

THE CONSTITUTIONAL CONFLICT ABOUT CONFIDENCE TO THE GOVERNMENT OF THE RUSSIAN FEDERATION IN THE CONTEXT OF CONSTITUTIONAL REFORM 2020

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The subject. The article is devoted to constitutional conflict about distrust to the Government of the Russian Federation and constitutional norms that regulated such conflict and were changed during the constitutional reform in 2020. The author analyzes such transformation in legal regulation and try to find causes for this changes. And also the author provides a constitutional-conflict diagnostic of new constitutional norms to identify conflictogens.

Purposes of the paper are to find a legal reasons for transformation of constitutional norms about distrust to the Russian Government and to prevent an appearance in future long term of serious constitutional conflict by finding its conflictogens.

The methodology of the study includes a new methodology of a constitutional legal science – constitutional-conflict diagnostic. The constitutional-conflict diagnostic is a system of consistently applied scientific methods, legal principles and presumptions aimed at obtaining information about the constitutional conflict and the constitutional-legal methods of its prevention and resolution. The constitutional-conflict diagnostic includes group of methods: dialectical and systemic methods, as well as structural and functional method; a group of private-scientific methods (historical, methods of formal logic: analysis, comparison). The formal-legal, comparative legal methods and a method of modeling of legal consequences are also used.

The main results and scope of their application. The constitutional reform of 2020 year complicated the procedure for resolving the constitutional conflict of trust to the government and introduced a subject-status misbalance in part 4 of Article 117 of the Russian Constitution, expressed in the unmotivated and unjustified possibility of the president to had no activities for resolving such conflict.

Legal modeling of the simultaneous implementation of the provisions of parts 3 and 4 of Article 117 of the Russian Constitution revealed the possibility of alternating procedures for expressing trust and denying in confidence to the government, which was absent before the constitutional reform.

From a formal legal point of view and a conflictological approach, the amendments to Part 4 of Article 117 of the Constitution of the Russian Federation cannot be explained, and they are a certain «opportunistic maneuver» to the Russian Parliament.

1. Introduction.

The question about trust (distrust) to the government has always become a subject of legal research by constitutional scholars [1, p. 507-510; 2, p. 559; 3, p.529; 4, p. 114; 5, p. 137-140; 6, p. 43-45; 7, p. 99-100; 8, p. 68]. In the legal literature this institute also appears as a vote of no confidence, including in the legislation of foreign countries [9, p. 94, 112; 10, p. 268; 11, p. 25, 36; 12, p. 268, 276; 13, p. 98].

Moreover, the question about who will exercise control over the activities of the Government of the Russian Federation – the president or the highest legislative body of the country, was main in the development of the draft of the Constitution of the Russian Federation [14, p.11].

Constitutional norms about trust (no confidence) to the government have been the subject of discussion since the work on the draft Constitution of the Russian Federation in 1993.

The constitutional reform of 2020 has made its own correctives to Article 117 of the Constitution of the Russian Federation, which regulates these issues.

In this article, the constitutional conflict diagnostics of these amendments will be carried out in order to assess their «law enforcement adequacy» for the purpose of resolving the constitutional conflict of confidence to the government.

2. The question about trust to the Government in the context of the checks and balances mechanism.

The institution of expressing distrust to the government is traditionally considered in the science of constitutional law in the context of the configuration of the constitutional principle of separation of powers and the mechanism of checks and balances [15, p. 6, 21; 16, p. 18, 27; 17, p. 29-31; 18, p. 18].

As Yu.A. Tikhomirov notes, the existence of checks and balances system is a necessary mechanism for «legal resolution of conflicts between the authorities» [19, p.205]. The system of checks and balances is a manifestation of the phenomenon of «separation of powers», which

consists in the creation of a state system that allows to minimize possible errors in management, one-sided approach to the issues being solved [20, p. 92].

The specificity of this mechanism, in contrast to the measures of constitutional-legal coercion, is that it is used to resolve a certain type of constitutional conflict – the confrontation of the branches of state power, which also determines the specific subject composition of such conflict.

In practice, many countries do not make a strict division of powers and choose a compromise. In the UK, for example, the powers of Parliament, the Government, and the courts are closely binded. The interaction of the executive and legislative branches is regarded as a «close alliance», which Walter Baggot called «the effective secret of the English Constitution» [21, pp. 67-68].

The mechanism of checks and balances as an integral part of the principle of separation of powers was «registered» in the constitutions of most democratic countries, and each of them had their own special «recipe» for the constitutional-legal balance of the various branches of government.

For example, article 6 of the Constitution of the Republic of Belarus maintains that «... State power in the Republic of Belarus is exercised on the basis of its division into legislative, executive and judicial. State bodies are independent within their powers: they interact with each other, restrain and balance each other.»

An example of the mechanism of checks and balances in the Finnish constitutional law is that the parliament has the power to initiate a question about confidence to the State Council or the Minister [22, p. 395].

In general, in many of the main laws of various countries, adopted after the 90s of the twentieth century, the separation of powers was directly enshrined in constitutional norms [23, p.113]. As B.S. Krylov notes, in the constitutions of all countries, even those in which the separation of powers is not theoretically recognized (Great Britain and some countries), it actually exists [24].

It is obvious, that the exercise of state power is associated with the dynamic development of interaction forms between various structures, including the emergence of conflicts between them -

it is potential conflict that contributes to the principle of separation of powers, achieving its goals; nevertheless, in each specific case, disputes that arise must be resolved, and in the future the system must function and taking into account the developed solutions [25].

Thus, the issue of the constitutional balance between the executive and legislative branches of government is one of the key issues for constitutional regulation. In this regard, the constitutional reform of 2020, aimed at improving the organization of public power in the Russian Federation, brought new aspects to the well-known «portrait» of the constitutional conflict about trust to the Government of the Russian Federation.

We should analyze the structure of the constitutional-legal conflict about trust to the government. The parties to such conflict are:

1) The Government of the Russian Federation;

2) The State Duma of the Russian Federation.

The object of the conflict is the state power as a constitutional value, and the trust to the government for its implementation by a representative body, that expresses the interests of the sole bearer of sovereignty – the multinational people of Russia.

The subject of the conflict is a specific manifestation of the state powers of the government. For example, the introduction of a law on the budget for consideration in the State Duma of the Russian Federation, the implementation of a certain reform, etc.

The President of the Russian Federation is the actor, which is capable of resolving this conflict by virtue of his constitutional powers. The presence of such an actor is not accidental, since it is placed «outside the brackets» of the principle of separation of powers, on the levers of balance of which this conflict is committed.

From the point of view of the historical approach, questions about the lack of confidence to the government arose in the State Duma due to the following circumstances:

1) October 27, 1994 - after Viktor Chernomyrdin's speech with a report about the economic situation in the country;

2) June 21, 1995 - the tragedy in Budyonnovsk, for which the deputies blamed the heads of power ministries;

3) October 15, 1997 - the government's implementation of reforms, disagreeing with their pace (deputies considered them «criminally slow»);

4) March 14, 2001 - the question of no confidence was initiated by the Communist Party, justifying it by the fact that «because of the current course, the country is heading for a tragedy»;

5) January 21, 2003 - the failure of the reform, according to deputies;

6) June 18, 2003 - low economic growth and «anti-social policy of the cabinet»;

7) September 20, 2004 - the reason was an omission, which, according to the deputies, resulted in numerous civilian casualties in Beslan.

3. The category of trust in constitutional law.

The category of «trust» is not genetically constitutional, and has a sociological and psychological nature. Thus, the role of trust as a condition for the formation of social communities and a factor of their activity effectiveness draws attention to F. Fukuyama [26, pp. 149-161].

In state-forming issues, the role of trust cannot be underestimated. As V.N. Kudryavtsev noted, among the factors influencing the course and results of reforms in the economy, political life or national relations, a huge, incomparable significance belongs to the socio-psychological phenomenon, which can be defined as trust in the state [27, p. 362].

For constitutional law, the category of trust is particularly significant: it is denied, it is lost, its existence and questioned, it is finally granted. You can lose the trust of the president, the State Duma can be asked for trust to the Government, the State Duma can express distrust to the Government, the electorate in elections has confidence to the candidate, the principle of the rule of law includes maintaining the trust of citizens in the law and the actions of the state, the governor can be expressed distrust by the legislative (representative) body of state power of the subject of the Russian Federation, the Russian Federation creates conditions for mutual trust between the state and society, and so on.

In the Constitution of the Russian Federation the word «trust» occurs 7 times, in connection with this fact the science of constitutional law could not pay attention to this category.

For the first time, the categories of «trust» and «distrust» in law were systematically studied by A.N. Kokotov in his monograph «Trust. Distrust. Law.» from the standpoint of the socio-psychological type of legal understanding [28]. As A.N. Kokotov notes, it is important to see objectified traces of trust during analyzing social processes. Almost all public administration institutions need to be viewed from this point. Trust is not so much a result as a process, and it is forced to be permanent. Thus, the President, who received the mandate of citizens, has a trust during elections, and he must constantly justify it [28, p. 28-29].

This is confirmed by the conclusions of V.N. Kudryavtsev, that confidence to the government, for example, was undermined by the events on the exchange of money, held in January 1991, when everyone remembered the statements of a number of senior officials made a couple of months before that there would be no exchange [27, p. 364].

The presence of the phenomenon of trust in constitutional law is due to the general role of law as a social regulator, as a form of public relations that reflects or incorporates other social regulators.

According to E.Y. Dugin, trust can be considered not only as a systemic property of information and communication processes, but also as a specific power that determines the nature

of the relationship between management structures and society [29, p. 60].

N.A. Arapov pays attention to the special role of trust in constitutional law, noting that the phenomenon of trust and the idea of maintaining the trust of legal entities expressed in a well-known principle of constitutional law, perhaps not so much because of the specific legal status of this sphere, but because this sphere itself and its provisions are a continuation of real relations and the states of legal entities expressed in them [30, p. 173].

When the State Duma of the Russian Federation answers the question of trust to the government, she decides the question of whether there is faith (in an objective sense) in the measures, taken by the Government of the Russian Federation, state policy in general, in the integrity, reasonableness and objectivity of the actions of the Government and their implementation exclusively in the interests of the multinational people of Russia.

4. The comparative analysis of certain provisions of Article 117 of the Constitution of the Russian Federation before and after the constitutional reform.

In the aspect of trust and distrust to the government, we suggest to consider the new version of Article 117 of the Constitution of the Russian Federation and compare it with the previous version by means of the table 1 below. Next we will compare the versions of Part 4 of Article 117 of the Russian Constitution before and after the constitutional reform

Table 1

Comparative table of revisions of Part 3 Article 117 of the Constitution of the Russian Federation before and after the constitutional reform of 2020

The version of Part 3 Article 117 of the Constitution of the Russian Federation before the constitutional reform of 2020	The version of Part 3 Article 117 of the Constitution of the Russian Federation after the constitutional reform of 2020
<p>The State Duma may express no confidence to the Government of the Russian Federation.</p> <p>After the State Duma expresses no confidence to the Government of the Russian Federation, the President of the Russian Federation has the right to announce the resignation of the Government of the Russian Federation or to disagree with the decision of the State Duma</p> <p>If the State Duma repeatedly expresses no confidence to the Government of the Russian Federation within three months, the President of the Russian Federation announces the resignation of the Government or disbands the State Duma.</p>	<p>The State Duma may express no confidence to the Government of the Russian Federation.</p> <p>After the State Duma expresses no confidence to the Government of the Russian Federation, the President of the Russian Federation has the right to announce the resignation of the Government of the Russian Federation or to disagree with the decision of the State Duma.</p> <p>If the State Duma repeatedly expresses no confidence to the Government of the Russian Federation within three months, the President of the Russian Federation announces the resignation of the Government or disbands the State Duma and calls new elections.</p>

Table 2

**Comparative table of revisions of Part 4 Article 117 of the Constitution of the Russian Federation
before and after the constitutional reform of 2020**

The version of Part 4 Article 117 of the Constitution of the Russian Federation before the constitutional reform of 2020	The version of Part 4 Article 117 of the Constitution of the Russian Federation after the constitutional reform of 2020
The Chairman of the Government of the Russian Federation may raise the question of confidence to the Government of the Russian Federation before the State Duma.	The Chairman of the Government of the Russian Federation has the right to put before the State Duma a question of confidence to the Government of the Russian Federation, which is subject to consideration within seven days.
If the State Duma refuses to trust,	If the State Duma refuses to trust to the Government of the Russian Federation,
Within seven days, the President decides on the resignation of the Government of the Russian Federation or on the disbandment of the State Duma and calls new elections.	The President of the Russian Federation has the right to decide within seven days on the resignation of the Government of the Russian Federation or on the disbandment of the State Duma and calls new elections.
	If the Government of the Russian Federation repeatedly raises the question of confidence before the State Duma within three months,
	and the State Duma will refuse to trust to the Government of the Russian Federation,
	The President decides on the resignation of the Government or on the disbandment of the State Duma and calls new elections.

As S.A. Avakian notes, the provisions of Part 4 Article 117 of the Constitution of the Russian Federation (in the pre-reform version) strengthened the unity of the President and the Government and weakened the position of the State Duma [31]. It is necessary to agree with this statement, taking into account the constitutional connection of the president and the government.

T.Ya. Khabrieva points out, when commenting on the previous version of Part 4 Article 117 of the Constitution of the Russian Federation, that in the entire history of the modern Constitution of the Russian Federation, there was only one case when the Prime Minister initiated the issue of trust to the Government. This was done on June 22, 1995. Prime Minister V.S. Chernomyrdin, in response to the Russian State Duma's expressed distrust to the Government and disagreement with the President's decision the day before. Thus, the Government tried to resolve the parliamentary-governmental crisis before the ending the three-month period, provided for in part 3 Article 117. Based on the position of the President of the Russian Federation, the refusal to trust to the Government meant the disbandment of the State

Duma. The Prime Minister proposed a compromise: the Duma repeatedly puts to the vote the question of expressing no confidence to the Government, and if the majority for no confidence is not obtained - the Prime Minister withdraws his question of confidence to the Government of the Russian Federation. On July 1, the motion of no confidence did not pass, and the Prime Minister withdrew his submission [32].

How this situation is described by an eyewitness of those events, S.M. Shakhrai, in his «unwritten memoirs» about how the Chairman of the Government of the Russian Federation, V.S. Chernomyrdin, raised the question of self-confidence before the State Duma of the Russian Federation and thereby saved on early elections [14, p. 23-24].

In this episode, the State Duma of the Russian Federation practically «blackmailed» the Government by expressing no confidence to it, putting this issue on almost every agenda of its meeting, but postponing its actual consideration, in connection with which the Government of the Russian Federation could not carry out normal current activities in such circumstances.

To resolve the current situation, the Government of the Russian Federation and its

Chairman, in particular, took a risk and put the question of trust to the Government before the State Duma, counting on the fact that the State Duma will no longer be able to postpone this issue.

In accordance with Part 4 Article 117 of the Constitution of the Russian Federation, if the State Duma refuses confidence, the President within seven days decides on the resignation of the Government of the Russian Federation or on the disbandment of the State Duma and calls new elections. Thus, the State Duma was forced to consider within 7 days the question of confidence to the Government of the Russian Federation.

In this example, the conflictogen was Article 10 of the Constitution of the Russian Federation, which establishes the principle of separation of powers. It was from this division that the contradictions of the highest legislative and executive bodies of state power in the country in this example arose.

The State Duma and the Government have already begun to oppose the constitutional value of state power and the scope of competence.

In view of the threat of disbandment of the State Duma in the above-described situation, the following rule was fixed in the Regulations of the State Duma of the Russian Federation (part 2 Article 153): if the Chairman of the Government raises the question of confidence to the Government before the State Duma during the period of submission or consideration by the deputies of the State Duma of a proposal to express no confidence to the Government, the proposal of the deputies of the State Duma to express no confidence to the Government is considered first. If the State Duma passes a resolution of no confidence and the President of the Russian Federation declares that he does not agree with the decision of the State Duma, the submission of the Prime Minister of the Russian Federation is considered after three months from the date of its submission.

However, this «legal trick» was justified when the Constitution of the Russian Federation, in part 4 Article 117 did not set a deadline for the State Duma to consider the question of confidence, raised by the Prime Minister of the Russian Federation.

We suggest once again refer to the above comparative table of amendments and compare the previous and new versions of Part 4 Article 117 of the Constitution of the Russian Federation - now there is a seven-day period, during which the State Duma should consider the issue of confidence in the government.

Consequently, the submission of the Prime Minister of the Russian Federation on the issue of confidence, even by virtue of Article 153 of the Regulations of the State Duma, cannot be considered after three months from the date of its introduction. In this connection, amendments to the Regulations of the State Duma are required.

In this view, the question arises about the delaying the resolution of this constitutional conflict, that has arisen between the legislative and executive authorities and introducing new stages into it, which can be designated as «two stages» of the question of trust to the Government of the Russian Federation.

For what purpose, was it necessary to create even the possibility of such a protracted and serious conflict?

After all, in accordance with the earlier version of Part 4 Article 117 of the Constitution of the Russian Federation, it was enough for the Prime Minister of the Russian Federation to raise the question of confidence before the State Duma once, followed by the duty to resolve this obvious conflict.

The historical fact that the Government of the Russian Federation has only once resorted to such a statement of the question, once again proves that the executive power is not inclined to abuse this procedure, while in the history of the State Duma of the Russian Federation there was a period when, according to S.M. Shakhrai, «the question of distrust was raised almost every day, kept on the hook» [14, p. 23] - in this case, the State Duma, indeed, requires these «two stages» for three months. Where the «first stage» may have a political or populist background, and the second case of expressing no confidence will already have a special legal significance, threatening to disband the representative body.

The result of the constitutional amendments was the complication of the procedure for refusing confidence to the Government of the Russian Federation in the case when the Government itself is

the initiator of raising the question of confidence before the State Duma. In particular, the obligation of the President to resolve this constitutional conflict arises only if the refusal of confidence is repeated, if the issue was raised by the Government again within three months.

We can only assume, that the legislator in this case sought uniformity with the provisions of Part 3 Article 117 of the Constitution of the Russian Federation and the situation, when the State Duma twice expresses no confidence to the Government by her own initiative.

We would like to cancel another interesting «zigzag» of the constitutional reform.

Speaking in January 2020 at the Kutafin Moscow State Law University, N.S. Bondar noted that the proposed constitutional amendments do not contain fundamental innovations that would not have been developed earlier by the practice of the Constitutional Court of the Russian Federation, and their inclusion in the text of the Constitution is natural and justified. Indeed, the practice of the Constitutional Court of the Russian Federation formed the basis for a number of constitutional amendments, but this practice has been transformed, sometimes in a very strange way.

For example, in the Decision of the Constitutional Court of the Russian Federation of December 11, 1998 № 28-P «On the case on the interpretation of the Provisions of Part 4 of Article 111 of the Constitution of the Russian Federation», the court concluded that the President of the Russian Federation is obliged to disband the State Duma in the event of a three-fold rejection of the submitted candidates of the Chairman of the Russian Government. However, in the current version of Part 4 Article 111 of the Constitution of the Russian Federation, as amended, this became the right of the President. Why this happened – scientists can only guess.

Considering the question of the constitutional and legal significance of Part 4 Article 111 of the Constitution of the Russian Federation in 1998, the Constitutional Court ruled that after the three-time rejection of the candidates, submitted by the President of the Prime Minister, - the State Duma is subject to disbandment. Such a constitutional method of resolving the

disagreement, that has arisen between the President of the Russian Federation and the State Duma, using the mechanism of free elections, corresponds to the foundations of the constitutional system of the Russian Federation as a democratic state, governed by the rule of law.

Despite this, now the President of the Russian Federation has the right not to disband the State Duma in this case.

Thus, the rights of the President to resolve conflicts between the executive and legislative branches of power during the constitutional reform were expanded, which is controversial for the following reasons.

First, the highest state authorities of the country are involved in the constitutional conflict about trust to the government, which indicates the importance of situation and the need for its early resolution.

Secondly, in the history of Russia, it was the confrontation between the legislative and executive authorities, that led to the constitutional crisis of 1993 with the use of the armed forces.

Third, the judicial branch of state power does not participate in the resolution of this conflict, and therefore the President of the Russian Federation is, in fact, the only subject of constitutional law, that can resolve this conflict in a system of checks and balances. Therefore, this actor cannot evade its resolution, since it is the only authorized person, who can exert a managerial influence on the course of this conflict.

In this context, we can remember an A.A. Belkin's scientific concept about textual and legal conflicts in the Constitution of the Russian Federation, which he defined as a certain group of legal conflicts, that are revealed when studying (commenting on) legal texts, the order of their publication, or in the course of law enforcement, appear in the form of conflicts of individual legal texts themselves or their aggregates [33, p.184-187]. As the most relevant type of textual-legal conflict for the Russian constitution, this scientist identified the subject-status imbalance. A subject-status imbalance (an imbalance of rights, obligations, prohibitions or restrictions) is characterized by the granting of improper powers, the presentation of improper

demands, the establishment of unlawful prohibitions, restrictions, etc.) [33, p. 187-188].

We believe, that in this case there is a subject-status imbalance, which consists in granting the President of the Russian Federation an improper right to inaction in terms of resolving the constitutional conflict of confidence to the Government of the Russian Federation.

5. Legal modeling of the simultaneous application of procedures for expressing no confidence and denying confidence to the government.

Using the method of legal modeling, we will demonstrate how the procedures, described in Parts 3 and 4 Article 117 of the Constitution of the Russian Federation and related to trust to the government, can be applied together against the background of a subject-status imbalance.

The Constitution of the Russian Federation formally and legally separates the procedures of «expression of distrust» and «denial of trust», although at first sight their semantic identity is seen. These differences in procedures do not allow us to say that even if they alternate for three months, as shown in Table №3, the President of the Russian Federation has a constitutional obligation to resolve this conflict.

Of course, this example is a theoretical one, since the President's obligation under Article 80 of the Constitution to ensure the coordinated functioning and interaction of bodies that are part of a single system of public power has not been canceled. However, the confrontation between the Constitutional Court and the ECHR also once seemed to be an exclusively theoretical and speculative issue that has nothing to do with practice [34, p. 708].

Table 3

Modeling the development of a constitutional conflict about confidence to the government

Date		Event	The reaction by the President, provided under Article 117 of the Russian Constitution
4 months	January 01	№1 The State Duma expresses no confidence to the Government	The right of the President to agree/disagree with the decision of the State Duma
	March 01	№1 The Prime Minister raises the question of trust, the State Duma refuses in confidence	The right of the President to decide on the resignation of the Government or on the disbandment of the State Duma
	April 01	№2 The State Duma expresses no confidence to the Government	The right of the President to agree/disagree with the decision of the State Duma
	July 01	№2 The Prime Minister raises the question of trust, the State Duma refuses in confidence	The right of the President to decide on the resignation of the Government or on the disbandment of the State Duma
TOTAL		6 months of constitutional conflict between the legislative and executive authorities in Russia	

In this context, the previous version of Part 4 Article 117 of the Constitution of the Russian Federation with a single refusal of confidence to the Government was more consistent with the purpose of resolving the constitutional conflict.

6. Conclusions.

The constitutional reform of 2020 complicated the procedure for resolving the constitutional conflict of confidence to the government and introduced a subject-status imbalance in part 4 Article 117, expressed in the unmotivated and unjustified possibility of the president to do nothing in resolving such a conflict.

Legal modeling of the simultaneous implementation of the provisions of parts 3 and 4 of Article 117 of the Constitution revealed the possibility of alternating procedures for expressing

no confidence and denying confidence to the government, which was absent before the constitutional reform.

From a formal legal point of view and a conflictological approach, the amendments to Part 4 Article 117 of the Constitution of the Russian Federation cannot be explained.

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