oldest form of government, monarchy assumes that supreme power is exercised by one person who has received this power, as a rule, by inheritance [10, p. 148].

Republic (from Latin *res publica* is a public affair) is characterized by the fact that the highest authorities (parliament, president) are elected by the people for a certain period and are responsible to it.

The history of the republic takes quite a long time in the history of statehood. In a limited territory of the republic existed in the slave society and under feudalism. An example is the ancient democratic republics of Greek city-states, the Roman aristocratic republic. In the Middle Ages, this is the Venetian Republic (the Most Holy Republic of Venice, which existed until the 18th century), the Pskov and Novgorod republics (existed until the XII and XV centuries respectively). The very idea of democracy and the republic as the most democratic form of government becomes most popular in the XIX- XX centuries [10, p. 156].

Among the characteristic features of states with a republican form of government, one can distinguish the following ones:

- presence of the supreme bodies of state power periodically elected by the people (special attention is paid to the head of state, as the procedure for the formation of the supreme legislative representative body is not a distinctive criterion from the republican form of government);
- implementation of the principle of separation of powers;
- implementation of the institution of constitutional and legal responsibility of the highest state authorities (removal from office of the head of state, dissolution of the parliament, sending the government to resign, etc.).

We agree with V.V. Lazarev and S.V. Lipen that the problem of the form of government is, first of all, the problem of recognizing or not recognizing the separation of powers, the ways of forming and correlating the bodies of legislative and executive power, as well as their responsibility to the people [10, p. 158]. In this connection, the place of the head of state in the system of public authorities is of particular interest in terms of the principle of separation of powers.

General theoretical content of the legal status of the head of state. The definition and characteristics of the structural elements of the "status of the head of state", are, in our opinion, essential to the theory of law and state. Characteristics of the concept of "the status of the head of state" and the content of its structural elements allow to define the institutional person of the head of state and place of the head of state not only in the system of legal and political relations, but also in the system of social relations.

As for the content of the concept of "legal status", unlike the approaches to the structure of the latter, a fairly general position can be traced in the legal literature. [11, p. 818].

Summarizing the various points of view, it can be noted that the content of the concept of "legal status" is the position of a person in society, determined by law [12, 13, 14]. The peculiarities of the special status of this or that subject of law are directly determined by the set and specific content of the elements included in it.

More attention has been paid to the maintenance of the legal status of a person today [15, 16, 17, 18]; allocation of the elements of the legal status of the subject [19, p. 148-155; 20, p. 53-57; 12, 21].

It should be noted that despite a certain relationship concepts of "legal status of a person", "the legal status of an official and especially legal status of the head of state, we believe that the identification of these concepts is not possible due to a fundamental inconsistency of legal subjects. The general legal status of a person predetermines the legal status of an official, which is specified in the various species status of officials, including the head of state.

In our view, the content of the legal head of state status should include: an order of granting of terms of reference (positions of substitution), the functions and the resulting powers, legal personality, the mechanism of implementing powers, the order of termination of powers, procedure of liability for any failure and complements authority.

We have to argue with the structural elements of the legal status is to some extent arbitrary, since, in practice, the question of Contents and the Research Institute of the Head of State status should be decided each time specifically of and depending on the characteristics of the constitutional order, the settlement claim of Proposition president the constitution and a national of a the practice of the functioning of state institutions, as well as the personality of the head of state.

The system of modern state-legal relations undergoes constant transformations connected with the optimization of the mechanism of delineation of powers, changes in the subject composition of Russia, the reform of the power vertical, in the organization and carrying out of which the key role is played by the head of the Russian state - the President of the Russian Federation, which ensures the unity of state power and the organizational and legal basis strengthening the rule of law in Russia.

The President's place in the mechanism of ensuring the unity of state power. The key role of the President of Russia in the mechanism of ensuring law and order is predetermined by the leading role of the head of state in the mechanism for ensuring the unity of state power. Proceeding from the theoretical and legal characterization of the unity of public power as the basis for ensuring the rule of law, it also seems necessary to show the role of the President of the Russian Federation in the combination of these mechanisms, whose main content coincides [22, p. 177-235].

Consideration of the role of the President of the Russian Federation in ensuring the unity of state power is particularly significant in connection with the presence of internal and external threats to the unity of the modern Russian state. Effective provision of security and law and order within Russia is possible only through the coordinated work of the entire state mechanism, whose leader and coordinator is the coordinator.

The principle of unity of the system of state power as a component of the principle of Russian federalism (part 3 of Article 5 of the Constitution of the Russian Federation) means its single source (people), common goals, system and principles for the organization and functioning of the state apparatus, which is cemented by the unity and coherence of the work of all state bodies.

Meanwhile, the unity of state power is expressed in the formation of the main directions of domestic and foreign policy, which is determined by the head of state, consistently implemented by state authorities.

The unity of state power is expressed in the presence of the state apparatus, which includes legislative, executive and judicial bodies, the competence of which covers all the powers necessary to carry out the internal and external functions of the state. Federal and regional state bodies qualitatively cement the unity of state power. This is achieved by the unity of the basic principles, the production of powers, the presence of organizational and legal checks and balances in which all bodies, in accordance with their functions, participate in the formulation of state policy, the adoption of laws and their implementation; policies and laws reflect the common position of the single state power [23, p. 71-72].

The President of Russia as a guarantor of the Constitution is called upon to ensure the unity of state power and the coordinated functioning and interaction of state authorities (Part 2, Article 80 of the RF Constitution) [24, 25, 26]. He is endowed with extensive constitutional powers that allow him to exert a significant influence on the composition, structure, organization and activities of public authorities in Russia.

Place of the President of the Russian Federation in the system of separation of powers. From the provisions of the Constitution of the Russian Federation it follows that the President of the Russian Federation occupies a special place in the system of public authorities, does not enter directly into any of its branches, but rather arbitrarily becomes over them [27, 28]. The dominant position of the President of the Russian Federation in the system of separation of powers allows some scholars to talk about presidential constitutionalism, defining the President of the Russian Federation as a factor in the implementation and development of constitutionalism in the country, which, in combination with the guarantor of the Constitution, gives him the role of a strong state-legal instrument of constitutional reforms [29, p. 6 -7].

The modern constitutional model fixes the priority position of the President of Russia in the mechanism of separation of powers, although he is not the head of the executive power, but actually performs coordination and conciliation functions in the system of interaction of state authorities (Part 2, Article 80 of the Constitution of the Russian Federation). At the same time, as mentioned, in the constitutional doctrine there is a point of view that the President of the Russian Federation,

carrying out according to Art. 11 of the Constitution of the Russian Federation state power, cannot enter into one of the three branches of state power, it refers to the executive power, of which the presidential power is a part [30, p. 140-142; 31, p. 315-321]. There is also a fundamental disagreement of scientists with the concept of the head of state as an arbitrator, coordinator of all other bodies of state power [32, p. 6].

However, such positions of scientists are not dominant in the doctrine and can hardly be put in the basis of the constitutional characteristics of the head of the modern Russian state. Meanwhile, the significant influence of the President of the Russian Federation on the executive power does form certain grounds for such a non-controversial scientific position. So, the President of the RF independently forms the Government of the Russian Federation, he is directly subordinated to law enforcement structures (he appoints and dismisses their leaders, implements the organizational and legal regulation of their activities) and only the Chairman of the Government of the Russian Federation is appointed with the consent of the State Duma. And such consent can be recognized as formal, since in the event of a triple rejection of the proposed or proposed candidates, the President of the Russian Federation dissolves the State Duma and appoints new elections. Nevertheless, it seems that the indicated significant influence of the President of Russia on the executive power testifies to the strong presidential power, but does not mean the entry of the President of the Russian Federation into the system of executive power of Russia.

Consequently, the constitutional design of a strong presidential power allows the President of the Russian Federation to ensure the unity of the executive power and the exercise of the powers of the federal government throughout the territory of Russia (Part 4, Article 78 of the Constitution of the Russian Federation), which is carried out through the issuance of its decrees and orders and the adoption of operational and administrative decisions.

Thus, the constitutional functions of the head of state concretize his powers, and it is important to pay attention to two points. Firstly, the Constitution of the Russian Federation contains only the basic powers of the President of the Russian Federation, which are substantially expanded by the legislator and presidential decrees. Secondly, the President has so-called "hidden", discretionary powers that are not directly enshrined in the Constitution of the Russian Federation, implicit in it and stem from the sense of presidential functions that manifest themselves in unforeseen extraordinary circumstances.

Discretionary powers. The essence of discretion may be of n thinned by the presence in the management processes and the state of so-called well the semi-legal methods [34, p. 41].

Presence of the discretionary powers in the constitutional status of the President of the Russian Federation was confirmed by the Constitutional Court of the Russian Federation in the decision on the "Chechen" case. Fundamentally, the Constitutional Court has established that the use of "hidden" powers is possible only in the conditions of compliance with the Constitution of the Russian Federation and federal laws, and only within the principle of separation of powers, which means their functional purpose for the head of state and excludes his intrusion into the competence of other state bodies.

Ambiguity of such a decision of the Constitutional Court of Russia is confirmed by criticism not only of well-known scientists [40, p. 46-48, 41, p. 38-40], but also by the fact that seven constitutional judges expressed a dissenting opinion on this case. It seems that the danger of such a legal position of the Court is that the subject of law himself specifies and establishes the limits of his competence .

It seems that the diversity of concrete life situations and the role of the President as guarantor of the Constitution, human rights and freedoms predetermine the responsibility of the head of state for the constitutional order, which is the basis of the rule of law in general, which gives grounds for recognizing the possibility of "hidden" powers of the head of state. It is very accurately noted that the implied powers of the President of the Russian Federation imply his implied duties [42, p. 153]. Such constitutional duties of the President of the Russian Federation, first of all, include

guaranteeing the Constitution of the Russian Federation, human rights and freedoms and ensuring constitutional law and order.

Meanwhile, it is necessary to consolidate the constitutional and legal means of limiting such "hidden" powers of the head of state from other branches of state power. The judiciary establishes their constitutionality, and the legislative and executive authorities represented by heads of the chambers of the Russian parliament, the chairman of the Government of the Russian Federation hold official consultations with the President of the Russian Federation regarding the possibility of their implementation, as, for example, provided for in the Constitution of France (Article 16).

Providing the President of the Russian Federation with the constitutional order. Given the designated role of the head of Russia in the mechanism of state unity, as well as in the constitutional and legal mechanism for ensuring law and order, the President of the Russian Federation occupies a key place, based on his constitutional characteristics as a guarantor of the Constitution, human and civil rights and freedoms (Article 80 of the Constitution of the Russian Federation). Ensuring the constitutional legal order is expressed in the well-coordinated and consolidated work of the state apparatus, effective implementation of the RF Constitution and legislation. And taking into account the fact that it is the President of Russia that exerts a significant influence on executive bodies that are maximally involved in the provision of law and order, the role of the head of state as an arbitrator and coordinator of their functioning significantly increases in such a mechanism of their interaction.

In addition to exerting influence on various bodies of state power, the President of the Russian Federation, as a guarantor of the Constitution of the Russian Federation, directly participates in ensuring the constitutional law and order through: its own standard-setting and organizational and managerial activities; resolution of legal disputes between public authorities (Part 1, Article 85 of the Constitution of the Russian Federation); the implementation of constitutional control through the abolition (part 3 of Article 115 of the Constitution of the Russian Federation) or the suspension of the acts of executive bodies (Part 2, Article 85 of the Constitution of the Russian Federation); realization of the right of legislative initiative (part 1 of Article 104 of the Constitution of the Russian Federation) and rejection of federal laws, including if, in his opinion, they do not comply with the Constitution of the Russian Federation or entail a breach of the rule of law (part 3 of Article 107 of the Constitution of the Russian Federation).

In addition, in accordance with the Constitution of the Russian Federation and current legislation, the President of Russia ensures the constitutional legal order as a whole through the implementation of the following powers:

- ensures the exercise of the powers of federal bodies of state power throughout the territory of the Russian Federation;
- forms the Government of the Russian Federation and takes a decision on his resignation;
- forms and heads the Security Council, which determines the strategy for ensuring national security, controls and coordinates the activities of public authorities in the field of security and law and order;
- appoints the high command of the Armed Forces of Russia and approves the military doctrine of the Russian Federation;
- appoints and dismisses plenipotentiary representatives of the President of the Russian Federation in federal districts and state authorities;
- submit to the Federation Council nominees for appointment to the position of judges of the higher federal courts of the Russian Federation; appoints judges of other federal courts;
- submits candidacies for appointment to the Federation Council and initiates the dismissal of the Prosecutor General of Russia and his deputies; appoints and dismisses prosecutors from the constituent entities of the Russian Federation, and other prosecutors equal to them;
- appeals to the Federal Assembly with annual messages on the main directions of the domestic and foreign policy of the state;

- Introduces the regime of martial law and state of emergency in the territory of the Russian Federation or in its separate localities;
- Decides to remove the highest official of the subject of the Russian Federation from the post in the event of his violation of the Constitution of the Russian Federation and legislation, in connection with the expression of his distrust by the legislative body of the subject of the Russian Federation; loss of trust of the President of Russia; in other cases provided for by federal law;
- dissolve the legislative (representative) body of the subject of the Russian Federation in the manner and on the grounds established by law;
- in accordance with the procedure established by the criminal procedural legislation of Russia, at the request of the Prosecutor General of the Russian Federation, temporarily suspends the highest official of the subject of the Russian Federation from performing duties in the event that a person is charged with committing a crime;
- appeals to the Constitutional Court of the Russian Federation with a request for interpretation of certain provisions of the Constitution of the Russian Federation, on the verification of the constitutionality of normative legal acts, and on the resolution of disputes between state authorities.

The introduction of the state of emergency is the exclusive prerogative of the President of the Russian Federation (Article 88 of the Constitution of the Russian Federation) and is recognized as one of the effective means of ensuring constitutional security and the rule of law. Meanwhile, sometimes even such a constitutional legal instrument is insufficient to establish a constitutional order on the territory of the state, when political forces seeking to seize power create their own armed formations and conduct military operations against government troops [43, p. 58-59].

The timely and constructive response of the head of state to sudden external threats to national security and the constitutional order of law is especially important, if they arise, the President of the Russian Federation acts promptly and decisively, such as a number of measures taken and the issuance of relevant presidential decrees aimed at ensuring the national security of Russia and its citizens in connection with accidents in Egypt and Turkey in October-November 2015.

The analysis of the competence of the President of Russia showed that most of his powers are realized in the sphere of ensuring the constitutional law and order, which is especially evident when establishing the system and the formation of federal executive bodies, as well as the formation, normative regulation and general management of the President of the Russian Federation by law enforcement agencies.

The President is the guarantor of the constitutional law and order, the ongoing reforms, including in the law enforcement sphere. He is directly subordinate to law enforcement structures (the Ministry of Internal Affairs, the FSB, the Criminal Code, the Federal Service for the Supervision of the Interior, etc.), as already noted, whose leadership he appoints and dismisses, exercises regulatory and legal regulation of their organization and activities [44, 69-70]. In fact, all strategic organizational and legal transformations of certain law enforcement structures are sanctioned by the decrees of the President of the Russian Federation. A whole complex of presidential decrees is aimed at ensuring the stability of the functioning of the state, ensuring and strengthening national security and constitutional law and order.

The personnel powers of the President of Russia in the law enforcement sphere and the law enforcement system are being expanded directly in the Constitution of the Russian Federation. In the updated version of Chapter 7 of the Constitution of the Russian Federation "The Judiciary and the Prosecutor's Office", the competence of the President of the Russian Federation includes the appointment and dismissal of prosecutors from the constituent entities of Russia (as proposed by the Prosecutor General of the Russian Federation) and other prosecutors (Article 129 of the Constitution of the Russian Federation).

Directly directing law enforcement agencies, the head of state individually takes operative decisions aimed at eliminating internal and external threats to the constitutional order and national security. Ensuring the unity of state power, the President of the Russian Federation determines the

strategy and the main directions of the development of the state, consolidates public forces in the direction of ensuring law and order and constitutional legality.

The Security Council of the Russian Federation and other advisory and advisory bodies under the President of the Russian Federation. The Security Council of the Russian Federation occupies a key place in the state mechanism, consolidates the bodies of state power, including law enforcement structures, in the direction of ensuring law and order and security (Article 80 of the Constitution of the Russian Federation). It is fairly noted that the Security Council acts as a strategic center for the development of state policy, in which representatives of the various branches of government (legislative, executive), and presidential structures collectively prepare decisions of the President of Russia on the issues of the state development strategy and national security [45, p. 24].

The Security Council is formed by the Decree of the President of June 3, 1992 No. 547 to ensure the implementation of the functions of the President of Russia in the management of the state, the formation of internal, foreign and military security policies, the preservation of the state sovereignty of Russia, the maintenance of socio-political stability in society, the protection of the rights and freedoms of citizens.

In addition to the Security Council as a constitutional body, the advisory bodies under the President of Russia in the field of law enforcement are: the Council for Improving Justice, the Anti-Corruption Council, the Council for Personnel Policy in Law Enforcement Bodies, the Commission for the preliminary consideration of candidates for the position of judges of federal courts. It is coordinated organizational and coordination work of all state bodies that allows to achieve the set goals and realize strategic priorities determined by the President of the Russian Federation, including in the direction of strengthening the constitutional legal order.

Coordination of law enforcement agencies. An important condition of the effective maintenance of law and order is the coordinated and coordinated work of law enforcement agencies, which is also provided by the President of the Russian Federation. Such bodies should function in concert and interact both with each other and with other public authorities. In the performance of such a task by the President of the Russian Federation, the Presidential Decree "On the coordination of the activities of law enforcement agencies in combating crime" is defined as an exemplary list of law enforcement agencies, and the main areas of coordination of such bodies, among them: joint analysis of the state of crime; implementation of federal and regional programs to combat crime; preparation and sending of information materials on the issues of combating crime to the President of the Russian Federation, the Federal Assembly and the Government of Russia, state authorities of the subjects of the Russian Federation, and local self-government bodies.

One of the main forms of coordinating activity of law enforcement bodies are coordinating meetings convened under the guidance of relevant prosecutors (Part 1, Article 8 of the Federal Law "On the Prosecutor's Office of the Russian Federation"). In particularly resonant cases, such meetings are held under the leadership of the President of the Russian Federation, which demonstrates his key role in strengthening law and order. Such meetings are periodically held not only in the Prosecutor General's Office of the Russian Federation, but also within the framework of the Security Council, as mentioned.

Thus, the direct relationship between the President of Russia and the law enforcement bodies subordinate to him, directly providing the constitutional legal order, most clearly shows its consolidating role in the analyzed mechanism.

The system of the current legislation also regulates the powers of the President of the Russian Federation related to the provision of the constitutional legal order. For example, the Federal Law "On Counteracting Terrorism" (Article 5), among the organizational bases for countering terrorism, establishes the powers of the President of the definition of the main directions of state policy in the field of countering terrorism; establishment of competence of federal executive bodies in this sphere; making decisions on the use outside the territory of Russia of regular military formations

and special purpose units to combat terrorist activities carried out against the Russian Federation and its citizens.

In accordance with Art. 5 Federal Law "On Combating Corruption" the President of the Russian Federation determines the main directions of state policy in the field of combating corruption; establishes the competence of federal executive bodies, whose activities are managed by him, in the field of combating corruption. Similar powers are exercised by the President of Russia in the sphere of counteracting extremist activity (Article 4 of the Federal Law "On Counteracting Extremist Activity").

Thus, the historical and legal analysis shows the key role of the head of state in the mechanism of ensuring state unity and law and order. Modern realities testify to the fact that the role of the President of the Russian Federation creates sufficient constitutional and legal grounds and conditions for the consolidated work of all state authorities, including law enforcement agencies, in the direction of ensuring the unity of state power and constitutional law and order. The indicated directions are in many ways identical, organically interrelated and interdependent, systematically defining the main lines of activity of the head of state, contributing to the improvement of the constitutional and legal mechanism for ensuring the rule of law in general.

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<p>Библиографическое описание статьи Безруков А.В. Институт главы государства в механизме укрепления государственного единства и правопорядка (теоретико-историческое и конституционно-правовое осмысление) / А.В. Безруков, В.В. Чугаев// Правоприменение. – 2018. Т. 2, № 1. – С. 40-53. – DOI 10.24147/2542-1514.2018.2(1).40-53</p>	<p>Bibliographic description Bezrukov A.V., Chugayev V.V. The Institute of Head of the State in the mechanism of strengthening state unity and the rule of law (theoretical-historical and constitutional-legal interpretation). <i>Pravoprimerenie = Law Enforcement Review</i>, 2018, vol. 2, no. 1, pp. 40-53. – DOI 10.24147/2542-1514.2018.2(1).40-53 (In Russ.).</p>