

THE CONSTITUTIONAL CONFLICTOLOGY IN THE SYSTEM OF CONSTITUTIONAL SCIENCE**Irina A. Tretyak***Dostoevsky Omsk State University, Omsk, Russia***Article info**

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The subject. The article is devoted to process of constitutional conflictology theory formation as separate field of constitutional science, researching constitutional conflicts and different measures for their prevention and solving.

The purpose of the article is to define theoretical base for constitutional conflictology theory formation.

The methodology of the study includes general scientific methods (analysis, synthesis, description) and sociological approach.

The main results and scope of their application. The author describes the genesis of constitutional conflictology theory, its subject, methodology and system. The author substantiates necessity of application of theoretical and methodological bases of conflictology's science in the constitutional and municipal law for the purpose of forecasting, identification and the resolution of the corresponding constitutional conflicts.

Causes of constitutional conflictology theory formation are:

- accumulation of results of many constitutional researches of different aspects of legal conflict and its expression in constitutional law;
- public power as an object of constitutional relationships and as main cause of conflict situation in society;
- character and scale of constitutional conflict's aftermaths;
- conflictology nature of the Constitution of Russian Federation.

Constitutional conflictology is a research level of legal conflictology exploring constitutional conflict, its causes and methods of prevention and solving, and also constitutional and municipal legal norms with conflictology nature.

A methodology of constitutional conflictology is symbiotic also and contains three different groups of methods:

I group of general scientific methods (dialectical, system, functional); II group of different scientific methods (historical, logical, statistic);

III group of special methods: legal methods (formal-legal methods, method of a prediction of legal consequences, comparative method), a generic definition description method.

A system of constitutional conflictology consists four interconnected elements:

- 1) theory of constitutional conflict;
- 2) methods of prevention and solving constitutional conflicts;
- 3) constitutional and municipal legal norms with conflictology nature;
- 4) different types of constitutional conflicts and methods of their solving.

Conclusions. Constitutional conflictology theory has been forming in constitution legal science as a separate field exploring constitutional conflict and all of its aspects.

1. Introduction.

The main sources of conflict of interests and changes in society, according to the founder of the theory of social conflict Ralph Darendorff, are power and authority, representing very scarce resources [1, p. 12-26]. Modern practice of state and municipal construction fully proved the validity of this hypothesis. In this regard, it is necessary to conclude that the higher the "degree" of power relations is, the higher is their conflict.

It is difficult to imagine a more powerful relationship than the constitutional one, where often both subjects of legal relations have power.

According to A. I. Orlanova, an important feature of Russian conflictology is the simultaneous development of its three main internal structural subdivisions: theoretical and methodological, conceptual, industrial and technological [2, p. 135]. Thus, these are currently formed branch varieties (levels) of conflictological knowledge.

Since it is impossible to understand the meaning and significance of the constitutional conflict without taking into account theoretical and methodological knowledge about social and legal conflicts, to which it refers, it is necessary and justified to talk about the existence of constitutional conflict as a research conceptual-sectoral level of a more general section - legal conflictology, which focuses on scientific ideas about the constitutional and legal conflict and ways to prevent and resolve it by special legal means provided for by the norms of constitutional law.

Thus, a sufficient level of development of theoretical and methodological foundations of conflictology, including the legal one, allows us to speak about the formation of constitutional conflictology as a research branch level of legal conflictology.

2. Theoretical aspects of constitutional conflictology.

In the science of constitutional law there are only isolated mentions of the term "constitutional conflictology" without proper study

of this phenomenon of legal reality [3, p. 72; 4, p. 22; 5]. There are also no special constitutional studies devoted to the complex study of constitutional conflictology as an independent field of legal scientific knowledge.

Opponents of the idea of separation of constitutional conflictology may object that extrapolation of legal conflictology to legal sciences will lead to the formation of various "conflictologies" as an unreasonable set of legal entities. On what it is necessary to object that formation of constitutional conflictology is caused by the following objective reasons:

1) the accumulation of a significant amount of research on various aspects of the conflict and its manifestations in constitutional law;

2) power and authority, being the main sources of conflict situations in society, are concentrated mainly in constitutional relations, the subjects of which have a special constitutional legal personality;

3) no other type of legal conflict in contrast to the constitutional one, does not affect the most important social relations, it cannot affect the foundations of the constitutional system of the state;

4) conflictological essence of the Constitution of the Russian Federation which, unlike other "profile" normative legal acts studied within branch sciences, in itself is a way of the permission of the legal conflict.

Thus, the formation and independent study of constitutional conflictology is objectively ripe in the science of constitutional law and its law enforcement practice.

The domestic science of constitutional law has accumulated a sufficient volume of qualitative fundamental scientific research devoted to certain aspects of legal conflict in constitutional law:

- the theory of constitutional and legal dispute [6], electoral dispute has been developed,

- the theory of constitutional conflict is formed [7; 4],

- constitutional values are studied from the point of view of their system, competition and balance [8; 9; 10; 11],

- conflicts [12] and competition of norms of constitutional law are considered in detail [13; 14],
- disputes on competence between power subjects of constitutional legal relations, Institute of Federal intervention are investigated [15; 16],
- the system of constitutional and legal coercion as a way to resolve the constitutional and legal conflict is considered [17, p. 116-141; 7; 18; 19; 20],
- the theory of constitutional and legal responsibility, as well as the General concept of constitutional tort and constitutional offense was formed [21; 22; 23; 24; 25; 26; 27; 28] etc.

The considerable accumulated volume of the given constitutional knowledge under the action of the law of dialectics on the transition of quantitative indicators to qualitative ones inevitably led to the formation of a new section of the science of constitutional law – constitutional conflictology.

It is worth mentioning that previously conflictology stood out as an independent science at the intersection of sociology and psychology precisely in connection with the accumulation of information about the causes, ways of resolving and general patterns of conflict development [29].

It should be especially noted that in the absence of a general theory of conflict and legal conflict, in particular, constitutional conflictology is proposed to be considered as a branch of the science of constitutional law, and not an interdisciplinary science of conflictology, since this will allow to include in the object and subject of the study of constitutional conflictology only the phenomena of legal reality expressed in the current system of law and legislation, avoiding confusion with other conflictological categories that have no legal content and tend to sociology and philosophy.

3. Object and subject of constitutional conflictology.

For scientific and cognitive activity of any content, the primary object is as a fragment of reality, chosen by the subject for research [30]. It is well known that the object is the area of reality, which explores this science, and the subject is a

way of seeing the object from the standpoint of this science.

Thus, the object of the study of constitutional conflictology are:

- special type of legal conflict - the constitutional conflict in all its forms and manifestations;
- the causes of the constitutional and legal conflicts (conflictogenes);
- methods of prevention, resolution of constitutional and legal conflicts and the mechanism of their management;
- constitutional and municipal legal norms of conflict type.

The need to identify the complex composition of the object of constitutional conflictology is due to the empirical and practical orientation of this field of science, since the theoretical knowledge of the nature of the constitutional-legal conflict does not allow to fully effectively manage such a conflict, prevent it and resolve it.

Therefore, in our opinion, the object of studying constitutional conflictology should include not only the constitutional-legal conflicts themselves, but also the ways of their resolution and prevention - the study of which should be based, among other things, on the postulates of the General theory of conflictology and should not be limited to purely legal knowledge, which does not allow to understand the social essence of these phenomena.

The subject of constitutional conflictology is the regularities of occurrence, development and resolution of constitutional and legal conflicts.

It should be noted that the object of constitutional conflictology includes, among other things, the norms of municipal law in view of the following.

Many modern conflicts are defined by researchers as internal conflicts "concerning the power in the state", "conflicts concerning control over a certain territory of the state" [31, p. 307], - that is conflicts, first of all, the state, power-political orientation. Earlier, after R. Dahrendorf, we noted that the government is the main source of conflict in the state.

The public authorities in the Russian Federation has a two-level structure and is represented by state power in the person of its Federal, regional bodies and officials, and local self-government in the person of local self-government bodies and its officials, which is not included by virtue of constitutional provisions in the system of state power and is independent.

Consequently, one of the key constitutional conflicts unfolds between the state power and local self-government. Moreover, this conflict was originally laid down in the norms of the Constitution of the Russian Federation.

Thus, the norms of municipal law fall into the orbit of the study of constitutional conflictology to the extent that they mediate the constitutional-legal conflict, one of the participants of which are the subjects of municipal law.

4. Methodology of constitutional conflictology.

Constitutional conflictology is characterized as a special methodology of scientific knowledge, which is a symbiosis of methods of generic science of conflictology and traditional methods of science of constitutional law.

In the legal literature, methods are usually defined as a set of techniques and methods of scientific knowledge of reality, the essence of legal phenomena [17, p. 146]. Traditional and generally recognized is the classification of methods into general, private-scientific and special methods of cognition of the object and subject.

In the science of constitutional law, the general methods include the philosophical method in its various variations, the system approach and the structural and functional method.

Private scientific methods of cognition include the methodology of specific sciences used in constitutional law: historical method, methods of formal logic, statistical and sociological methods.

The composition of special methods of the science of constitutional law is represented by the formal legal method, the interpretation of law, the method of constitutional legal modeling, legal experiment and comparative legal method [17, p. 148].

Since constitutional conflictology is a certain symbiotic knowledge, it seems necessary to apply the above matrix of methods of the science of constitutional law, taking into account the concept of integrative jurisprudence as a new standard of legal knowledge. As the outstanding Russian scientist A. I. Kazannik pointed out, the methodology of integrative jurisprudence requires that modern constitutional law be studied simultaneously as: a system of legal norms; an objective reality; a complex social phenomenon; the form of expression of conscious will of human values, and also moral principles; a product of historical development; a complex of internal volitional acts and acts of subordination to the external law and order, acts of freedom and acts of coercion [17, p. 175]. In the context of integrative jurisprudence, the American Professor G.-D. Bergman rightly observes that "we need to overcome ... the misconception about exclusively political and analytical jurisprudence (positivism), or exclusively philosophical and moral jurisprudence (natural law theory), or exclusively historical and sociometric jurisprudence (historical school, social theory of law). We need a jurisprudence that integrates all three traditional schools and goes beyond them" [17, p. 175].

Therefore, the methodology of constitutional conflictology must also have an integrative character, due to the symbiotic nature of its object and subject. In this connection the system of methods of constitutional conflictology can be represented by the following elements:

The first group of methods: general scientific methods:

- dialectical method, which consists in the study of constitutional-legal conflicts in their continuous development, transformation, taking into account the essential links of constitutional-legal conflict with the institutions of constitutional law, other legal phenomena;

- a systematic method, which consists in considering the constitutional and legal conflict as a complex organized system, which, in turn, is part of a higher-level system;

- structural and functional method by which constitutional and legal conflicts are considered for their internal structure and external manifestations,

the functions of the actors of the constitutional and legal conflict are studied.

The second group of methods: private scientific methods:

- historical method that allows to study all the conditions in which the constitutional and legal conflict unfolds: place, time, specific historical situation in society;

- methods of formal logic: analysis, comparison of individual elements, types of constitutional and legal conflict, methods of its resolution;

- statistical method that allows to take into account statistical data in the study of certain constitutional and legal conflicts and the causes that gave rise to them.

Group III methods: special methods:

- legal methods of scientific knowledge:

- a) formal-legal method, involving the study of the norms of constitutional and partially municipal law of conflict type, their structural analysis, the study of various ways of resolving constitutional-legal conflicts enshrined in the rules of law;

- b) comparative legal method, which consists in comparing constitutional values in the context of finding their balance, domestic and foreign law enforcement practice in the field of resolving constitutional and legal conflicts, etc.;

- c) the method of forecasting the legal consequences of the development of constitutional and legal conflicts as a mechanism of their prevention.

- method of universal conceptual scheme of description of constitutional and legal conflicts.

Separately, it is necessary to dwell on the last of the selected groups of methods of constitutional conflictology, since it is determined by its subject of research, which was previously formulated as patterns of occurrence, development and resolution of constitutional conflicts.

So, the subgroup of legal methods of scientific knowledge allows to reveal regularities of reflection in the positive constitutional law of the reasons of emergence and ways of the resolution of constitutional-legal conflicts in such a way which will not allow to go beyond a legal field, having

gone deep into philosophical and sociological semantics.

Further, the method of the universal conceptual scheme of the description of constitutional and legal conflicts is a borrowing from the methodology of General conflictology. In each of the branches of conflictology developed and developed their conceptual schemes to describe the conflict. For example, in psychology, the conceptual scheme of describing the conflict was proposed by L. A. Petrovskaya and included four categorical groups: the structure of the conflict, its dynamics, functions and typology [32]. A. I. Antsupov proposed to expand this scheme to seven groups of categories: the essence, Genesis of the conflict, classification, functions, structure, dynamics, methods of studying the conflict [33]. Today leading conflictologists offer already 11 basic categorical groups in the conceptual scheme of the description of the conflict: essence, classification, structure, functions, evolution, Genesis, dynamics, information in the conflict, the prevention, termination of the conflict, diagnostics and research [33, p. 157].

Being the branch research level of the General conflictology, the constitutional conflictology also has to use the universal conceptual scheme of the description of the constitutional-legal conflicts applicable taking into account its object and a subject. At the initial stage of accumulation of scientific and practical knowledge about constitutional-legal conflicts within the framework of constitutional conflictology, it seems that such basic categorical groups in the conceptual scheme of the description of the constitutional-legal conflict will be: the essence, classification, structure and resolution of the constitutional-legal conflict. In the future, this list may be supplemented with the implementation of new scientific research in this area.

5. The system of constitutional conflictology.

The system of constitutional conflictology correlates with its object of research. At present, in view of the formation of this section of the science of constitutional law, it is not possible to single out the General and special part of constitutional

conflictology. However, it is not excluded that such a division may arise in the future with the development of research on certain types of constitutional and legal conflicts, which may form a special part of constitutional conflictology, while the General part will include the concept of constitutional and legal conflict, the methodology of its study, classification and theoretical foundations of the mechanism of their resolution, the theory of constitutional and legal coercion and constitutional legal dispute.

Thus, the system of constitutional conflictology at the initial stage of its formation can be represented by the following elements:

1. Theory of constitutional-legal conflict: concept, signs, causes, classification, constitutional-legal dispute.

2. Methods of resolving constitutional and legal conflicts: constitutional and legal coercion, mechanism of checks and balances, coordination in the system of state and municipal authorities, etc.

3. Constitutional and municipal norms of conflict type: competition of constitutional values, conflict of constitutional norms.

4. Certain types of constitutional and legal conflicts and ways of their resolution.

6. Conclusions.

On the basis of the above it is necessary to draw the following conclusions.

1. The formation of a general theory of constitutional conflictology within the framework of the science of constitutional law is an objectively determined process due to a number of interrelated reasons:

- accumulation of a significant volume of constitutional and legal studies of various aspects of the legal conflict and its manifestations in the constitutional law;

- the presence of a special object in constitutional legal relations-power as the main source of conflict situations in society;

- the nature and scale of the consequences of the constitutional and legal conflict;

- conflictological essence of the Constitution of the Russian Federation.

2. Constitutional conflictology is a research conceptual and sectoral level of legal conflictology, the object of study of which are constitutional and legal conflict, the causes of its occurrence and methods of prevention and resolution, as well as constitutional and municipal legal norms of conflict type.

3. Constitutional conflictology by virtue of its formation as a symbiosis of constitutional-legal and interdisciplinary conflictological knowledge has a symbiotic methodology, represented by three groups of methods:

I group of methods: General scientific methods (dialectical, systemic, structural and functional).

II group of methods: private scientific methods (historical method, methods of formal logic, statistical method).

III group of methods: special methods (legal methods of scientific knowledge (formal-legal method, method of forecasting legal consequences, comparative-legal method), method of universal conceptual scheme of description of constitutional-legal conflict).

4. The system of constitutional conflictology consists of four interrelated aggregated elements:

1) theory of constitutional and legal conflict;

2) methods of prevention and resolution of constitutional and legal conflicts;

3) constitutional and municipal rules of conflict of the type;

4) certain types of constitutional and legal conflicts and ways of their resolution.

Since these findings require further systematic scientific understanding, the author will continue research in the field of constitutional conflict.

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INFORMATION ABOUT AUTHOR

Irina A. Tretyak – PhD in Law, Lecturer, Department of State and Municipal Law
Dostoevsky Omsk State University
55a, Mira pr., Omsk, 644077, Russia
e-mail: irina.delo@yandex.ru
RSCI SPIN-code: 3455-2600; AuthorID: 762457

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