

## THE CONFLICT INITIATION AND RESOLUTION RULES IN CONSTITUTIONAL AND MUNICIPAL LAW

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The subject. The article is devoted to analysis and classification of different constitutional and municipal legal rules that may cause and resolve the constitutional conflicts.

The purpose of the article is to confirm or disprove hypothesis that there is a set of constitutional and municipal legal rules with common conflict initiation nature as well as with common conflict resolution nature.

The methodology of the study includes general scientific methods (analysis, synthesis, description) and legal interpretation of Russian Constitution and laws.

The main results, scope of their application.

There is a whole set of legal norms in constitutional and municipal law, that focus on the conflict component due to the conflict nature of the constitutional act itself as the basic law of the country. They need to be studied and classified due to the different content and legal nature of these rules. The author attempts to research the constitutional and municipal legal norms that may cause and resolve the constitutional conflicts, offers their classification on certain grounds, analyzes scientific researches on this topic. Constitutional and municipal legal rules that may cause and resolve the constitutional conflicts can be classified for two types depending on their content: rules generating constitutional conflicts and rules that establish methods and principles for resolving constitutional conflicts.

Conclusion. The constitutional and legal rules that give rise to constitutional and legal conflicts include the norms of constitutional law that enshrine constitutional values that are in a state of real or imaginary competition.

The norms that establish ways to resolve a constitutional and legal conflict include: 1) collision rules of constitutional and municipal law – rules determining which legal regulation should be applied to the relevant conflict legal relationship. They have a reference character and are applied only together with substantive legal norms that resolve the issue; 2) constitutional and municipal regulations governing the methods and principles for the resolution of constitutional conflicts.

## 1. Introduction.

Constitutional and municipal law, like any branch, is a system of legal norms that regulate certain social relations. The content of norms is formed under the influence of the subject of regulation. Accordingly, public relations of a conflict type are regulated by the relevant legal norms, which:

- contain the cause of the constitutional and legal conflict and are conflictogens;
- establish ways to resolve the constitutional and legal conflict.

These constitutional and, in certain cases, municipal norms of law belong to different classifications, are both regulatory and protective norms, but they are United in a certain set by a certain conflictological essence, defined as the ability of constitutional and municipal legal norms:

- create a constitutional and legal conflict;
- regulate the constitutional and legal conflict;
- establish ways to resolve the constitutional and legal conflict.

Thus, the definition of these norms as constitutional and municipal norms of conflictological type aims to separate a group of conflict-related legal norms in order to study them in the systemic unity of causes and consequences within the framework of constitutional conflictology [1, p.46].

Before that, in the science of constitutional law, research was devoted separately to either competition, conflict of laws of constitutional law that generates negative legal consequences, or the legal status of actors in a constitutional legal conflict, or the procedural form of resolving constitutional legal disputes, etc.

In the systemic relationship, the legal causes of the conflict in constitutional law, ways of resolving it, and legal forms mediating the constitutional-legal conflict were not considered.

At the same time, it is true that A.V. Semenov's remark that constitutional institutions reflect the historical realities of political and legal reality, objectify the dynamics of social relations through their content [2 p. 4]. Previously, psychology and sociology formulated the thesis

about the impossibility of a conflict-free state of society.

In this regard, the rules on the causes of conflicts and how to resolve them could not fail to be reflected in the law as one of the most important social regulators. Taking into account that the norms of constitutional law are not only a product of the worldview, but also a means of fixing the ideology, therefore, the norms of constitutional and partially municipal law of the conflictological type are fixed, including the ideology chosen by the state for the management of legal conflicts and their resolution in the sphere of public power. It is the characteristics of such an ideological model that give an idea of the effectiveness of legal regulation of legal conflicts in its social context.

## 2. Constitutional and legal norms that give rise to constitutional and legal conflicts.

The most common reason for the emergence of constitutional-legal conflicts in the form of constitutional-legal disputes is the competition of constitutional values enshrined in the relevant norms of constitutional law.

At the same time, not any contradiction of constitutional norms to each other can generate a constitutional-legal conflict, but only such a contradiction that somehow affects the essence of the constitutional value as a certain intangible good that is the object of a constitutional-legal conflict.

"Competition (from lat. "konkurro" - to collide) means competition, competition of constitutional rights and freedoms, constitutional values. Competition is possible both within the framework of one right, freedom (constitutional value), and between equally protected different constitutionally significant values" [3, p. 56].

According to S. V. Naruto, "competition of rights leads to conflicts, so the Constitutional Court of the Russian Federation has to overcome these conflicts, to search for a balance between constitutional values... Competition within the framework of a single constitutional law may arise as a result of poor-quality legal norms, as well as an arbitrary misinterpretation of the content of a specific constitutional law, failure to observe the balance between various filling and concretizing

rights that both sides of the legal relationship have" [3, p. 56].

D. S. Miz agrees with this, who in his dissertation points out that in the design of constitutional and legal means of countering illegal encroachments on the constitutional system, one of the most difficult tasks is to resolve conflicts between competing constitutional and legal values by achieving a balance of interests of the state, society and the individual. As shown by historical experience and comparative legal analysis of modern constitutional development, violation of the optimal balance or absolutization of certain constitutional and legal values is the main reason for the reproduction of various conflicts [4 p. 8].

Constitutional values are most often understood as priority goods, especially protected collective goals (ideas, ideals, principles), embodied in various legal forms (norms-principles, rights and freedoms, and other norms of the most General nature), enshrined in the Constitution and derived from its content by official interpretation [5, p. 8; 6, p.11; 7, p. 8].

I. A. Karaseva suggests understanding the competition of constitutional values as their clash, which is manifested within a specific legal relationship and can be resolved in a rational way using legal means [5, p. 12]. The author also suggests, in our opinion, a successful classification of the competition of constitutional values, according to such criteria as the causes that give rise to it:

1) imaginary competition arising from unfair use of the right (abuse of the right) or a gap in the law,

2) actual competition resulting from the conflict of interests of various subjects of legal relations acting in good faith [8].

It should be noted that I. A. Karaseva also writes about "the conflict of constitutional values and norms" [9]. It seems that a more appropriate category would still be the competition of constitutional values, while a constitutional-legal conflict would be a legal relationship entered into by subjects of constitutional law guided by competing constitutional values. Since the constitutional-legal conflict is always a phenomenon of social (real) reality, while the

"conflict" of constitutional values outside the legal relationship is not such a phenomenon of social existence and is reflected only "on paper".

Competition of constitutional values generates quite complex constitutional and legal conflicts, which are usually expressed in the form of constitutional and legal disputes, since it is impossible to make a complete and exhaustive list of all constitutional values on a hierarchical basis.

### **3. Rules governing the resolution of constitutional and legal conflicts.**

In the mechanism of legal regulation, these norms have a special purpose - to resolve the constitutional and legal conflict in which the subjects of legal relations are located.

Due to a special purpose conditionally given norms of constitutional and municipal law:

- they themselves contain a rule for resolving a constitutional-legal conflict, or they fix a specific method for resolving it (for example, they regulate the use of measures of constitutional-legal coercion);

- establish principles for resolving constitutional and legal conflicts.

It appears that in a legal state the nominal rule of law as obligatory, formally certain rule of conduct, is the very conventional "neutral party", which obliges the parties relationship with each of its interest, because of state coercion, both explicit and potential, to enable constitutional and legal conflict.

As a scientific hypothesis, we suggest that two types of legal regulators are included in the norms regulating the resolution of constitutional and legal conflicts:

- conflict of laws rules of constitutional and municipal law;

- constitutional and municipal norms regulating ways to resolve constitutional and legal conflicts.

#### **3.1. Conflict of laws rules of constitutional and municipal law.**

The constitutional norm of the conflictological type is a conflict of laws constitutional and legal norm, which contains a

method for resolving legal conflicts in constitutional and municipal law.

According to N. E. Taeva, a special type of constitutional and legal norms are conflict-of-laws norms, which are contained both in the Constitution of the Russian Federation and in other constitutional and legal acts. Conflict of laws rules in constitutional law serve to resolve conflicts that arise between legal regulations. In General, this is one of the ways to resolve conflicts in this branch of law [10].

The name of the conflict rule comes from the Latin "collisia; collision" and literally means "conflict, collision" [11, p.169]. According to M. A. Zanina, the analysis of scientific works of Russian scientists shows that there is no single approach to the concept of "conflict of law" [12, p. 10].

N. G. Alexandrov understands the conflict as the existence "on the same issue" of several norms that "differ in content from each other" [13, p.3].

Yu. a. Tikhomirov notes that such conflict of law rules in constitutional law includes the rules establishing the priority of the Constitution over other normative legal acts establishing the priority of norms of international treaties; the rule of article 76 of the Constitution of the Russian Federation, which deals with the ratio of laws to the validity of [14, pp. 50-51].

However, conflict of laws rules in constitutional law are rarely an independent subject of research.

One of the few definitions of conflicting constitutional and legal norms is given by N. E. Taeva and offers to understand them as norms aimed at eliminating conflicts that arise between constitutional and legal regulations, as well as norms that fix legal mechanisms for resolving contradictions between subjects of constitutional and legal relations and perform the function of ensuring the unity and consistency of the legal regulation system, giving it stability [15 p.233].

The author also suggests the following, in our opinion, a very successful classification of conflict of laws constitutional and legal norms, which allows them to be reflected in all their diversity:

1. Depending on the level of legal regulation:

- constitutional and legal conflict of laws rules at the Federal level;
- conflict of laws rules at the level of the subjects of the Russian Federation;
- conflict of laws rules contained in municipal legal acts.

2. Depending on the types of collisions:

- temporal conflict of laws constitutional and legal norms;
- spatial conflict of laws constitutional and legal norms.

3. Hierarchical conflict of laws constitutional and legal norms:

- norms that resolve contradictions between the Constitution of the Russian Federation and all other normative legal acts;
- the rules that permit the contradictions between the laws, between the laws and regulations between the regulations;
- rules that resolve contradictions between national and international law.

4. Competence conflict of laws rules. These are rules that strictly establish the authorized body that can carry out legal regulation of a specific issue at the subordinate level.

5. In scope:

- General constitutional and legal conflict of laws rules;
- special constitutional and legal conflict of laws rules [15, p. 233-234].

At the same time, it is impossible to agree with the broad approach to conflict of laws in constitutional law, reflected in the doctoral dissertation of N. E. Taeva, in which conflict of laws rules-prescriptions (in the traditional sense of conflict rules as reference and blank in their content, which establish the rule to be applied), and conflict of laws-mechanisms that establish mechanisms for resolving contradictions that arise between any constitutional legal phenomena. So, according to N. E. According to taeva, conflict-of-laws regulations should include rules that establish a mechanism for resolving contradictions in Federal relations, a mechanism for resolving contradictions between the President of the Russian Federation

and the chambers of the Federal Assembly of the Russian Federation [15, p. 230 – 231].

Also a broad approach to the definition of conflict of constitutional norms adheres to the V. S. Zherebin, who believes that a limited, narrowed understanding of the conflict of laws and relevant regulations no longer meet actual realities of development of Russian society, while the Constitution legalizes the possibility of contradictions and disputes between the legislative and Executive power, also of the conflicts between the various stakeholders of our state [16, p. 17].

However, with this approach, the constitutional and legal norms that establish measures of constitutional and legal prevention are also recognized as conflict of laws, although the constitutional and legal conflict as a clash, "conflict" of interests as a phenomenon of legal reality has not yet emerged in their application. Taking this approach into account, the constitutional judicial process will also be an institution of conflict of laws.

It seems that in this case, the logical connections of the General theoretical category of conflict of laws norms as generic for constitutional and legal conflict of laws norms are violated. In our opinion, even a certain specificity of constitutional law as a branch cannot justify the fact that within its framework the content of conflict of laws rules will be much broader in scope than, for example, in private international law – the branch of law from which this legal category was formed by special legal Sciences.

This confusion of entities is derived from the semantic proximity of the categories "conflict" and "conflict". However, it is necessary to distinguish between these concepts and under a conflict of laws constitutional and municipal rule to understand only the rule of constitutional or municipal law, which determines which legal regulation should be applied to the relevant conflict of law relationship, having a reference character, which can only be followed together with the substantive legal rules that decide the issue on the merits, to which it refers.

However, it is necessary to maintain the above-mentioned authors is that of constitutional and municipal rules contain a mechanism for

resolving conflicts between subjects of constitutional and municipal law, should be the subject of scrutiny constitutionalists in systemic unity of conflict of laws constitutional law, but in the "narrow" understanding of the past.

In this connection, in order to avoid an unjustified expansion of legal entities, it is proposed to speak about a separate category of constitutional and municipal norms that regulate ways to resolve constitutional and legal conflicts, but are not conflict-of-laws constitutional and legal norms.

To demonstrate the multiplicity of conflicting constitutional and municipal legal norms, we will give a number of examples:

1) according to part 4 of article 15 of the Constitution of the Russian Federation, generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international agreement of the Russian Federation establishes rules other than those provided for by law, the rules of the international agreement shall apply;

2) according to paragraph 2 of Section two of the Constitution of the Russian Federation, laws and other legal acts that were in force on the territory of the Russian Federation prior to the entry into force of this Constitution are applied in the part that does not contradict the Constitution of the Russian Federation;

5) Federal law No. 184-FZ of 06.10.1999 "On General principles of organization of legislative (representative) and Executive bodies of state power of the subjects of the Russian Federation" also contains conflict of laws rules, according to which the subjects of the Russian Federation have the right to carry out their own legal regulation on subjects of joint jurisdiction before the adoption of Federal laws. If a state authority of a subject of the Russian Federation believes that a Federal law does not comply with the Constitution of the Russian Federation, the dispute on competence or the question of compliance of the Federal law with the Constitution of the Russian Federation shall be resolved by the appropriate court. Prior to the entry into force of the court decision on recognition of Federal law or individual provisions thereof with the Constitution of the Russian Federation, laws and

other normative legal acts of the Russian Federation, contrary to the relevant provisions of the Federal law, is prohibited (part 3 article 3). The conflict of laws rule in this case establishes the priority of Federal legal regulation on issues of joint jurisdiction of the Federation and its subjects during a dispute over the competence or constitutionality of Federal legal regulation;

6) according to part 4 of article 17 of Federal law No. 131-FZ of 06.10.2003 "On General principles of local self-government organization in the Russian Federation" (hereinafter – Federal law No. 131-FZ) if, in accordance with the Federal law and (or) laws of the subjects of the Russian Federation, the powers of state authorities are transferred to local self-government bodies, legal acts of Executive authorities of the RSFSR, legal acts of Federal Executive authorities, legal acts of regional, regional, city (cities of Republican subordination) Councils of people's deputies or their Executive committees, regional, regional, city (Federal cities) administrations, legal acts of state authorities of subjects of the Russian Federation, the powers to adopt which have passed to local self-government bodies, shall be valid in the part that does not contradict the legislation of the Russian Federation, until the local self-government bodies adopt and enter into force municipal legal acts regulating the relevant legal relations. From the date of entry into force of municipal legal acts regulating the relevant legal relations, previously adopted legal acts of Executive authorities of the RSFSR, legal acts of Federal Executive authorities, legal acts of regional, regional, city (cities of Republican subordination) Councils of people's deputies or their Executive committees, regional, regional, city (cities of Federal significance) administrations, legal acts of state authorities of the subjects of the Russian Federation that regulate such legal relations shall not be applied;

7) part 9 of article 85 of Federal law no. 131-FZ of 06.10.2003 provides that until the regulatory legal acts of local self-government bodies are brought into compliance with the requirements of Federal law no.131-FZ of 06.10.2003, the said acts shall operate in the part that does not contradict it.

### **3.2. Constitutional and municipal norms regulating ways to resolve constitutional and legal conflicts.**

These norms are also characterized by a conflictological nature, since they directly fix the ways of resolving constitutional and legal conflicts.

In contrast to conflict of laws rules of constitutional and municipal law is that constitutional and municipal rules regulating the resolution methods constitutional law conflict apply directly and immediately with actors in the constitutional-legal conflict or parties to the relevant constitutional matters in the course of enforcement.

Depending on the provided method of resolving constitutional and legal conflicts, constitutional and municipal norms of conflict type can be grouped as follows:

- norms regulating the mechanism of checks and balances as a way to resolve constitutional and legal conflicts;
- norms establishing measures of constitutional and legal coercion;
- the rules governing the coordination mechanisms in the Russian constitutional and municipal law;

Here are a number of examples of relevant constitutional and municipal legal norms of a conflict type.

1) norms regulating the mechanism of checks and balances as a way to resolve constitutional and legal conflicts:

Article 10 of the Constitution of the Russian Federation establishes the fundamental principle of separation of powers. The conflict type of this norm is manifested in the fact that it initially assumes division and opposition, rather than division and rational interaction of different branches of government. At the same time, the second part of this rule contains a rule for resolving conflicts in which one branch of government will try to appropriate the powers of the other: "the legislative, Executive and judicial authorities are independent". On the one hand, this is a norm-a guarantee of the independence and independence of the branches of government, but on the other hand, it is a "dormant" mechanism for conflict resolution, designed to return the branches of government that invade areas that do not belong to

them to a state of balance and independence. Currently, disputes about the competence of state authorities arising from the principle of separation of powers are one of the many types of constitutional and legal conflicts that arise due to differences in interests, goals, and economic opportunities of power structures;

2) norms establishing measures of constitutional and legal coercion:

in accordance with part 2 of article 85 of the Constitution of the Russian Federation, the President of the Russian Federation has the right to suspend acts of Executive authorities of constituent entities of the Russian Federation if these acts contradict the Constitution of the Russian Federation and Federal laws, international obligations of the Russian Federation, or violate human and civil rights and freedoms until this issue is resolved by the appropriate court, which is a measure of constitutional and legal restraint;

in accordance with article 88 of the Constitution of the Russian Federation President of the Russian Federation under circumstances and in the manner envisaged by the Federal constitutional law enters the territory of the Russian Federation or in its separate districts state of emergency, which is a measure of the constitutional-legal restraint;

3) norms regulating coordination mechanisms in Russian constitutional and municipal law:

in accordance with part 1 of article 85 of the Constitution of the Russian Federation President of the Russian Federation may use conciliation procedures to resolve disagreements between bodies of state power of the Russian Federation and bodies of state power of subjects of the Russian Federation, as well as between bodies of state power of subjects of the Russian Federation. If an agreed solution is not reached it may refer the resolution of the dispute to the appropriate court;

in accordance with part 4 of article 105 of the Constitution of the Russian Federation in case of rejection of the Federal law by the Federation Council the chambers may create a conciliatory Commission to settle the differences, whereupon the Federal law shall be reconsidered by the State

Duma that aims to overcome the constitutional-legal conflict, which were the chambers of the Federal Assembly of the Russian Federation.

#### 4. Conclusions.

Based on the results of consideration of constitutional and municipal norms of conflict type, it is necessary to come to the following conclusions.

1. In constitutional and municipal law, there are norms that focus on the conflict component, which is primarily due to the conflict essence of the constitutional act itself – the basic law of the country.

In this connection, certain norms of constitutional and municipal law have a pronounced conflictological essence and are included in the object of study of constitutional conflictology, since:

- contain the cause of the constitutional and legal conflict;

- establish methods and principles for resolving constitutional and legal conflicts.

2. Constitutional and municipal norms of conflictological type, depending on their content, can be classified into two large groups:

- constitutional and legal norms that give rise to constitutional and legal conflicts;

- constitutional and municipal norms that establish methods and principles for resolving constitutional and legal conflicts.

3. Constitutional and legal norms that give rise to constitutional and legal conflicts include norms of constitutional law that enshrine constitutional values that are in a state of competition, real or imaginary.

4. The norms that establish ways to resolve a constitutional and legal conflict include:

1) conflict of laws rules of constitutional and municipal law. At the same time, a conflict-of-laws constitutional and municipal norm must be understood as a rule of constitutional or municipal law, respectively, which determines which legal regulation should be applied to the relevant conflict-of-law relationship, having a reference character, which can only be followed together with the substantive legal norms that decide the issue on the merits, to which it refers;

2) constitutional and municipal norms regulating the methods and principles of resolving

constitutional and legal conflicts, which, depending on the method of conflict resolution provided for by them, can be grouped as follows:

- norms regulating the mechanism of checks and balances as a way to resolve constitutional and legal conflicts;
- norms establishing measures of constitutional and legal coercion;
- the rules governing the coordination mechanisms in the Russian constitutional and municipal law.

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