

### PREVENTION AND RESOLUTION OF CONSTITUTIONAL CONFLICTS: CONCEPT AND METHODS

**Irina A. Tretyak**

*Dostoevsky Omsk State University, Omsk, Russia*

**Article info**

Received –

2019 September 20

Accepted –

2019 November 20

Available online –

2019 December 20

**Keywords**

Constitutional conflict, prevention, resolution, enforcement methods, cooperative methods, conflict risk, conflictogen, constitutional conflict diagnostics

The subject. The article is devoted to different methods of constitutional conflicts resolution, classification of constitutional conflicts, genesis of constitutional conflict diagnostics theory as a system of different measures for constitutional conflicts prevention.

The purpose of the article is to confirm or disprove hypothesis that methods of constitutional conflicts resolution and prevention may be classified by different bases.

The methodology of the study includes general scientific methods (analysis, synthesis, description) as well as sociological and economic approaches.

The main results and scope of their application. The author describes different groups of conflict resolution methods, its types and system. The optimal way to resolve the constitutional conflict is systematic application of the following principles:

- 1) the legality of measures;
- 2) priority of human and civil rights and freedoms;
- 3) ultimo ratio (last resort);
- 4) proportionality of measures;
- 5) the effectiveness of measures, aimed at resolving the constitutional conflict.

Conclusions. Constitutional conflicts are resolved by special legal methods.

Depending on the enforceability of such methods for the conflicting parties, such methods can be classified into:

- enforcement methods, that are based on the constitutional power of legal enforcement to be applied to one side of the conflict by the other party or by the actor of the constitutional-legal conflict (measures of constitutional enforcement, the mechanism of checks and balances); - cooperative methods, which are understood as mechanisms for resolving constitutional conflicts, enshrined in the norms of constitutional law and based on cooperation, mutual assistance of the parties to the conflict on a parity basis (various forms of coordination, such as negotiations, mediation, conciliation).

Methods and mechanisms of conflicts prevention are not the part of methods of resolving constitutional conflicts, since the first methods are applied before the appearance of constitutional and legal conflicts.

A constitutional conflict diagnostics as a method of constitutional conflict prevention is based on risk management system and represents a system of legal and organizational measures, aimed at identifying risks of constitutional conflicts and legal monitoring.

## 1. Introduction.

Constitutional conflictology is largely applied scientific knowledge, since it not only answers the question: "what are constitutional and legal conflicts?", but also gives the answer to the question: "how to prevent and resolve these conflicts?".

Within the framework of the category of constitutional security studied by A. A. Yezerov, measures for resolving constitutional conflicts are considered, while in general, the author understands constitutional security as "a system that prevents and resolves conflicts with the least losses to society and the state, transforms their "energy" into a positive direction; a system of measures to protect the constitutional system." [1, p. 68]. It is necessary to agree with A. A. Yezerov is convinced that constitutional law has a certain arsenal of measures, methods of resolving constitutional and legal conflicts, which, in the presence of system-forming factors, can be grouped into an ordered set.

Previously, experts in the field of conflict, including legal, repeatedly considered the question of the concept, content and species diversity of ways to resolve legal conflicts. In this connection it seems necessary to determine the terminology and typology in terms of describing the result of the use of different methods of conflict resolution.

## 2. The concept of resolution of constitutional conflicts.

The end of the conflict means any termination of the conflict, which does not necessarily imply a positive result, i.e. the parties to the conflict reach agreement. In this regard, it is noteworthy that the Latin word "lex" is translated not only as "law", but also as "consent".

In conflictology, there is a pluralism of concepts that reflect the cessation of conflict actions, for example: resolution, attenuation, overcoming, suppression, self-destruction, extinction, settlement, elimination, settlement, etc. But, as noted by A. Ya. Antsupov

and A. I. Shipilov, in conflictology it has become traditional to designate the final stage in the dynamics of the conflict with the term "conflict resolution" [2, p. 504].

It is necessary to agree with these authors about the preferential use of the category "resolution" as the widest and most comprehensive, since the analysis of a significant number of works on conflictology showed that this category was most often used by researchers and was characterized as the minimization of problems separating the parties, usually carried out through the search for compromise, agreement, etc. In particular, the category of conflict resolution was included in the dictionary of conflict, defined as the removal of contradictions that caused the conflict and establishing normal relations between belligerents; what resolves the conflict, its result.

To resolve the conflict means: 1) to decide who is the winner and who is defeated, what will be the future distribution of values; 2) to implement this distribution of values; 3) to come to the conclusion that the conflict is completely over [3, pp. 235-236]. In other words, the resolution is understood as a positive solution to the conflict, the solution of the anomaly in the law.

At the same time, the conflictologists A. Ya. Antsupov and A. I. Shipilov believe that the broadest concept is still the end of the conflict, which is the end of the conflict for any reason, not just a positive property. As the forms of conflict completion, the authors cited: resolution, settlement, attenuation, elimination, development into another conflict [2, p. 468].

V. S. Zhrebina proposed to use the term "removal of legal conflict". The author believes that overcoming legal conflicts means their removal on the basis of a qualitative change in the relationship between its counter-subjects and its other constituent elements. Accordingly, the concept of "overcoming" and "removal" are essentially identical and are the same categories [4, p. 106-107]. As a result, the author refers to the ways of overcoming (removing) legal conflicts:

- prevention of legal conflicts;
- settlement of legal conflicts;

- consensual legal conflicts;
- resolution of legal conflicts;
- elimination of legal conflicts;
- liquidation of legal conflicts [4, p. 271-

367].

S. V. Ruzina adheres to a similar point of view, believing that overcoming a legal dispute is its constructive deployment, the result of which is the completion of the latter, accompanied by the removal from its countersubjects of mutual and opposite legal claims [5, p. 121-125].

A. V. Dmitriev notes that the generic concept is the resolution of legal conflicts, and its forms are parliamentary and other constitutional procedures, judicial review, mediation, consensus [6, p. 146].

M. M. Lebedeva defines conflict resolution as a generic concept, and its forms are prevention, settlement and resolution [7, p. 39].

From the above pluralism of opinions it seems reasonable to talk about the final stage of the conflict as its completion, termination or withdrawal, regardless of the result (positive or negative). However, when it comes to graduation/completion/withdrawal conflict with a positive, constructive result it is necessary to talk about conflict resolution.

According to the literal interpretation, resolution means "to find the right solution, to judge including the conflict". At the same time, according to the explanatory dictionary of the Russian language, withdrawal means "to eliminate, overcome, resolve". According to the dictionary of synonyms of the Russian language, the synonyms "elimination", "removal" correspond to the removal. Thus, a certain degree of difference is not so much the literal meaning of these terms as their connotation. Thus, the removal is dominated by a neutral or negative connotation, while the resolution is characterized by a positive connotation-the search for a solution to the conflict, and not the actual removal, blocking.

In connection with the above, the term resolution could not be more successfully means a positive result of resolving the conflict, and not its mechanical completion, removal, removal. In this regard, it is necessary to agree with the above point of view of A. V. Dmitriev regarding the use of

the term "resolution" as a generic concept to all forms and mechanisms of conflict resolution, which allow not just to stop it, but to stop positively and effectively.

### **3. Ways to resolve constitutional and legal conflicts.**

The ways in which conflicts can be resolved can be classified according to the criterion of compulsion for conflicting parties.

The first group includes the methods to which the parties to the conflict resort voluntarily (negotiations, involvement of a mediator, mediator) - cooperative ways of resolving the conflict, not assuming the presence of the actor's levers and mechanisms of legal coercion.

The second group is represented by the methods associated with the use of power and legal coercion, the imposition of a binding decision, as a rule, by the third party to the conflict – its actor - coercive ways of resolving the conflict.

For example, S. B. Nanba refers to the ways of resolving legal conflicts: conciliation procedures for conflict resolution, alternative ways of conflict resolution and judicial procedures [8, pp. 152-178].

The method of resolving legal conflicts depends largely on the behavioral strategy of its participants, which must be distinguished from the method of conflict resolution. The most common are the following strategies of behavior in conflicts:

- rival-imposing on the other side of the preferred solution;
- cooperative-search for a solution that would satisfy both parties;
- yielding-lowering their aspirations, resulting in the outcome of the conflict becomes less acceptable than we would like;
- avoiding-withdrawal from the conflict situation;
- inaction - being in a conflict situation, but without any action to resolve it .

In relation to the constitutional and legal conflict, the most pronounced are: a rival strategy of behavior and inaction, in particular, because the participants of the constitutional and legal conflict, possessing public power, seek either to defend their own interests and independence in decision-making

by all means, or, on the other hand, having discovered the conflict, it is often easier and "cheaper" for public authorities to do nothing and maintain the status quo of the conflict.

At the same time, it is necessary to note the aspirations, in particular, of the constitutional Court of the Russian Federation to integrate into the Russian legal reality the cooperative strategy of behavior of participants in constitutional conflicts. In some of their legal positions regarding the constitutional legal conflict of bodies of state power of subjects of the Russian Federation and municipal entities of the Russian constitutional Court has repeatedly noted that imposing the Constitution of the Russian Federation on local self-government bodies independent solving of issues of local importance does not preclude constructive, based on recognition and the guarantee of independence of local government cooperation between local governments and state authorities for the most efficient solutions to common problems, directly related to issues of local importance, in the interests of the population of municipalities, as well as the participation of local authorities in the performance of certain public functions and tasks of state importance in the relevant territory (Resolutions of 16 October 1997 No. 14-P, of 30 November 2000 No. 15-P, of 29 March 2011 No. 2-P and of 26 April 2016 No. 13-P).

However, attempts to introduce such a cooperative strategy for resolving constitutional and legal conflicts into law enforcement practice are hampered by the de facto unified vertical structure of the organization of public power in the Russian Federation.

According to A.V. Teterin, as a means of resolving constitutional conflicts are: dispute resolution bodies of judicial constitutional control, the use of procedures provided for by the Constitution (resignation of the government, dissolution of the legislature, impeachment of the President), the use of conciliation procedures by authorized entities, the use of Federal intervention, consideration of the issue at a referendum [9, p. 11].

Taking into account the above, the methods of resolving constitutional and legal conflicts in the Russian Federation include:

- coercive methods (constitutional and legal coercion, the mechanism of checks and balances laid down in the Constitution of the Russian Federation);
- cooperative methods (coordination mechanisms in Russian constitutional and municipal law (conciliation, negotiations, mediation)).

Under coercive methods are necessary to understand the mechanisms for the resolution of constitutional conflicts under constitutional law and is based on the constitutional power of legal coercion to be applied to one side of the conflict by the other party or actor of the constitutional and legal conflict.

#### **4. Prevention of constitutional and legal conflicts.**

Separately, it is necessary to consider ways to prevent constitutional and legal conflicts, since the above methods of conflict resolution take place in an already arisen constitutional and legal conflict. While the prevention of their occurrence, or so-called conflict prevention, acquires special importance due to the previously described specifics of constitutional and legal conflicts and their legal consequences.

It is obvious that it is expedient to prevent constitutional and legal conflicts, as well as any legal anomaly, first of all, rather than subsequently resolve them. In any case, conflicts and the risks of their occurrence must be managed in order to build an effective legal system capable of resisting conflict.

Prevention of constitutional and legal conflicts is aimed at preventing violations of constitutional norms, thereby ensuring the security of the individual, society and the state. According to the axiom that the disease is easier to prevent than to treat [10, p. 168; 11, p. 19-21], measures to prevent constitutional and legal conflicts are aimed precisely at preventing the "disease" - the constitutional and legal conflict.

K.P. Ermakova and M.V. Zaloilo also believe that the prevention of legal conflict is more effective compared to the termination and resolution of the

conflict already taking place, in connection with which the efforts of society and the state should be directed to the prevention of conflicts [8, p.136].

Scientists identify various ways to prevent legal conflicts, including constitutional and legal.

According to Ermakova and Zaloilo, the most effective way to prevent conflicts is to eliminate their causes, which is achieved by various methods, including, for example:

- increase of scientific character of law-making (institutionalization of law-making consulting);

- legal modeling, forecasting of efficiency of the projected legal norm, legal experiment, measures of strategic planning, legal monitoring;

- raising the level of legal awareness and lawful behavior, achieving high quality of the law, internal consistency of the legislative system, etc. [8, p. 137-138].

We believe that this list contains both preventive measures of a General nature (increasing legal awareness, scientific nature of law-making, etc.) and special legal measures (forecasting the effectiveness of the projected legal norm, legal monitoring).

A. A. Yezerov, for example, considers constitutional-conflict diagnostics as the main means of prevention of constitutional conflict, which includes: monitoring of constitutional conflicts, constitutional-conflict analysis, constitutional-conflict expertise of constitutional legislation and practice of its application [9, pp. 137-138]. It is necessary to note positively the author's research in the field of constitutional and legal diagnostics, as it is possible to accumulate various legal means of combating constitutional and legal conflicts.

A. V. Teterin as means of prevention of constitutional conflicts also allocates constitutional-conflict diagnostics, Institute of public control and preparation by judicial bodies of constitutional control of messages on a condition of constitutional legality [9, p. 11].

It is necessary to agree with these authors that a special complex legal mechanism is required, allowing:

- identify risks of constitutional and legal conflicts, monitor them and manage such risks;

- to diagnose contentious at an early stage of its manifestation;

- to generalize the practice of resolving existing constitutional and legal conflicts.

These goals, as well as diagnostic, expert and analytical nature of the constitutional-legal diagnosis consonant widely used in control theory, system compliance (compliance system), which is a universally accepted international system of counteraction to threats and risk management, which ensures compliance of the activities of the entity, the various requirements of state bodies and other organizations, the law, regulations, guidelines and standards governing the activities of the entity in a certain legal system. The literal meaning of the words "compliance" in English means consent, compliance.

As a General rule, the risk management process as an integral part of the compliance system includes [12, p. 4]: risk identification; risk assessment; measures to reduce the level of risk; risk monitoring; documentary recording and reporting.

In this case, it is possible to formulate the following research hypothesis: 1) since there are constitutional and legal conflicts as the objects of legal reality, we can highlight their causes (conflictogenes) and set their risk in those or other relations, based on the construction of specific constitutional provisions; 2) installing risks of a constitutional-legal conflict, you need to take optimum measures for their prevention and management.

Since the system of constitutional law does not contain specific mechanisms for the control of the constitutional-legal conflict, and risk as the combination of probability and consequences of adverse events in the form of a constitutional-legal conflict is essentially no different from any other type of regulatory risk, General mechanisms to manage such risks (compliance system) is applicable in constitutional law and constitute a system of constitutional conflict diagnosis.

The initial sphere of formation and application of the compliance system in public law at the official level was the legal relationship on the development of competition and anti-corruption. In particular, according to the order of the FAS of

Russia of November 27, 2018 No. 1646/18 "On the system of internal compliance of the antitrust legislation the Federal Antimonopoly service (Antimonopoly compliance)" under the antitrust kompleksom understood as a set of legal and organizational measures aimed at compliance with Antimonopoly law and prevention of its violation. This system is aimed at identifying the relevant risks of violation of Antimonopoly legislation ("compliance risks") - a combination of the probability and consequences of adverse events in the form of restriction, elimination or prevention of competition.

There is also a widely used anti-corruption compliance, which serves the purpose of preventing corruption and is focused on the search for corruption risks. The basis of the anti-corruption compliance system is not only the identification and minimization of corruption risks, but also the conditions and reasons for their occurrence.

This compliance system was formed in the private sector in order to identify certain risks for companies and, accordingly, to determine the best way to prevent them. Today, the largest Russian and international companies successfully implement this system in their practice in accordance with the developed international compliance standards. Taking into account the constantly changing legislation in terms of public responsibility, control and Supervisory functions of the state, it is natural that private companies were the first to face the impossibility of successful business without building a competent compliance system in their activities.

We believe that a similar system of identifying the risks of constitutional and legal conflicts can be used as a basis for constitutional and conflict diagnostics, which will allow:

- identify the risks of constitutional and legal conflicts in the design of relevant legal norms at the stage of rulemaking;
- predict the emergence of constitutional conflicts;
- not only to analyze the law enforcement practice, but also to carry out the processing of data about constitutional-legal conflict, their conflictogenes;

- to exclude unconscious acceptance by subjects of constitutional legal relations of risks of emergence of constitutional and legal conflicts;

- to minimize the risks of bringing to constitutional and legal responsibility;

- to choose the best way to prevent and resolve constitutional and legal conflicts.

With regard to the last of the listed goals of "constitutional compliance" or constitutional conflict diagnosis, it should be noted that the current state of conflict studies is characterized by a significant variety of proposed, first of all, sociology and psychology [13, 14], and subsequently Economics [15] methodological theoretical approaches. Hence, there is a problem of legal knowledge about conflict management, because it is on the legal science and practice is the burden of the permissible transformation of the conflict into a legally significant legal relationship in order to resolve them in the legal field.

Under the constitutional-conflict diagnosis is proposed to understand the system of legal and organizational measures aimed at identifying the risks of constitutional-legal conflicts, conflict, their monitoring in order to effectively prevent constitutional-legal conflicts.

Constitutional conflict diagnosis includes:

- identification of the risk of constitutional and legal conflict and its assessment;

- monitoring of the constitutional law of conflicts and risks;

- constitutional and conflict analysis of existing constitutional and legal conflicts;

- forecasting the emergence and development of constitutional and legal conflicts;

- measures to reduce the risk of constitutional and legal conflict;

- documenting and reporting.

Constitutional-conflict diagnostics has prognostic, analytical and modeling functions, which are not peculiar to the legislative process in its pure form, and allows to identify not only conflictogens, but also the zone of law enforcement risk. The purpose of such diagnostics-prevention of occurrence of constitutional and legal conflicts-distinguishes it, for example, from any kind of examinations carried out at lawmaking [16, p. 747-753].

In terms of possible criticism of the proposals on the expediency of applying the risk management system in constitutional and municipal law, it should be noted that, first, the significance and scale of the consequences of such constitutional and legal conflicts as confrontation of branches and levels of power, violation of constitutional human rights, unconstitutional transfer of powers, legal regulation, disavowing constitutional norms, - it is worth using all measures to identify the relevant risks, including the constitutional conflict situation and compliance at its core.

Secondly, the study of constitutional conflict diagnostics in the context of conflict prevention will contribute to the experimental integration of interdisciplinary research into the orbit of constitutional law enforcement. And as V. E. Chirkin rightly points out, science should investigate the social and legal content of constitutional and legal norms and institutions and offer such thoroughly thought-out, to some extent partially used in practice, and if possible - in an experimental manner, legal formulations that will best correspond to the socio-economic objectives [17, p.11-13].

### **5. Choosing the optimal way to resolve constitutional and legal conflicts.**

Our study showed that there are different ways to resolve constitutional and legal conflicts, conditionally divided into two groups:

- coercive methods (constitutional and legal coercion, the mechanism of checks and balances laid down in the Constitution of the Russian Federation);

- cooperative methods (coordination mechanisms in Russian constitutional and municipal law (conciliation, negotiations, mediation)).

If we are to assume that every constitutional and legal conflict is unique and has inherent composition of participants, the nature of contentious, coordinates of place and time, it is impossible to establish a universal method for the resolution of all the conflicts taking into account their specifics. Accordingly, we need an algorithm

to find (test) a way to resolve the optimal conditions of a particular constitutional and legal conflict.

It seems that the basis of such an algorithm can be based on the following fundamental principles, applied systematically and consistently:

- 1) the principle of legality of measures to resolve constitutional conflicts. Any measure applicable to subjects of constitutional conflict must comply with the law;

- 2) the principle of priority of human and civil rights and freedoms. This principle corresponds to article 18 of the Constitution of the Russian Federation that the rights and freedoms of man and citizen are directly operating and define sense, the contents and application of laws, activity of legislative and Executive authorities, local self-government and guaranteed by law;

- 3) the principle of ultimo ratio, - meaning that punishment, punishment should be the last argument, the last means in matters of restoration of rights violated during the conflict.

S. A. Avakyan notes that the possibility of real application of sanctions in state law exists as an extreme measure, and the necessary results are achieved by organizational means, practical work of competent authorities and persons [18, p. 56]. It is the scale of the destructive potential of constitutional conflicts that necessitate the use of conciliatory and conciliatory measures, or measures of constitutional and legal coercion, which meet primarily the goals of prevention and suppression. And only in the case when the constitutional conflict was transformed into a constitutional tort (constitutional offense), the measures of constitutional and legal responsibility are applied;

- 4) the principle of proportionality and proportionality of measures to resolve the constitutional conflict-the development and implementation of a set of measures to reduce the likelihood of involvement of subjects of law in the constitutional conflict is carried out taking into account the risks of constitutional conflicts existing in this type of legal relationship. Thus the constitutional Court of the Russian Federation defines this principle as following from the constitutional principles of humanism and justice and assuming application only necessary and sufficient for achievement of the purposes of

repression of compulsory measures of state-legal reaction. In other words, measures to resolve the constitutional conflict should be optimal and fair.

Also, the principle of proportionality means that constitutional conflicts are suppressed with the help of proportionate (proportional) measures, while avoiding both excessive repression and complete depenalization in relation to acts that objectively require constitutional and legal coercion;

5) the principle of effectiveness of measures aimed at resolving the constitutional conflict. This principle means the application of such measures to resolve the constitutional conflict, which have a low cost, provide ease of implementation and bring significant results.

Thus, in case of detection during the constitutional diagnosis of the risk or fact of occurrence of constitutional conflict it is possible to implement a five-step analysis (or test - this term is used by analogy with the practice of the ECHR means the totality of all questions, certain answers to which indicate in particular the use of norms) the applicability of the chosen legal means of resolving the conflict, corresponding to the five specified principles.

In practice, in order to choose the optimal measure to resolve the constitutional conflict, the law enforcement officer must consistently answer the following questions:

1) whether the chosen measure to the legislation of the Russian Federation directly if they provided or allowed by the analogy of Statute or law, by interpretation of the rule of law?

2) does the application of this measure ensure the priority of human and civil rights and freedoms?

3) is it Possible to apply a less repressive measure to resolve constitutional conflicts?

4) is the measure chosen proportionate and proportionate to the risk or fact of constitutional conflict?

5) is the chosen measure effective in this particular case?

By passing a five-step test for measures to resolve constitutional and legal conflicts, it is possible to come to a conclusion about the

effectiveness of a measure to resolve a constitutional and legal conflict.

Let's consider it on a concrete example of the constitutional-legal conflict. Competing constitutional values in it will be the constitutional right to private property and limitations on part 3 of article 55 of the Constitution of the Russian Federation, according to which rights and freedoms may be restricted by Federal law only to the extent necessary to ensure the country's defence and state security.

The government of the Russian Federation dated 29.05.2002, No. 364 "About sustainable gas supply financed from Federal budget organizations that ensure the security of the state" shall not limit gas and heat supply organizations, ensuring the safety of the state (military units, institutions, enterprises and organizations of the Federal bodies of Executive power in which military service is envisaged, as well as enterprises, institutions and organizations of criminal Executive system and state fire service). Thus, these organizations are non-switchable consumers.

Thus the municipal networks providing these objects with the thermal carrier or gas, are in municipal property.

In this regard, the scale of the Russian Federation the situation is as follows: municipal heating networks, boiler houses connected to the above nondisconnectable consumers, local administrations are leased or transferred in concession to legal entities, which accumulated significant debts for transportation contracts and gas supply to the boiler; the gas supplier is not legally able to hold the restriction of supply of gas to these boilers, because end-users are not disconnected. Subsequently, these boiler operators are recognized as bankrupt, and their debts to gas transportation organizations remain outstanding.

As a result, due to the ownership of gas transportation organizations and gas suppliers, local issues (gas supply) are performed for public purposes and in the presence of restrictions on the right of gas transportation companies and gas suppliers to disconnect such debtors.

Gaps and conflicts of legislation on gas supply, civil, housing and constitutional legislation, as well as legislation on sanitary and epidemiological



well-being are the source of conflict for such a constitutional and legal conflict.

Now consider the possible measures to resolve this constitutional and legal conflict in order to identify the most effective measures in the form of the following matrix of results.

Now we will consider possible measures to resolve this constitutional conflict in order to identify the most effective measure in the form of the following matrix of results.

№ n/n	Method of Conflict Resolution	Test conditions					Performance (Test condition is met /is not met)
		1	2	3	4	5	
1	Inclusion of a claim in the register of claims of a debtor in the course of a bankruptcy case in accordance with Federal law No. 127-FZ of 26.10.2002 "On insolvency (bankruptcy)".	+	+	+	+	–	4/1
2	Disconnection of the debtor from gas supply	–	–	–	+	+	2/3
3	The allocation of funds from the local budget in the form of subsidies for the repayment of arrears	+	+	+	+	+	5/0
4	Measures of prosecutorial coercion on inadmissibility of disconnection from gas and heat supply of non-disconnected consumers	+	+	–	–	–	2/3
5	Recovery of losses of gas transportation organizations from the Treasury of the relevant public legal entity under article 15 of the RF Civil Code	+	+	+	+	–	4/1
6	Inclusion of lost revenues of gas transportation organizations in future gas transportation tariffs	–	–	–	–	+	1/4

Thus, we see that the degree of decreasing effectiveness of measures to resolve the constitutional and legal conflict may be as follows:

1) allocation of funds from the local budget in the form of subsidies to repay the debt;

2.1) inclusion in the register of claims of the debtor in the course of bankruptcy proceedings in accordance with the Federal law of 26.10.2002 No. 127-FZ "on insolvency (bankruptcy)".

2.2) recovery of losses of the gas transport organizations from Treasury of the corresponding public legal entity under article 15 of the Civil code of the Russian Federation.

3.1) measures of public Prosecutor's coercion on inadmissibility of disconnection from gas and heat supply of non-disconnected consumers.

3.2) disconnection of the debtor from the gas supply.

4) inclusion of lost revenues of gas transportation organizations in the tariff for gas transportation for the future period.

Accordingly, when one of the measures is exhausted, the subjects of the constitutional-legal conflict have the right to resort to the next effective measure of resolving the constitutional-legal conflict.

This example illustrates the mechanism of determining the optimal measure of resolving the

constitutional and legal conflict on the basis of both existing measures and proposals to improve legislation on the disputed issue.

## 6. Conclusions.

Constitutional conflicts are resolved by special legal methods, which, depending on the enforceability of such methods for the conflicting parties, can be classified into:

- forced ways, which are defined mechanisms for the resolution of constitutional conflicts under constitutional law and is based on the constitutional power of legal coercion to be applied to one side of the conflict by the other party or actor of the constitutional-legal conflict (measures of constitutional and legal coercion, the mechanism of checks and balances inherent in the Constitution of the Russian Federation);

- cooperative methods, which are understood as mechanisms for resolving constitutional and legal conflicts, enshrined in the norms of constitutional law and based on cooperation, mutual assistance of the parties to the conflict on a parity basis (various forms of coordination (negotiations, mediation, conciliation)).

Methods and mechanisms of their prevention cannot be attributed to the methods of resolving

constitutional and legal conflicts, since they are applied before the appearance of constitutional and legal conflicts.

Way to prevent the constitutional and legal conflicts of a constitutional conflict diagnosis-based risk management system represents a system of legal and organizational measures aimed at identifying risks of onset of the constitutional law of conflicts, of conflicts and legal monitoring for effective warning of the constitutional and legal conflicts.

The best step to resolve the constitutional-legal conflict is determined by the degree of compliance with the following principles applied consistently and collectively, test for optimality measures of conflict resolution:

- 1) the legality of measures to resolve constitutional conflicts;
- 2) priority of human and civil rights and freedoms;
- 3) ultimo ratio;
- 4) proportionality of measures to resolve the constitutional conflict;
- 5) the effectiveness of measures aimed at resolving the constitutional conflict.

## REFERENCES

1. Ezerov A.A. Guarantees and means of ensuring constitutional legality, in: *Aktual'ni problemi derzhavi i prava*, Collection of scientific articles, Iss. 61. Odesa, Yuridichna literatura Publ., 2011, pp. 68–76. (In Russ.).
2. Antsupov A.Ya., Shipilov A.I. *Conflictology*, Textbook for universities. Moscow, YuNITI Publ., 2000. 551 p. (In Russ.).
3. Grishina N.V. *Psychology of interpersonal conflict*, Doct. Diss. St. Petersburg, 1995. 361 p. (In Russ.).
4. Zherebin V.S. *Legal conflictology*, a Course of lectures, Pt. 3. Vladimir, Vladimir State University Publ., 2000. 202 p. (In Russ.).
5. Zherebin V.S. *Problems of legal conflictology*, Doct. Diss. Nizhny Novgorod, 2001. 395 p. (In Russ.).
6. Ruzina S.V. *Legal disputes in relations about formation bodies of state power and local self-government: general legal analysis*, Cand. Diss. Vladimir, 2006. 188 p. (In Russ.).
7. Kudryavtsev V.N. (ed.). *Fundamentals of conflictology*. Moscow, Yurist Publ., 1997. 200 p. (In Russ.).
8. Lebedeva M.M. *Political resolving of conflicts*. Moscow, Aspekt Press, 1999. 271 p. (In Russ.).
9. Tikhomirov Yu.A. (ed.). *The legal conflict*, Monograph. Moscow, INFRA-M Publ., The Institute of Legislation and Comparative Law under the Government of the Russian Federation Publ., 2017. 312 p. (In Russ.).
10. Teterin A.V. *Constitutional and legal conflict: theoretical problems and ways of overcoming*, Cand. Diss. Moscow, 2018. 266 p. (In Russ.).
11. Lukashova E.A. (ed.). *Human rights*, Textbook. Moscow, INFRA-M Publ., 1999. 573 p. (In Russ.).
12. Enikeev O.A. Constitutional right to medical care: state and prospects of development. *Rossiiskii sud'ya = Russian Judge*, 2007, no. 11, pp. 19–22. (In Russ.).
13. Grankin M.B., Zhigas M.G. Compliance culture as the most important element of regulatory risk management system. *Baikal Research Journal*, 2016, vol. 7, no. 3. DOI: 10.17150/2411-6262.2016.7(3).3. (In Russ.).
14. Efremov O.Yu. *Social and philosophical analysis of conflict management*, Cand. Diss. Thesis. Cheboksary, 2007. 22 p. (In Russ.).
15. Maksimov N.P. *Management of social conflicts by local self-government bodies on the basis of dispositive-personal approach*, Cand. Diss. Thesis. Magnitogorsk, 2007. 21 p. (In Russ.).
16. Rudyi D.V. *Organizational methods of project conflicts management*, Cand. Diss. Thesis. Moscow, 2009. 17 p. (In Russ.).
17. Titov N.S. Expertise of draft normative legal acts: experience, types and strategic perspectives. *Yuridicheskaya tekhnika = Legal technique*, 2015, no. 9, pp. 747–753. (In Russ.).
18. Chirkin V.E. About the terms "economic Constitution" and "constitutional economy", as well as on Russian and Western science (response to G. N. Andreeva's article). *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and Municipal Law*, 2016, no. 3, pp. 11–13. (In Russ.).
19. Avak'yan S.A. *Sanctions in the Soviet state law. Reflections of the constitutionalist*, Selected articles. Moscow, Moscow University Publ., 2010. 560 p. (In Russ.).

## INFORMATION ABOUT AUTHOR

**Irina A. Tretyak** – PhD in Law, Senior 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

## BIBLIOGRAPHIC DESCRIPTION

Tretyak I.A. Prevention and resolution of constitutional conflicts: concept and methods. *Pravoprimenenie = Law Enforcement Review*, 2019, vol. 3, no. 4, pp. 30–41. DOI: 10.24147/2542-1514.2019.3(4).30-41. (In Russ.).