

THE PRINCIPLE OF PROPORTIONALITY OF CONSTITUTIONAL RESPONSIBILITY OF ELECTED OFFICIALS: THEORY, FOREIGN EXPERIENCE AND PROBLEMS OF RUSSIAN LAW ENFORCEMENT

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The subject of the research is the principle of proportionality as an intersectoral principle of legal responsibility. It has a constitutional nature and guarantees fairness in resolving the cases of constitutional responsibility. This principle provides individualization of constitutional-legal sanction and its proportionality to the constitutional tort, circumstances, reasons, conditions and consequences of its commission.

The purpose of the article is to confirm or dispute the hypothesis that the principle of proportionality should be taken into account both in the description of the constitutional torts of elected officials in the legislation, and in the application of the rules on constitutional responsibility

Methodology. The method of legal comparison is the main method of the research. The authors carry out the comparative analysis of practice of the foreign constitutional courts, the European Court of Human Rights concerning the subject of research. Traditional methods of legal academic knowledge – the analysis, synthesis, deduction, induction and a formal legal interpretation – were used also.

The main results of the research and the scope of their application. The authors research the theoretical foundations, foreign experience, problems of applying the principle of proportionality in the process of implementing the constitutional-legal responsibility of elected officials in order to formulate the proposals for improving the Russian legislation and the law enforcement practice. The principle of proportionality of constitutional responsibility should be reflected in the legislation and implemented in the law enforcement practice. The measures of constitutional liability to elected officials can be based not on any, but only on a serious, gross violation of the Constitution and laws, indicating the guilty conduct. Such constitutionally punishable conduct should cause damage to the protected constitutional values or pose a threat of such damage and therefore be incompatible with the further exercise of the public legal duties and powers.

Conclusions. The composition of constitutional torts should be formulated with a certain degree of abstraction in such way that conditions are created for the enforcer to take into account the repetition, systematic, duration, severity or insignificance of the committed tort and the other factors that can individualize the constitutional responsibility. Judicial and the other enforcement bodies should enforce early termination of the powers of an official as an exceptional, extreme measure of constitutional responsibility based on the principle of proportionality. The nature and severity of the constitutional offence committed, the causes, conditions and consequences thereof, the degree of guilt of the offender, consequences of the sanction for the further exercise by the person of his constitutional rights and freedoms in the political and legal sphere and the other important circumstances must be considered in case of early termination of the powers of an official. The law enforcement body should assess each time whether such measure is proportionate to the constitutional offence committed, and whether it was strictly necessary to protect the constitutional values.

1. Introduction

Proportionality, which is a manifestation of justice and the rule of law, is the most important philosophical, ideological and legal principle underlying legislative regulation and law enforcement. The importance of the principle of proportionality in foreign law is so great that it is considered "the most important element of global constitutionalism" [1, p. 72], called "a consistent paradigm", "the doctrine of resolving conflicts arising around human rights" [2, p. 84], "the universal criterion of constitutionality" [3, p.162]. "In many countries, proportionality is implicitly recognized as one of the main constitutional principles" [4, p. 468], "mandatory for both the legislative and executive branches, as well as for the courts in the performance of their functions" [5, p.264].

In modern Russian legal science, there is a gradual recognition of the constitutional significance of the principle under consideration [6, p. 6-27]. It is increasingly noted that "the method of balancing and the principle of proportionality are expressed in all three basic elements of the constitutional system" [7, p. 30]; "proportionality is an important element of the entire concept of the rule of law" [8, p. 71], since "it expresses in a concretized form one of the normative and semantic aspects of the essence of law as such" [9, p.7]. "The principle of proportionality deserves attention not only as a principle of constitutionalism, fixed by the constitution," writes I. A. Kravets, "but also as a principle designed to effectively "work" in the doctrine and practice of limited government and constitutional communication in the sphere of fundamental rights and freedoms of the individual [10, p. 221-222]. This is the practical significance of the principle of proportionality (balancing test) – it is used by the bodies of judicial constitutional control in the process of resolving constitutional and legal disputes, allowing, first of all, to assess the legality (constitutionality) of the restrictions imposed on the fundamental rights and freedoms of the individual and to find a balance between competing constitutionally protected private and public interests.

This principle is also crucial for the application of legal liability, making it fair and individualized. "Many lawyers, as well as non-lawyers, associate the principle of proportionality primarily – and mainly - with criminal law and the proportionality of the criminal penalty to the crime. That a just punishment means a punishment proportional to the crime committed seems quite obvious" [11, p. 56]. It is also obvious that the application of this principle is not limited to criminal law. "The principle of proportionality is the basis for the legislative regulation and practical implementation of legal responsibility in all democratic countries" [12, p. 105]. Domestic legal science [13, p.486-507; 14, p. 56-57; 15, p. 193-195; 16, p. 106], legislation and judicial practice (primarily of the Constitutional and Supreme Courts) confirm the possibility of its application in administrative, civil, labor, tax, customs, criminal and other branches of law.

However, Russian constitutional law is rather an exception in this respect. The principle of justice of constitutional and legal responsibility and the principle of proportionality of the sanction resulting from it to the committed constitutional offense are not reflected in the Russian constitutional legislation and are very limited applied in judicial practice. In this regard, the purpose of this article is to study the theoretical foundations, the practice of the European Court of Human Rights, Russian and foreign constitutional courts to justify the possibility and necessity of applying proportionality as a fundamental principle of the constitutional and legal responsibility of elected officials in the process of its legislative regulation and law enforcement.

2. Proportionality as a principle of legal responsibility: theoretical foundations

The recognition of justice as a generally recognized principle of law allows us to say that proportionality has the same quality, since "the proportionality of the punishment for the committed offense is considered as a necessary condition for its justice" [13, p.502]. According to the Constitutional Court of the Russian Federation, "the legislator ... is obliged to observe the generally recognized principle of law, according to which the

punishment should be proportionate to the offense. Similarly, courts, other bodies and officials, when applying these rules in a particular case, must take into account that the sanction they choose must be adequate to the gravity of the act committed." At the same time, the principle under study, as well as other general principles of legal responsibility (such as the principles of legality, humanism, legal equality, legal certainty, the inevitability of responsibility, etc. [17, p. 246-295; 18, p. 21-33]), has "universal significance for all types of legal responsibility and essentially refers to the foundations of the constitutional legal order". Thus, the principle of proportionality is a universally recognized principle of law, has a constitutional nature and universal character, applies to all types of legal responsibility, imposing obligations on both legislative and law enforcement bodies.

From the constitutional and legal point of view, any sanction is a restriction of certain basic human rights (the right to freedom, to free labor, to freedom of movement, property rights, etc.), and therefore its legislative establishment and application must comply with the requirements of Part 3 of Article 55 of the Constitution of the Russian Federation and the legal positions of the Constitutional Court of the Russian Federation formulated on its basis. Restrictions on rights and freedoms imposed by the legislator (and, therefore, measures of legal liability): They can be justified only by the need to ensure the goals specified in part 3 of Article 55 of the Constitution of the Russian Federation; they must be reasonable, proportionate and adequate to the purposes for which they are established; they must meet the requirements of justice; they cannot be retroactive; they must not be excessive, but only necessary and strictly conditioned by the purposes of the restrictions. "State intervention ... should not be arbitrary and should not upset the balance between the requirements of the public interest and the necessary conditions for the protection of fundamental rights, which implies a reasonable proportionality between the means used and the goal pursued, so as to ensure a balance of constitutionally protected values and the person is not subjected to excessive encumbrance."

The application of the principle of proportionality makes it possible to individualize the punishment, taking into account various factual circumstances related to both the personality of the offender and the characteristics of the offense committed.

Therefore, the legislative regulation of legal liability measures should create the appropriate conditions for this. D. A. Lipinsky rightly notes that "the differentiation of liability is a legislative process. If, as a result of the impact of the regulatory function, the criteria for individualization are established, then, accordingly, the prerequisites for law enforcement individualization are created" [19, p. 52]. The specific duties of the legislator arising from the principle of proportionality of legal responsibility are formulated in a number of decisions of the Constitutional Court of the Russian Federation. These include: the obligation to legally differentiate punishments depending on the severity of the offense, the size and nature of the damage caused, the degree of guilt of the offender, and other significant factors; correlate a specific type of legal liability not only with the specified factors and circumstances, but also with the danger to the values protected by the law, thereby guaranteeing the adequacy of the resulting consequences to the harm that is caused as a result of the offense, preventing excessive state coercion and ensuring a balance between the rights of the citizen being held accountable and the public interest, which consists in protecting the individual, society and the state from illegal encroachments; do not impose excessive sanctions that are disproportionate to the nature and consequences of violations.

The implementation of the principle of proportionality by law enforcement agencies implies the need to take into account various criteria (factors) in the process of choosing a measure of legal responsibility, the list of which is determined differently by scientists [20, p.62-63; 21, p. 20; 22, p. 11]. Summarizing various points of view, the following criteria can be distinguished: the nature and severity of the offense, the degree of its public danger, the circumstances, causes and conditions of its commission, the consequences that the offense entailed or could entail, the amount and nature of the damage caused, as well as the circumstances

that characterize the offender himself – the form and degree of his guilt, family, property and financial situation, the consequences of punishment for the offender, circumstances that mitigate or aggravate responsibility and other significant factors that determine the individualization of the sanction. The Constitutional Court of the Russian Federation also suggests using these criteria of individualization in relation to various types of legal liability. The law enforcement officer is also obliged to establish a balance between the measure of responsibility applied to the violator and the amount of actual damage caused as a result of the offense. If the offense is insignificant, i.e. if there is no significant threat to the protected public relations, the court or other law enforcement body should have the opportunity to release the guilty person from legal liability.

3. The principle of proportionality of the constitutional and legal responsibility of elected officials: foreign experience of application

Since the competence of many foreign judicial bodies of constitutional control includes powers related to the constitutional and legal responsibility of officials with constitutional and legal status (heads of state, members of the government and parliament, judges of higher courts, etc.) [26, p. 117-137], individual constitutional courts have developed legal positions on the grounds, procedure, and legal consequences of impeachment, including the application of the principle of proportionality (proportionality) or its analogues.

For example, in two cases of impeachment of the President, the Constitutional Court of the Republic of Korea formulated a "standard of verification", stating that Article 65 of the Constitution of the Republic of Korea, which defines as a basis for impeachment violations of the Constitution and other laws in the course of performing their official duties, cannot be interpreted literally and cannot mean that any violations of the constitution and the law should automatically lead to the removal of the head of State from office. If each and every minor violation leads to the termination of powers, this will not

comply with the principle of proportionality. The court ruled that impeachment is possible only if there are serious violations of the law sufficient to justify the removal of an official. The question of whether the violation of the law was serious and the removal from office justified is decided on the basis of a balance between the degree of negative impact or harm caused by the violation of the law to the constitutional order and the effect of the removal of the person from office. At the same time, it should be borne in mind that the decision to remove the President from office "takes away" the democratic legitimacy delegated to the President by the voters, and can lead to political chaos resulting from a split between those who support the President and those who do not support him. Thus, the grounds for the removal of the President from office may occur in cases where the retention of the President in office is unacceptable from the point of view of the protection of the Constitution or the President has lost his qualifications in the management of state affairs, betraying the trust of the people [27, p.78-80; 28, p. 106].

Various aspects of the concept of impeachment of the President and members of the Seimas were revealed in the judicial practice of the Constitutional Court of the Republic of Lithuania. In its ruling of 11 May 1999, the Constitutional Court noted for the first time that impeachment is one of the self – defense measures of civil society. "By providing for a special procedure for removing senior officials from office or depriving them of their mandate, impeachment ensures public and democratic control over the activities of these officials and at the same time provides them with additional guarantees so that they can perform their duties on the basis of the law" [29, p.75].

In March 2004, the Constitutional Court of the Republic of Lithuania, in connection with the appeal of the Seimas, issued an opinion on the commission by the President of the Republic of Lithuania Rolandos Paksas of actions that grossly violated the Constitution. The following acts were classified as gross violations: granting of Lithuanian citizenship to Yuri Borisov for financial and other substantial support; informing Yuri Borisov that law enforcement agencies were conducting an investigation against him and listening to telephone

conversations, giving instructions on the transfer of the company's shares to the President's proxies. On April 6, 2004, President R. Paksas was impeached by the Sejm. According to the Constitutional Court of the Republic of Lithuania, which is similar to the legal position of the Constitutional Court of the Republic of Korea, not every violation of the Constitution itself is a gross violation. In particular, when making a decision on a gross violation of the Constitution by the President of the Republic, in each case it is necessary to assess the content of specific actions, as well as the circumstances of their commission. The actions of the President should be qualified as a gross violation of the Constitution in cases where the President exercised his powers in bad faith, acted contrary to the interests of the nation and the state, but in his own personal interests, the interests of individuals or groups of persons, acted with a purpose and in interests incompatible with the Constitution and laws, public interests, or knowingly failed to perform the duties established for the President of the Republic by the Constitution and laws.

These provisions of the constitutional doctrine also apply *mutatis mutandis* to legal situations in which the question of whether the actions of a member of the Sejm constitute a gross violation of the Constitution is decided. The Constitutional Court of the Republic of Lithuania emphasizes that when deciding whether a member of the Seimas committed a gross violation of the Constitution by his actions, in each specific case it is necessary to assess the nature of the actions, their content, the circumstances of their commission, time and place, consistency, repeatability, duration, behavior of the person after the commission of these actions and other significant circumstances.

The legal positions of foreign constitutional courts undoubtedly echo the democratic practice of the Council of Europe bodies. In particular, the European Commission for Democracy through Law (Venice Commission) noted in a number of reports and opinions that "the removal of an elected representative from office is an exceptional measure that should only be applied in cases of serious violations", and that "all procedural

guarantees, including the participation of the court, should be provided".

The practice of the European Court of Human Rights concerning the application of the principle of proportionality in the process of holding elected officials accountable is based on the interpretation of article 3 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, which guarantees the right to free elections. It should be clarified that this article establishes the obligation of States to hold free and periodic elections to the legislative bodies of the country, so the precedents of the European Court of Justice, developed on the basis of this article, relate to electoral rights related to the election of members of parliaments, excluding the level of local self-government. The basis for applying these precedents in cases of constitutional and legal responsibility is the legal position that "it is not enough for a person to have the right to stand for election; he should also have the right to sit as a member of Parliament as soon as he is elected by the people"; "the rights guaranteed by article 3 of Protocol No. 1, which are inherent in the concept of a truly democratic system, would be illusory if an elected official or his constituents could be arbitrarily deprived of them at any time". The assessment of the legality of early termination of powers, as well as other cases of state interference in the implementation of human rights, is carried out by the European Court of Justice by applying the proportionality test, which includes a step-by-step check of whether the interference was "provided for by law", whether it pursued any legitimate purpose, whether it was "necessary in a democratic society", whether it was "proportionate to the goal pursued".

The quality, certainty and predictability of the legislative act that is the legal basis for the early termination of the powers of an elected official is the subject of evaluation at the first stage of the application of this test. For example, in the case of *Lykourazos v. Greece*, the applicant complained of a violation of his right under Article 3 of Protocol No. 1 to the Convention under Greek constitutional law. The applicant, who was elected as a member of Parliament on 9 April 2000, was deprived of his status by the Special Supreme Court of Greece on the basis of art. 57 of the Constitution, amended in

2001. The early termination of his powers was due to his employment as a lawyer on a permanent basis. The revised article 57 of the Greek Constitution provided that the duties of a member of Parliament were incompatible with any professional activity, although it allowed for legislative exceptions. However, this legislation was never adopted. In the present case, the applicant mainly referred to the unpredictability of the legislation and the violation of the principle of "legitimate expectation" – at the time of his election, there were no restrictions on professional activities; the constitutional amendments were applied to a member of Parliament elected before their entry into force, and the grounds for disqualification were absolutely unlimited by the legislator.

In the Court's view, the rights guaranteed by Article 3 of Protocol No. 1 are crucial for establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law. If the will of the people is expressed freely and on a democratic basis, no subsequent amendment to the organization of the electoral system can call this choice into question, unless there are compelling reasons for a democratic order. In this case, neither the applicant, as a candidate, nor his constituents could have imagined that the applicant's election as a member of Parliament would be called into question and found to be erroneous while his term of office was still in progress, because of the disqualification resulting from the parallel exercise of professional activity. The Court also noted that the Government had not put forward any grounds of urgent importance to the democratic order that could justify the immediate application of absolute disqualification. The Court concluded that this situation violated the very essence of the rights guaranteed by article 3 of Protocol No. 1.

In the case of *Zhdanok v. Latvia*, the applicant, who had previously been a member of the banned Communist Party of Latvia and had been involved in the coup d'etat in 1991, was deprived of her status as a deputy of the Riga City Duma on the basis of a law prohibiting persons who retained membership in the Communist Party after its ban from being elected to the Latvian

authorities. The application of the principle of proportionality in this case, on the contrary, allowed the European Court of Human Rights to conclude that the State did not violate article 3 of Protocol No. 1, since, although such a restriction is practically impossible to allow in a certain political system – as, for example, in countries where democratic institutions were established several decades or centuries ago, – it can be considered acceptable in Latvia, taking into account the historical and political context that led to its adoption, and the threat posed to the new democratic legal order by the resurrection of ideas that create the danger of restoring a totalitarian regime. The Court recognized that the national authorities of Latvia are better able to assess the difficulties that arise in establishing and maintaining a democratic rule of law. At the same time, the Latvian Parliament should ensure constant monitoring of the restriction under consideration in order to stop its application as soon as possible.

Of great importance in the practice of the European Court of Human Rights are the precedents devoted to such a measure of constitutional and legal responsibility as a ban on being elected to government bodies for persons who previously held elected positions. One of the most significant decisions on this issue is the decision in the case "*Paksas v. Lithuania*" of 6 January 2011, in which the applicant was a former President of Lithuania, who was removed from office by the Parliament on the basis of the decision of the Constitutional Court, the analysis of which was presented above. In 2004, the Lithuanian Parliament adopted amendments to the laws on parliamentary elections and on presidential elections, according to which any person removed from office by impeachment could not be registered as a candidate for the presidential election and could not become a member of Parliament. Recognizing that the restriction imposed was in accordance with the law and pursued the legitimate aim of protecting the democratic order, the Court assessed it as disproportionate due to the fact that it was permanent, unlimited in duration and therefore did not comply with Article 3 of Protocol No. 1 to the Convention. In a number of "*Turkish cases*", the European Court has assessed the proportionality of the loss of a parliamentary

mandate by persons belonging to political parties that were liquidated by the Turkish Constitutional Court. Thus, in the case "Selim Sadak and others v. Turkey", the Court considered a violation of the provisions of the Convention that the members of the Party of Democracy (Demokrasi partisi) were automatically deprived of their parliamentary mandate. This type of sanction was applied not for any political activity of the applicants, but as an automatic result of the dissolution of the party in which they were members. The measure taken by the State in this case was excessively harsh: the Party of Democracy was dissolved for good, and the immediate consequence of the dissolution was that the applicants who were members of this party were banned from engaging in political activities, and they ceased to exercise their parliamentary powers. Therefore, the imposed sanction cannot be considered a measure proportional to any legitimate goal pursued by the State. The measure taken by the State in this case is incompatible with the very essence of the right to be elected and to hold parliamentary office, which the applicants are entitled to by virtue of Article 3 of Protocol No. 1 to the Convention, and it violated the free expression of the will of the voters who voted for them in the election.

In general, from the content of the above decisions, we can conclude that the European Court of Human Rights does not exclude the establishment of prohibitions and restrictions for elected officials and the possibility of early termination of powers in connection with their violation. The deprivation of the status of an elected official in any case affects the right to free elections guaranteed by Article 3 of Protocol No. 1 to the Convention, and in certain circumstances may constitute a violation of this right. One of the most important criteria that the European Court uses when considering such cases is to assess whether the actions of the public authorities do not constitute arbitrariness or lack of proportionality of the measures taken.

Foreign experience confirms the need to apply the principle of proportionality (proportionality) in the process of removing from office persons elected by citizens. Since the early termination of their powers is essentially an

interference of the State in the exercise of electoral rights, it should be applied as an exceptional, extreme measure of constitutional and legal responsibility. The basis for such liability may not be any, but only a serious, gross violation of the Constitution and the laws of the State, indicating guilty behavior that has caused damage to protected constitutional values or creates a threat of such damage and therefore is incompatible with the further exercise of public legal duties and powers.

4. Problems of Russian constitutional and legal regulation and law enforcement

In contrast to the judicial practice of foreign countries, as well as in contrast to the norms of Russian industry legislation that require law enforcement agencies to take into account the principle of proportionality in the process of implementing measures of legal responsibility, in Russian constitutional law, this principle is only at the stage of its formation. In particular, the Constitutional Court of the Russian Federation stated in one of its decisions on the constitutional and legal responsibility of local self-government bodies that "early termination of powers-provided that it is accompanied by the simultaneous appointment of new elections and as a form of responsibility commensurate with the degree of violation committed and the significance of the protected interests – in itself cannot be considered as unlawful interference of state authorities in the activities of local self-government. However, a number of problems of legal regulation and law enforcement hinder the active implementation of this principle in cases of constitutional and legal responsibility.

One of the significant problems is that judicial bodies are often excluded from the process of implementing constitutional and legal responsibility in relation to elected officials (heads of municipalities, senior officials of the subjects of the Russian Federation, deputies of legislative (representative) authorities). The courts do not participate in the application of constitutional and legal sanctions entailing early termination of powers, and even in establishing the fact that a person has committed a constitutional and legal tort as a material basis for the application of the

sanction. In turn, the bodies and officials with such powers perform a kind of "quasi-judicial" functions, which is contrary to the principle of separation of powers. This issue is often raised in publications on constitutional and legal responsibility [24, p. 228; 30, p. 10].

This problem has been repeatedly brought to the attention of the applicants who sent appeals to the Constitutional Court of the Russian Federation. Thus, the deputies of the State Duma in their request to verify the constitutionality of a number of provisions of the Federal Law "On the Status of a Member of the Federation Council and the Status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation" argued that the contested legislative provisions, which do not require preliminary judicial control in order to establish the fact that a deputy of the State Duma performs activities incompatible with the deputy status, allow the State Duma to terminate the powers of a deputy out of court, and by a simple majority of votes, and in the conditions of the dominance of one parliamentary faction, they create the possibility of making an unjustified decision, thereby violating a number of provisions of the Constitution of the Russian Federation. Citizens who challenged the provisions of the provisions of the Federal Law "On the General Principles of the Organization of Local Self-Government in the Russian Federation" on the removal of the head of a municipality from office, argued that these rules, as not providing as a basis for the removal of the head of a municipality elected by the population in municipal elections on the basis of universal equal and direct suffrage by secret ballot, his specific illegal decisions or actions (inaction), confirmed in court, allow it to be arbitrarily removed from office, thereby violating the rights guaranteed by the articles 2, 3, 12, 13, 32, 43, 46 (parts 1 and 2), 130-133 of the Constitution of the Russian Federation. The Constitutional Court of the Russian Federation considered these norms to be in accordance with the Constitution, stating, *inter alia*, that subsequent judicial control provides appropriate guarantees.

It is obvious that the application of the principle of proportionality in the process of

implementing constitutional legal responsibility should be the prerogative of the judicial authorities, "able" to carefully assess all the circumstances of the committed constitutional offense on the basis of the principles of independence and impartiality in the absence of a political context. This idea can also be traced in the documents of the European Commission for Democracy through Law, which, for example, in relation to the responsibility of members of municipal councils and heads of municipalities, emphasizes that "if it is necessary to check possible violations on the part of a member of the council, the decision to terminate his powers cannot be taken by the local council. The intervention of the court is a necessary element of the system... This would ensure that local elected representatives can freely perform their duties in accordance with the European Charter." "In cases where the reasons for revocation are such as conflict of interest, illegal or criminal acts, abuse of power or corruption, as a rule, such issues should be resolved by the court in accordance with the current legislation." "Removal from office involves removal based on the results of legal proceedings initiated against elected representatives on the grounds that they have committed an illegal or criminal act. Unlike the recall, the removal from office has no political implications (at least, it should not have)."

At the same time, the bodies and officials that are instances of the implementation of constitutional and legal responsibility in the Russian Federation do not apply the principle of proportionality, limiting themselves to a formal assessment of the committed act, often guided not by legal, but by political motives.

The second problem of legal regulation is related to the construction of the components of constitutional offenses in such a way that it does not allow taking into account in the process of law enforcement the seriousness of the violation of the Constitution and legislation, the repetition, regularity, severity or insignificance of the committed tort, the degree of guilt of the offender, to assess the consequences of the tort for society and the state, the severity of the damage caused by the tort to constitutional values and other factors that can individualize constitutional and legal responsibility. The lack of differentiated sanctions

does not contribute to this. In some cases, violations of the rights of elected officials are caused by incorrect or insufficiently clearly formulated constitutional torts. In the absence of legally established criteria for "improper exercise of powers" as a basis for early termination of the powers of the highest official of the subject of the Russian Federation or "inefficiency of the activities of the head of a municipal formation" as a basis for his removal from office, it is impossible not only to apply the principle of proportionality, but also to provide them with the necessary guarantees for retaining elected office.

The third problem is caused by the fact that the courts of general jurisdiction, exercising subsequent control over the legality of early termination of powers, do not apply the principle of proportionality, do not refer to it when making court decisions on constitutional and legal responsibility.

The Constitutional Court of the Russian Federation drew attention to the need to take into account the specific circumstances of the case during the procedure for depriving deputies of their mandate in the case, the reason for which was the request of a group of State Duma deputies challenging the provisions of the Federal Law "On the Status of a Member of the Federation Council and the Status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation", according to which the powers of a member of the Federation Council or a deputy of the State Duma are terminated prematurely, including in cases of teaching, scientific and other creative activities, which is financed exclusively at the expense of foreign states, international and foreign organizations, foreign citizens and stateless persons. According to the applicants, the contested legal provisions, among other things, do not meet the constitutional criteria for the proportionality of possible restrictions on rights and freedoms. In resolving this case, the Constitutional Court of the Russian Federation pointed out that the contested norm is aimed at preventing real and potential conflicts of interests of a foreign state or other foreign entity that finances the relevant activities, and the interests of Russia when the State Duma makes the most important state decisions, i.e.

pursues a constitutionally justified goal – to ensure the security of the state. Therefore, when making a decision to engage in teaching, scientific or other creative activities, a deputy of the State Duma is obliged to exercise reasonable restraint and caution and pay close attention to issues related to its financing. At the same time, in a situation where a deputy, due to objective circumstances, could not know that the financing of such his activities is made exclusively from foreign sources, the negative consequences of the termination of his deputy powers would be contrary to the principles of justice and proportionality and thus violate the guarantees of the status of a deputy of the State Duma arising from the constitutional provisions.

As can be seen from the above examples, the practice of the Constitutional Court of the Russian Federation on the application of the principle of proportionality (proportionality) in resolving cases on the application of constitutional and legal responsibility of elected officials is only at the initial stage of its formation. In fact, the decisions of the Russian judicial body of constitutional control contain only "hints" about the possibility of applying this principle. Therefore, courts of general jurisdiction usually do not take into account the specific circumstances of the case in the process of revoking the powers of an elected official, reducing the resolution of the case to an assessment of the legality of the decision taken from a procedural point of view and the formal compliance of the committed act with the constitutional tort described in the law.

5. Conclusions

The implementation of the ideas of the rule of law and justice requires that the basis for the application of the principle of proportionality is legislative regulation. The legislative body, when establishing measures of constitutional and legal responsibility for elected officials, must take into account their special political and legal status, as well as the fact that the termination of their powers invariably affects the principle of democracy and the closely related right to vote and be elected. Therefore, the basis for such liability may not be any, but only a serious, gross violation of the Constitution and laws, indicating guilty behavior that

has caused damage to protected constitutional values or creates a threat of such damage and therefore is incompatible with the further exercise of public legal duties and powers. The constitutions of constitutional torts should be formulated with a certain degree of abstraction in such a way as to create conditions for the law enforcement officer to take into account the repetition, systematicity, duration, severity or insignificance of the committed tort and other factors that can individualize constitutional and legal responsibility. In addition, the constitutional and legal sanctions themselves must be differentiated.

A legislative change in the role of the court in the process of implementing constitutional and legal responsibility is required. As practice shows, subsequent judicial control does not create adequate guarantees against unjustified deprivation of the powers of elected officials. Ideally, the courts should have the power to

impose sanctions of constitutional liability or, at the very least, to establish that an official has committed a constitutional tort.

In turn, judicial and other bodies, relying on the principle of proportionality, should apply early termination of powers as an exceptional, extreme measure of constitutional and legal responsibility, taking into account the nature and severity of the committed constitutional offense, the reasons, conditions and consequences of its commission, the degree of guilt of the offender, the consequences of sanctions for the further exercise of a person's constitutional rights and freedoms in the political and legal sphere, and other important circumstances, each time assessing the fact of the violation., to what extent such a measure is proportionate to the constitutional offense committed, and whether it is strictly necessary to protect the protected constitutional values.

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