

## CONSTITUTIONAL STATUS OF THE RUSSIAN STATE COUNCIL IN THE MIRROR OF ACTUAL CONSTITUTIONAL REFORMS

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The subject of research is social relations concerning the constitutional transformation of the State Council of the Russian Federation into the format of a constitutional state body, its tasks and functions in the unified system of public power.

The aim of the research is to confirm or disprove hypothesis that the Russian State Council is a constitutional state body that ensures the coordinated functioning and interaction of authorities in the unified system of public power.

The methodological basis of the research includes historical, comparative legal, formal legal methods, legal modeling and forecasting. The research is based on existing and historical legal acts, materials of judicial practice, as well as on the works of leading national lawyers. The main results, scope of application. The authors substantiate concept of the constitutional status of the Russian State Council as a completely new constitutional state body, formed on the basis of modern national principles of state building, taking into account the existing constitutional practice. Main task of the State Council is exercising the constitutional powers of the Russian President to ensure the coordinated functioning and interaction of public authorities, the definition of the main directions of national and foreign policy of the state. The article provides a critical analysis of the goals, tasks, functions of the Russian State Council, the decisions it makes, as a result of which a number of conflicts in the regulation of its constitutional-legal status are revealed. Some proposals to improve legislation and law enforcement practice aimed at solving of the discovered contradictions are made. Current constitutional of the State Council is a result of the constitutional amendments of 2020 in the Russian Constitution and innovations in the Federal Law on the State Council of the Russian Federation. The authors substantiate the idea that the consolidation of a new constitutional position of the State Council can be considered as a process of forming a completely new state body, designed to ensure the coordinated functioning and interaction of bodies included in the unified public system. A comparative legal analysis of the constitutional legislation on State Councils in foreign countries showed that despite the same name the status and functions of these state institutions differ greatly in different countries, therefore any comparative study of them will be unreliable.

Conclusions. The Russian State Council has competence, functions of a state power character, take decisions signed by the President of the Russian Federation and therefore have a generally binding character. So it has the characteristics of a public authority. The Russian State Council is a new constitutional and legal structure - a constitutional state body created in order to implement the constitutional powers of the Russian President to ensure the coordinated functioning and interaction of other bodies (that are part of the unified system of public authority) and to determine the main directions of domestic and foreign policy of the state.

## 1. Introduction

The constitutional reform initiated by the President of the Russian Federation in the Message to the Federal Assembly of the Russian Federation on January 15, 2020 (further - the Message) affected many aspects of the social and state structure of our country. At the same time, the main goal of the constitutional reform is to improve the regulation of certain issues of the organization and functioning of public authorities, which could not but affect the constitutional-legal status of some state authorities.

Earlier, one of the authors identified three blocks of the main tendencies of the constitutional reform of 2020: 1) strengthening of state unity and territorial integrity of the Russian state intertwined with socially oriented provisions of the Constitution of the Russian Federation, based on the basic constitutional values established in Chapter 1 of the Constitution of the Russian Federation; 2) the idea of "unity of public power", which has matured in many respects and is reasonably introduced to the constitutional level, but runs counter to art. 12 of the Constitution of the Russian Federation; 3) a change in the configuration of public power, where, in addition to the tendency of convergence of state and municipal power, there is a change in the powers of many federal state authorities [1, c. 5].

Each of the declared blocks entailed not only a change in the constitutional foundations of individual government bodies, but also contributed to the emergence of a body that was not previously mentioned in the text of the Constitution of the Russian Federation - the State Council of the Russian Federation. In particular, the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ «On improving the regulation of certain issues of the organization and functioning of public authorities»<sup>1</sup> in Article 83 introduced a norm defining the foundations of the constitutional-legal status of the State Council of the Russian Federation.

That changes to the Basic Law of the

<sup>1</sup> Legislation Bulletin of the Russian Federation. 2020. № 11. Art. 1416.

Russian Federation opened a new page in the chronicle of this public authority, which in Russian history is becoming the sixth state institution with a similar name.

The first is the State Council, established as the highest legislative institution of the Russian Empire in 1810, the second is the upper house of the Russian parliament after the Manifesto of October 17 (29), 1905, the third - the State Council, formed under the President of the RSFSR<sup>2</sup> as an advisory body, fourth - the State Council of the USSR as an inter-republican advisory body for coordinating issues of domestic and foreign policy of the subjects of the Union<sup>3</sup>. Fifth - created by the Decree of the President of the Russian Federation of September 1, 2000 No. 1602 «On the State Council of the Russian Federation»<sup>4</sup> (further - the Decree of the President of the Russian Federation of September 1, 2000 No. 1602) an advisory body under the President of the Russian Federation.

And if since the creation of the State Council of the Russian Federation (further - the State Council of the Russian Federation), it was considered exclusively as an advisory body under the head of state, then in connection with the introduction into the Constitution of the Russian Federation paragraph e<sup>5</sup> of art. 83 and the adoption of the Federal Law of December 8, 2020 No. 394-FZ «On the State Council of the Russian Federation»<sup>5</sup> (further - the Law on the State Council of the Russian Federation), on the one hand, it remained a body acting in order to implement the constitutional powers of the President of the Russian Federation, on the other, as

<sup>2</sup> Decree of the President of the RSFSR of July 19, 1991 № 12 «On the State Council under the President of the RSFSR» // Bulletin of the RSFSR Council of People's Deputies and the RSFSR Supreme Council. 1991. № 31. Art. 1028.

<sup>3</sup> Law of the USSR of September 5, 1991 № 2392-1 «On the bodies of state power and administration of the USSR in the transition period» // Bulletin of the RSFSR Council of People's Deputies and the RSFSR Supreme Council. 1991. № 37. Art. 1082.

<sup>4</sup> Legislation Bulletin of the Russian Federation. 2000. № 36. Art. 3633.

<sup>5</sup> Legislation Bulletin of the Russian Federation. 2020. № 50. Part III. Art. 8039.

indicated in the Law on the State Council, it acquired the status of a constitutional state authority, unlike other advisory bodies under the President of the Russian Federation who did not receive this status.

Such a conceptual change in the constitutional-legal status of the State Council of the Russian Federation is of considerable scientific interest. Among the topical research problems, one can note a retrospective analysis of the historical past of this state body, the search for its international analogues, the substantiation of the current legal status of the State Council of the Russian Federation in the system of state authorities based on research of its new legal characteristics, tasks and functions.

Preparing this material, the authors set themselves the goal of substantively considering the updated status of the State Council of the Russian Federation, using historical, comparative legal, formal legal and legal and technical methods. Determine its place and role in the system of public authorities, establish the presence or absence of dualism in its legal status, consider new tasks and functions of the State Council of the Russian Federation, the forms of their implementation, using methods of legal modeling and legal forecasting. The results of the research made it possible to state generalized conclusions aimed at developing the modern concept of the legal status of the State Council of the Russian Federation as a constitutional state authority that ensures the coordinated functioning and interaction of authorities, included in the unified system of public power.

The research was based on currently valid and invalid normative legal acts, materials of judicial practice, as well as the works of leading domestic representatives of legal science, including such scientists as S.A. Avakyan, E.V. Vinogradov, P.A. Vinogradov, A.A. Klishas, E.I. Klochko, N.M. Korkunov, I.I. Kuznetsov, V.O. Luchin, A.N. Medushevsky, Yu.A. Tikhomirov, A.N. Tulaev, T. Ya. Khabrieva, B.S. Ebzeev and others, in whose works, directly or indirectly, the problems under study were considered.

As a result of the research of the identified problems, the author's vision of the modern

concept of the constitutional and legal status of the State Council of the Russian Federation was proposed, the position of the said authority in the general system of state authorities is determined. Studied the composition and structure of the State Council of the Russian Federation, carried out a critical analysis of the tasks and functions of this state authority, substantiated proposals for further improving its constitutional-legal status and eliminating certain inaccuracies of a legal and technical nature in the legislation.

## **2. State Council of the Russian Federation in the context of the historical development of Russian statehood.**

The concept of the State Council of the Russian Federation is contained in paragraph «e<sup>5</sup>» of art. 83 of the Constitution of the Russian Federation and part 1 of art. 3 of the Law on the State Council of the Russian Federation, in accordance with which the State Council of the Russian Federation is a constitutional state authority formed by the President of the Russian Federation in order to ensure the coordinated functioning and interaction of authorities included in the unified system of public power, and to determine the main directions of the domestic and foreign policy of the Russian Federation and priority areas socio-economic development of the state.

As noted earlier, for Russian history, the modern State Council of the Russian Federation is the sixth state body with a similar name. But is there any continuity in these state institutions, is it possible to draw historical parallels. It seems that not. The pre-revolutionary state council gravitated towards the legislative branch, being focused on a smooth transition to a parliamentary monarchy. The rights of a legislative institution to the State Council were granted by the Manifesto of February 20, 1906, which it was no longer vested with legislative, but legislative powers and was considered as the second chamber of the Russian parliament. [2, c. 25]. At the same time, as V.A. Demin, in Russia the State Council actually played the role of an arbiter between the Duma and the government, in accordance with the requirements of the emperor and the government, he limited himself to adjusting the Duma reforms, practically giving up the right to legislative initiative and not trying to carry out counter-reforms [3, c. 22].

Created in 1991, the State Council under the President of the RSFSR had the status of an advisory body without clearly defined tasks and functions. The State Council of the USSR, formed in the same year with the hope of preserving the Soviet state, was endowed with state power. This is evidenced by the following provisions of the Law of the USSR of 05.09.1991 No. 2392-1 «On the bodies of state power and administration of the USSR in the transition period»: «The decisions of the State Council of the USSR are binding» (art. 3), "The leadership of the all-union bodies in charge of defense, security, law and order and international affairs is carried out by the President of the USSR and the State Council of the USSR" (art. 5). At the same time, as noted by experts, the potential of the State Council of the USSR was not fully realized, and the goals were not achieved [4, c. 18]. The State Council under the President of the RSFSR practically did not work as it was conceived [5, c. 218, 228]. The State Council of the USSR, in violation of the Constitution of the USSR and the current legislation, by its resolutions of September 6, 1991, recognized the independence of the three republics of the USSR - Lithuania, Latvia and Estonia, thereby accelerating the disintegration of the country [6, c. 22-25]. Accordingly, when analyzing the legal status of the State Council of the Russian Federation, arguments about historical adoption, possible restoration of one of the previous formats of the State Council, adoption the experience of their activities do not find confirmation.

The main reason for the creation of the State Council of the Russian Federation in 2000, representatives of legal science call the need to ensure the implementation of the constitutional powers of the President of the Russian Federation to ensure the coordinated functioning and interaction of public authorities, and the need to discuss issues of particular state importance concerning the relationship between the Russian Federation and its subjects [7, c. 19-28]. Political scientists see this as a tactical concession to regional elites [4, c. 12] – the highest-ranking officials of the subject of the Russian Federation, due to a change in the procedure for the formation of the Federation Council, whose members they

ceased to be in office, losing, including immunity, and «as a kind of compensation, they were given a place in a new, albeit one that does not have power, state body» [8, c. 44].

Over the 20-year period of existence of the State Council of the Russian Federation, the legal status of which was determined by the Decree of the President of the Russian Federation of September 1, 2000 No. 1602 «On the State Council of the Russian Federation», it has become the most prominent advisory body under the President of the Russian Federation. The most important issues for the Russian society and state were discussed at its sessions. The decisions taken at its sessions became the basis for large-scale reforms and transformations. At the meetings of the State Council of the Russian Federation, many issues were considered. Such as implementation of national projects, development strategies of Russia, issues of the political system of Russia, foreign policy, federal relations and regional policy, national, economic, social, cultural and environmental policy, youth policy, tourism, physical culture and sports, state anti-drug policy, information technology and e-government [9, c. 38-80].

Almost all the main directions of the country's domestic and foreign policy were on the agenda of the sessions of the State Council of the Russian Federation, despite the relatively short time since its formation. The significance of this body, attributed to it by the President of the Russian Federation, went far beyond a simple advisory body at the head of state. The list of issues under consideration, the composition of the members of the State Council of the Russian Federation, the special attitude of its chairman - the President of the Russian Federation in organizing work, monitoring the implementation of decisions made, gave it exactly the actual status that was constitutionally enshrined in the framework of the 2020 constitutional reform.

Despite the fact that the State Council of the Russian Federation, after the introduction of amendments to the Constitution of the Russian Federation in 2020, is legally a continuation of the State Council of the Russian Federation, created by the Decree of the President of the Russian Federation of September 1, 2000 No. 1602, in which

there is only one active norm: «To form the State Council of the Russian Federation», in the definition of its new constitutional-legal status, we should agree with the position expressed by A.N. Medushevsky that one of the directions of the transformation of the 2020 Constitution of Russia was the inclusion of a new institution in it - the State Council of the Russian Federation [10, c. 56]. Not evolution or transformation, but the formation of a new state institution. Being created in 2000 as one of the many auxiliary (advisory) bodies under the head of state, as a result of the constitutional reform of 2020, the State Council of the Russian Federation acquired a completely different constitutional status, which other councils at the President of the Russian Federation were not endowed with (for example, deciding equally significant issues, Council for the Development of Civil Society and Human Rights), and was endowed with new tasks and functions.

The new definition of its legal status, enshrined in the Federal Law on the State Council of the Russian Federation, does not allow considering the State Council of the Russian Federation as an auxiliary body under the head of state. It is "a constitutional state body formed by the President of the Russian Federation ..." instead of the previous "is an advisory body that promotes the implementation of the powers of the head of state ..." from the Decree of the President of the Russian Federation of September 1, 2000 No. 1602. State Council of the Russian Federation is an independent constitutional body that performs its own specific functions and tasks [11, c. 10]. These properties determine its unique character in the system of domestic political representation [12, c. 22-26].

Thus, the State Council of the Russian Federation, created as a result of the introduction of amendments to the Constitution of the Russian Federation in 2020, despite its legal succession with the previous body with a similar name, is a fundamentally new state institution, unique for Russian history. In paragraph "e<sup>5</sup>" of art. 83 of the Constitution of the Russian Federation, the Law on the State Council of the Russian Federation, the constitutional goals of this body and the fact that it is formed by the President of the Russian

Federation are enshrined.

The absence in the legal norms provisions of the provisions "as an advisory body" or "in order to exercise its powers" obviously indicates that the State Council of the Russian Federation, since the entry into force of the new edition of the Constitution of the Russian Federation in 2020, is an absolutely independent constitutional state body with its own constitutional goals and unique constitutional-legal status.

### **3. The State Council of the Russian Federation in the comparative legal dimension.**

Analysis of materials on the state structure of foreign countries shows that the modern format of the State Council of the Russian Federation is unique.

As noted by leading experts, political institutions called the «State Council» currently exist in 39 countries. Depending on the functions being implemented, the State Council can act as the highest legislative body (State Council of Cuba), highest administrative court (Egypt, Colombia, Rwanda), the highest executive body of state power (PRC, Norway). In addition, in some countries, the Council of State refers to groups of officials who, in certain cases, exercise the powers of the head of state (Great Britain), or a body that simultaneously implements the functions of an administrative court and an advisory body (Algeria, Belgium, Italy, Luxembourg). In some countries (for example, Ireland, Ghana, East Timor), it acts as an advisory body under the head of state, which suggests powers that are somewhat similar in some areas to the Russian State Council. At the same time, as noted, the dual function of ensuring the implementation of a unified state policy throughout the country and at the same time the expression of the interests of the regions at the federal level makes it possible to perceive the State Council as a special specific body that has no analogues in the world [13, c. 8].

Указывая на то, что Государственный совет учрежден конституциями многих зарубежных государств и чаще всего действует как экспертно-консультативный орган, Т.Я. Хабриева и А.А. Клишас приводят в качестве примера Государственный совет Португалии – орган, с которым совещается Президент

Республики при осуществлении большей части своих исключительных полномочий, Pointing out that the State Council was established by the constitutions of many foreign states and most often acts as an expert advisory body, T.Ya. Khabrieva and A.A. Klishas cites the Portuguese Council of State as an example, the body that the President of the Republic consults with in the exercise of most of his exclusive powers. Moreover the Council of State of the Netherlands is an advisory body to the Government, consisting of members of the royal house and appointed by the Crown, the Council of State of Denmark is a ceremonial advisory body under the Danish monarch, which authorizes and approves the monarch's activities as head of state, the Council of State of Ireland is a body established by the Irish Constitution for advising the President in the exercise of many discretionary powers, Council of State of Monaco, performing an advisory function [14, c. 202-204].

The Council of State of France is the highest authority in such a specific entity as the administrative justice system. Being subject to a number of reforms, it is currently the subject of constitutional control and actively checks the constitutionality of legal acts, including the executive authorities, to control the legality of which it was originally formed [15, c. 1084-1086]. At the same time, as noted, these bodies do not perform such a unique function as representing the interests of the subjects of the federation under the head of state, ensuring the participation of regions in solving national issues. In this regard, the specificity of the State Council of the Russian Federation is expressed not only in its participation in the implementation of the powers of the head of state, but also in the development of a model of federal relations, by ensuring the representation of the subjects of the Russian Federation in the implementation of presidential powers.

In a comparative legal aspect, some analogies can be drawn with the National governors association, created in 1908 in the US<sup>6</sup> (further – the NGA). Members of the are the governors of the 50 states and five territories. The NGA addresses national policy issues and is the

public policy liaison between the federal government and state governments.

The NGA chair, vice chair and other members of the nine-person Executive Committee, who are elected annually, supervise the association's operations on behalf of the entire membership. The NGA association has Executive Committee - general authority over all policy issues and primary jurisdiction over issues involving federalism, homeland security, the federal budget and federal tax policy. The Community Renewal Task Force has jurisdiction over a broad range of issue areas including Workforce, Nutrition, Education, Criminal Justice, Agriculture, and Broadband. The Economic Recovery and Revitalization Task Force has jurisdiction over a broad range of issue areas including Infrastructure, State Stabilization, Energy, Environment, Land Management, and Taxes. The Pandemic and Disaster Response Task Force has jurisdiction over a broad range of issues in the areas including Federal Emergency Management Administration (FEMA), National Guard, cybersecurity, healthcare, COVID-19 issues related to testing, vaccines, supply chain, and Personal Protective Equipment (PPE).

The NGA also creates special task forces of governors to focus on the most significant issues.

The Council of Governors was created by the National Defense Authorization Act for FY 2008 and formally established by Executive Order 13528, issued on January 11, 2010. The Council is intended to serve as a mechanism for governors and key federal officials to address matters pertaining to the National Guard, homeland defense and defense support to civil authorities<sup>7</sup>.

Key Issues of the Council of Governors: Catastrophic Disaster Response And Recovery, Cybersecurity, Dual-Status Command, Ensuring The National Guard Is Valued, Federal Budget Discussions, and Military Families

As noted in the publication of the Russian newspaper, the NGA was created as an analogue of the State Council of the Russian Federation in order to further strengthen the partnership between the federal government and state governments in order

<sup>6</sup> URL: <https://www.nga.org> (date of the application 25.03.2021).

<sup>7</sup> URL: <https://www.nga.org/cog> (date of the application 25.03.2021).

to protect people from any type of threat<sup>8</sup>. At the same time, based on the composition of the participants, the NGA is more like the role of an analogue of the State Council of the Russian Federation, while the Council of Governors is more like its presidium. In terms of the composition of the subjects and the tasks carried out, these organizations in the comparative legal aspect are the most akin to the State Council of the Russian Federation and its Presidium. At the same time, unlike the State Council of the Russian Federation, the NGA is not a state body, acting exclusively as an advisory organization of the heads of the subjects of the federation and federal territories.

As the comparative legal analysis of the constitutional legislation of foreign countries shows, it is hardly possible to draw direct parallels, to borrow the experience of organizing and operating bodies with the name "state council", taking into account the lack of uniform approaches to its legal status in the system of state bodies, composition, assigned tasks. As well as borrowing experience from Russian history, which has no analogues in the modern legal status of this body. The State Council of the Russian Federation is exclusively the result of domestic state building, based on the provisions of the federal Constitution and based on the established constitutional practice.

#### **4. The State Council of the Russian Federation is a constitutional state body at the present stage of state development.**

The legislative definition of the State Council of the Russian Federation contains the following main characteristics: first, it is a constitutional state body; second, it is formed by the President of the Russian Federation; third, it was created for the following purposes: ensuring the coordinated functioning and interaction of bodies that are part of the unified system of public authority, defining the main directions of the domestic and foreign policy of the Russian Federation and the priority directions of the socio-economic development of the state. Let's explore them in more detail.

Constitutional state body - this concept is

enshrined in federal law for the first time. Previously, only in the acts of the Constitutional Court of the Russian Federation one could find the phrases «federal constitutional bodies of state power» (which are listed in part 1 of article 11 of the Constitution of the Russian Federation)<sup>9</sup> and «constitutional (statutory) body of state power of a subject of the Russian Federation» (in relation to constitutional (statutory) courts of the constituent entities of the Russian Federation)<sup>10</sup>.

The terms «government body» [16; 17], «public authority» [18; 19] in the science of constitutional law are sufficiently researched both separately and in comparison [20; 21]. However, the concept of «constitutional state body» was used for the first time in domestic constitutional legislation. This is a new epistemological problem for the science of constitutional law, the solution of which will be its integration into an established conceptual apparatus.

Even the Administration of the President of the Russian Federation, the creation of which is provided for by the Constitution of the Russian Federation from the moment of its adoption, acts on the basis of the decree of the head of state<sup>11</sup>. At the same time, neither in it, nor in the regulations on the Administration of the President of the Russian

<sup>8</sup> URL: <https://rg.ru/2010/01/13/sovet.html> (date of the application 25.03.2021).

<sup>9</sup> Decision of the Constitutional Court of the Russian Federation of December 21, 2005 № 13-P «On the case of checking the constitutionality of certain provisions of the Federal Law "On general principles of the organization of legislative (representative) and executive bodies of state power of the constituent entities of the Russian Federation" in connection with complaints of a number of citizens» // Legislation Bulletin of the Russian Federation. 2006. № 3. Art. 336.

<sup>10</sup> Determination of the Constitutional Court of the Russian Federation of December 27, 2005 № 491-O «At the request of the St. Petersburg City Court on checking the constitutionality of certain provisions of the Federal Constitutional Law "On the Judicial System of the Russian Federation", the Law of the Russian Federation "On the Status of Judges in the Russian Federation" and Of the Federal Law "On the Bodies of the Judicial Community in the Russian Federation"» // Bulletin of the Constitutional Court of the Russian Federation. 2006. № 2.

<sup>11</sup> Decree of the President of the Russian Federation of March 25, 2004. № 400 «On the Administration of the President of the Russian Federation» // Legislation Bulletin of the Russian Federation. 2004. № 13. Art. 1188.

Federation<sup>12</sup> it is not called a constitutional state body. And the goals of creating the Administration - ensuring the activities of the President of the Russian Federation and exercising control over the execution of his decisions in comparison with the constitutional goals of creating the State Council of the Russian Federation, do not seem so ambitious. Although, as noted by A.V. Zuikov, the essence of such structures is the same - it is a kind of department that is responsible for coordinating the activities of the entire state apparatus in accordance with the decisions of the head of state, and in the Russian version these powers went to the State Council [22, c. 33].

The Central Bank of the Russian Federation is mentioned five times in the text of the Constitution of the Russian Federation, and with the 2020 amendments - six. However, in art. 1 of the Federal Law of July 10, 2002 No. 86-FZ «On the Central Bank of the Russian Federation (Bank of Russia)»<sup>13</sup>, it is not called a constitutional state body or a state authority. It contains only an indirect indication of its similar status: «the functions and powers provided for by the Constitution of the Russian Federation and this Federal Law are exercised by the Bank of Russia independently of other federal government bodies ...». From the phrase «other federal bodies of state power», one can logically deduce that the Bank of Russia is also a body of state power, but this is not a direct confirmation of the status, but an indirect indication of it.

According to the legal position of the Constitutional Court of the Russian Federation, the Bank of Russia is classified as a state authority: «Since the powers entrusted to him, by their legal nature, relate to the functions of state power and presuppose the use of measures of state enforcement»<sup>14</sup>. However, such a norm was never

wrote down into the law defining its legal status.

The fixation of the provision on a constitutional state body in the Law on the State Council of the Russian Federation brings researchers back to the well-known discussion of state power bodies and state bodies, a point at which has not yet been set, and even this is hardly possible.

The rule adopted in the science of constitutional law for the differentiation of state bodies from state authorities, based on the latter's state power powers, including the adoption of generally binding decisions, is difficult in practical application. That is why many scientists put an equal sign between these definitions. So, for example, despite the fact that in art. 21 of the Federal Law of June 12, 2002 No. 67-FZ «On basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation»<sup>15</sup> The Central election commission of the Russian Federation was named a federal state body, according to the authoritative opinion of V.E. Churov and B.S. Ebzeeva: «The CEC of Russia is not just a state body, but first of all a state authority, and the highest one, since, on the one hand, it is included in the system of state power bodies of the Russian Federation, and on the other, it occupies a dominant position in the hierarchy of election commissions that form an autonomous system of organs» [23, c. 9].

It is difficult to imagine that such a state body as the State Council of the Russian Federation, the chairman of which is the President of the Russian Federation, is the «first» body of state power in the Russian Federation, which includes the highest officials of the constituent entities of the Russian Federation - the «first» bodies of state power in the corresponding constituent entities of the Russian Federation, the chairmen The government of the Russian Federation, the chambers of the Federal Assembly, the decisions of which are signed by the President of the Russian Federation, do not have state powers. For example, the right granted to the

<sup>12</sup> Decree of the President of the Russian Federation of April 6, 2004. № 490 «On approval of the Regulations on the Administration of the President of the Russian Federation» // Legislation Bulletin of the Russian Federation. 2004. № 15. Art. 1395.

<sup>13</sup> Legislation Bulletin of the Russian Federation. 2002. № 28. Art. 2790.

<sup>14</sup> Decision of the Constitutional Court of the Russian Federation dated December 14, 2000 № 268-O «At the request of the Supreme Court of the Russian Federation

on the verification of the constitutionality of part three of Article 75 of the Federal Law "On the Central Bank of the Russian Federation (Bank of Russia)" // Bulletin of the Constitutional Court of the Russian Federation. 2001. № 2. <sup>15</sup> Legislation Bulletin of the Russian Federation. 2002. № 24. Art. 2253.



State Council of the Russian Federation to invite to its meetings members of the Government of the Russian Federation, heads of other state authorities, state bodies, local self-government bodies and organizations; the right to request and receive materials and information from the same subjects (part 2 of article 15 of the Law on the State Council of the Russian Federation) are obviously imperious in nature and have signs of state and power powers.

An important distinguishing feature of the State Council of the Russian Federation from other subsidiary, advisory and advisory bodies under the President of the Russian Federation is that its status fixed in federal law.

Earlier, the only such body was the Security Council of the Russian Federation, which E.S. Tikhonova calls it «priority» precisely because at that time, it was the only council, the creation of which was directly provided for by the Constitution of the Russian Federation, and the status was established by federal law. As she notes, decisions of the Security Council of the Russian Federation become binding upon approval by the President of the Russian Federation, which makes these decisions functionally decisions of the President of the Russian Federation. [24, c. 37-38]. In this regard, it should be noted that decisions of the State Council of the Russian Federation are also signed by its chairman - the President of the Russian Federation. At the same time, despite the fact that in science there are proposals to give the Security Council of the Russian Federation the status of a constitutional state body [25, p. 66-67], in the law it is not referred to as such.

To ensure the activities of the Security Council of the Russian Federation, a separate Apparatus is created - an independent subdivision of the Administration of the President of the Russian Federation, and the activities of the State Council of the Russian Federation are provided by a separate subdivision of the Administration - the Office of the President of the Russian Federation for ensuring the activities of the State Council of the Russian Federation. This implies that the activities of these bodies and their real powers go far beyond simple consultative, deliberative or other subsidiary bodies under the head of state.

The idea of the formation of such organs is that their activity ensures the work of the organ under which they are formed. But if for a subsidiary body is created a department as a separate independent subdivision of the Administration of the President of the Russian Federation to ensure its activities, its subsidiary nature is questioned.

Considering the project of amendments to the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation foresaw the emergence of such issues and outlined in advance the position that the consolidation of the powers of the President of the Russian Federation to form the State Council of the Russian Federation, the Security Council of the Russian Federation and the Presidential Administration of the Russian Federation does not lead to the intersection of the sphere of responsibility of these institutions with the competence of the bodies. state power specified in article 11 (part 1) of the Constitution of the Russian Federation, and correspond to the duties of the President of the Russian Federation to ensure coordinated actions of public authorities<sup>16</sup>.

In this regard, concerns about the intersection of the sphere of responsibility of the State Council of the Russian Federation with the competence of the chambers of the Federal Assembly, the Government of the Russian Federation or the courts of the Russian Federation are seen as unfounded, since its activities are based on the powers of the President of the Russian Federation to ensure coordinated actions of public authorities, to determine the main directions of domestic and foreign policy. As follows from said before legal position, the activities of the State Council of the Russian Federation do not go beyond

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<sup>16</sup> Conclusion of the Constitutional Court of the Russian Federation of March 16, 2020 № 1-Z «On compliance with the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation on the provisions of the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation «On improving regulation of certain issues of organization and functioning public authority», as well as on the compliance with the Constitution of the Russian Federation of the procedure for the entry into force of Article 1 of this Law in connection with the request of the President of the Russian Federation» // Legislation Bulletin of the Russian Federation. 2020. № 12. Art. 1855.

the presidential powers.

Perhaps precisely because the presidential powers do not constitutionally belong to any of the branches of government, art. 3 of the Law on the State Council of the Russian Federation with the promising title «The State Council in a unified system of public authority» does not give a clear answer to its place in this system. However, it gives a positive answer to the question of whether the State Council of the Russian Federation has competence: "The State Council within its competence ..." (p. 2, art. 3).

Defining competence as the volume of public affairs legally assigned to an authorized subject, Yu.A. Tikhomirov identifies the following required elements in its composition: established by law goals; subjects of competence as legally defined spheres and objects of influence and powers of authority as a measure of decision-making and actions guaranteed by law [26, p. 55-56]. According to B.M. Lazarev, not all the rights and obligations of the body are within its competence, but only those of them that are necessary for the body to achieve the goal set by the state are aimed at exercising state power [27, c. 46-47]. As V.V. Emikh, the category «competence of a state body» is associated primarily with the category of «state power» [28, p. 383-384]. Thus, the fact of possession of competence presupposes that the State Council has powers of authority.

Actually, it is illogical and impossible to be in a single system of public power without possessing any power. Despite the fact that art. 2 of the Law on the State Council of the Russian Federation provides for the inclusion of «other state bodies» in the unified system of public power along with government bodies, the concept of «public power system» presupposes the presence of this type of power in its individual elements. The possession of enforcement power distinguishes the state from all other forms of communication, in this it differs from any other social union [29, p. 6-7]. That is why the presence of power distinguishes any government agency from any other social agency - public, political, corporate.

All of the above consistently leads us to the idea that regardless of the fact that the State Council of the Russian Federation is called a state

body in the federal law, at the same time it possesses the features of a state authority - presidential branch of authority which in the modern interpretation of the theory of separation of powers, supported by many representatives of the science of constitutional law. This allows it to be considered as a state body with the public authority, which was created in order to implement the constitutional powers of the President of the Russian Federation to ensure the coordinated functioning and interaction of bodies that are part of the unified system of public power, to determine the main directions of domestic and foreign policy of the state. A public authority not by name, but by the meaning attached to this concept in legal doctrine and judicial practice, which presupposes the presence of state power, including the adoption of generally binding decisions.

#### **5. Optimization of the composition and structure of the State Council of the Russian Federation.**

The composition of the State Council of the Russian Federation includes its chairman - the President of the Russian Federation and members, some of whom are included in its composition by position - the chairmen of the Government of the Russian Federation, the Federation Council, the State Duma, the Head of the Presidential Administration of the Russian Federation, highest-ranking officials of the subjects of the Russian Federation. The rest of the members of the State Council of the Russian Federation, as follows from the law, can be included in its composition by decision of the President of the Russian Federation from among representatives of political parties that have factions in the State Duma, representatives of local self-government, as well as other persons. Among the "other persons" in the current composition of the State Council of the Russian Federation, in particular, are the plenipotentiaries of the President of the Russian Federation in the federal districts, the President of the Russian Union of Industrialists and Entrepreneurs, the Chairman of the Federation of Independent Trade Unions of Russia.

Such a composition of the State Council of the Russian Federation ensures the implementation of the principles enshrined in art. 5 of the Constitution of the Russian Federation - the unity of

the system of state power, the delimitation of the subjects of jurisdiction and powers between the bodies of state power of the Russian Federation and the bodies of state power of its subjects. This is achieved through direct interaction between representatives of key federal government bodies and highest-ranking officials - the actual heads of the subjects of the Russian Federation - united in one body when discussing priority issues for the development of the country and making appropriate decisions.

At the same time, the representation of local self-government bodies in the current composition of the State Council of the Russian Federation is very small - only 2 people and from far from the largest and economically developed municipalities. Whereas when discussing the amendments to the Constitution of the Russian Federation was supported the argument that «the lack of communication between different levels of public authority gives rise to problems of delimiting the sphere of responsibility between federal, regional and municipal authorities» [9, p. 9]. The disproportionately small representation of self-governments in the State Council of the Russian Federation does not ensure the implementation of art. 12, 130 of the Constitution of the Russian Federation, which guarantees their independence and independence. Thus, the actual representation of the levels of public authority in the State Council of the Russian Federation existing today does not allow considering this body as a platform for their equal dialogue.

We believe that in the future, with the improvement of the legal framework for the activities of the State Council of the Russian Federation, it is possible to envisage the inclusion of the heads of municipalities with a population of more than 1 million people in its composition. For example, the population of the Nenets Autonomous Area is just over 44 thousand people<sup>17</sup>, it is 0,03% of population of Russia, and its governor is a member of the State Council of the Russian Federation, while the population of

Novosibirsk is more than 1.6 million people<sup>18</sup>, it is 1,1% of population of Russia, and its mayor is not a member of the State Council of the Russian Federation. It seems that the assessment of the opinion of the leaders of such municipalities is important in addressing issues of the socio-economic development of the state, and such a consideration of the norm of representation is in accordance with the democratic foundations of the constitutional system (art. 1, 3 of the Constitution of the Russian Federation).

To resolve the current issues of the activities of the State Council of the Russian Federation, its Presidium is formed, the personal composition of which is determined by the President of the Russian Federation. In addition, on the basis of art. 11 of the Law on the State Council of the Russian Federation and compliance with the Regulations on the working bodies of the State Council of the Russian Federation and the Secretary of the State Council of the Russian Federation<sup>19</sup> (further - the Regulations) within its structure, by the decision of the President of the Russian Federation, commissions for areas of activity, working groups and other working bodies can be formed. Organizational issues of the activities of the State Council of the Russian Federation are provided by its secretary.

Such an internal organization of this state body allows it to effectively carry out activities for the implementation of constitutional tasks. To resolve issues of socio-economic development in structure of the State Council of the Russian Federation have been formed 18 commissions<sup>20</sup>. By order of the President of the Russian Federation of December 21, 2020 № 311-rp<sup>21</sup> the composition of the commission of the State Council of the Russian Federation for ensuring the coordinated functioning and interaction of public authorities was approved.

<sup>17</sup> URL: <https://arhangelskstat.gks.ru/population111> (date of the application 25.03.2021).

<sup>18</sup> <https://novosibstat.gks.ru/folder/31729> (date of the application 25.03.2021).

<sup>19</sup> Decree of the President of the Russian Federation of December 21, 2020. № 800 «Questions of the State Council of the Russian Federation» // Legislation Bulletin of the Russian Federation. 2020. № 52. Part I. Art. 8793.

<sup>20</sup> Ibid.

<sup>21</sup> URL: <http://www.kremlin.ru/acts/bank/46223> (date of the application 25.03.2021).

By order of December 21, 2020 № 310-рп<sup>22</sup> was approved the composition of the Presidium of the State Council of the Russian Federation. By order of the same date № 312-рп<sup>23</sup> the composition of the commission for the coordination and assessment of the effectiveness of the executive authorities of the subjects of the Russian Federation was approved.

By acts of the President of the Russian Federation of December 21, 2020, the structure of the State Council of the Russian Federation established by law was fully formed. But the question of the form of making the appropriate decisions by the President of the Russian Federation remains open: chairpersons of commissions for areas of socio-economic development were appointed by decree, The Presidium and other commissions were approved by orders, but since the Constitution of the Russian Federation does not distinguish between these acts of the President of the Russian Federation, this is his full right and the method of their formation de jure does not affect the status of these organs.

The law on the State Council of the Russian Federation provides for the possibility of creating working groups and other working bodies. In the Regulations on the working bodies of the State Council of the Russian Federation, it is determined that working groups are created for the period of preparation of materials for a meeting of the State Council or its Presidium, their heads are appointed from among the members of the State Council of the Russian Federation - highest-ranking officials of the subjects of the Russian Federation, the personnel and the working procedure are approved by the leaders of the working groups. The method of creation and the form of appointment of the heads of working groups are not defined by regulatory legal acts, therefore it can be assumed that this will be formalized by the decision of the President of the Russian Federation - the Chairman of the State Council of the Russian Federation in form of a decree or order.

Analysis of the legislation does not allow making an unambiguous conclusion about which

bodies belong to other working bodies of the State Council of the Russian Federation. The Regulation provides for the possibility of creating expert and scientific councils, attracting specialists for scientific-methodological and expert-analytical support of the activities of these working bodies. It also provides for the possibility of creating an autonomous non-profit organization under the Administrative Department of the President of the Russian Federation to ensure the activities of the working bodies of the State Council of the Russian Federation. At the same time, the question of what these «other working bodies of the State Council» are like remains open.

The identified problems will require further improvement of the composition and optimization of the structure of the State Council of the Russian Federation, and an additional regulatory support.

#### **6. Goals, tasks and functions of the State Council of the Russian Federation.**

The constitutional goals of the activities of the State Council of the Russian Federation are to ensure the coordinated functioning and interaction of bodies that are part of the unified system of public power, to determine the main directions of the domestic and foreign policy of the Russian Federation and priority areas of the socio-economic development of the state. Let's consider each of them.

Ensuring the coordinated functioning and interaction of bodies included in the unified system of public authority presupposes the implementation of what is enshrined in part 2 of art. 80 of the Constitution of the Russian Federation, the powers of the President of the Russian Federation.

Before the amendments were made in 2020, this provision applied only to public authorities, but now its effect is extended to all public authorities, including local self-government bodies. At the same time, the provisions of art. 85 of the Constitution of the Russian Federation on the possibility of using conciliation procedures to resolve disagreements between the state authorities of the Russian Federation and the state authorities of the subjects of the Russian Federation, as well as between the state authorities of the subjects of the Russian Federation. And it even provides for the possibility of referring the dispute to the court if no agreement is reached. Without taking into account this feature,

<sup>22</sup> URL: <http://www.kremlin.ru/acts/bank/46224> (date of the application 25.03.2021).

<sup>23</sup> URL: <http://www.kremlin.ru/acts/bank/46216> (date of the application 25.03.2021).

clause 11 of the Regulation on the working bodies of the State Council of the Russian Federation assigns to its commission for ensuring the coordinated functioning and interaction of public authorities the function of preparing proposals for the State Council of the Russian Federation on the use of conciliation procedures by the President of the Russian Federation to resolve disagreements between bodies that are part of the unified system public authority.

The Constitution of the Russian Federation includes only state authorities among the participants in these procedures. The regulation on the working bodies of the State Council of the Russian Federation provides for the possibility of the President of the Russian Federation applying conciliation procedures in relation to all bodies included in the system of public authority. That is, the list of subjects determined by the Constitution of the Russian Federation is supplemented by local self-government bodies and other state bodies. There is no doubt that conciliation procedures are aimed at ensuring the implementation of the coordinated functioning and interaction of bodies that are part of a single system of public authority, but such shortcomings of a legal and technical nature require elimination.

Of scientific interest are the provisions of art. 2 of the Law on the State Council of the Russian Federation, the first part of which defines the forms of interaction of bodies that are part of a single system of public authority: organizational and legal, functional, financial and budgetary, including on the transfer of powers between levels of public authority on the basis of «principles of coordinated functioning».

The second part of this article contains the concept of «coordination of the activities of bodies included in the unified system of public authority», which is understood as a system of actions and decisions aimed at ensuring their coordinated functioning and interaction. Thus, two new, previously unexplored in the science of constitutional law, phenomena receive normative consolidation: the principles of the coordinated functioning of the bodies included in the unified system of public authority, and the coordination of the activities of these bodies. These definitions

undoubtedly need to be researched.

When studying the goal of the State Council of the Russian Federation: «defining the main directions of domestic and foreign policy of the Russian Federation and priority directions of the socio-economic development of the state», the accuracy of its definition is questioned. On the one hand, we might think that the direction of socio-economic development does not belong to one of the main directions of domestic policy, therefore, it complements their list. On the other hand, if it is listed along with the main directions of domestic policy in order to emphasize its importance, then why was the socio-economic development of the state chosen, and not ensuring the rights and freedoms of man and citizen, for example.

It seems that the main directions of the domestic and foreign policy of the Russian Federation cover, among other things, the priority directions of the socio-economic development of the state and there was no need to list these directions separated. At the same time, taking into account the predominance of commissions in the areas of socio-economic development in the structure of the State Council of the Russian Federation, it is possible that this area, among others, has a really priority value for its activities. And then, inevitably, the assumption arises that the primary goal of the activities of the State Council of the Russian Federation is to ensure the priority areas of the socio-economic development of the state, and ensuring the coordinated functioning and interaction of bodies included in the unified system of public authority is subordinate to this main goal and ensures its achievement.

Ensuring the coordinated functioning of the activities of state authorities and local self-government bodies cannot be an aim in itself. According to art. 18 of the Constitution of the Russian Federation, the activities of these bodies, which are part of the unified system of public authority, are carried out in order to ensure the rights and freedoms of man and citizen. The tasks and functions listed in the Federal Law on the State Council of the Russian Federation are subordinated to this main constitutional goal. Ensuring the coordinated functioning and interaction of public authorities is an immediate and very important

function that is entrusted to the President of the Russian Federation [30, p. 87]. And if the tasks themselves are formulated with reference to the powers of the President of the Russian Federation: «preparation of proposals to the President of the Russian Federation», «assistance to the President of the Russian Federation», «consideration at the suggestion of the President of the Russian Federation», then the imperative nature of the activity is clearly manifested in the functions: «considers issues», «analyzes practices», «participates in the definition», «provides monitoring», «participates in the development».

In the norms of the Law on the State Council of the Russian Federation, regulating the issues of its decision-making, the state-imperious nature of its activities is also manifested. On the one hand, the decisions of the State Council of the Russian Federation are signed by its chairman - the President of the Russian Federation, while the fact of the signature of the head of state, undoubtedly, gives them a generally binding character for all bodies that are part of the unified system of public authority.

On the other hand, as indicated in part 2 of art. 14 of the law, if a decision is made on the need to adopt a federal constitutional law, a federal law or amend them, amend their drafts, the draft of the relevant act is submitted to the State Duma. Since in accordance with art. 104 of the Constitution of the Russian Federation, the State Council of the Russian Federation is not endowed with the right of legislative initiative, these projects will most likely be introduced by the President of the Russian Federation.

Specified in parts 3, 4 of art. 14 of the Law on the State Council of the Russian Federation, decisions on the advisability of developing strategic planning documents of the Russian Federation, a constituent entity of the Russian Federation or a municipal formation or amending them, also signed by the President of the Russian Federation, will be sent to the Government of the Russian Federation, a constituent entity of the Russian Federation or a municipal formation, respectively. And there is no doubt that these decisions will be perceived not as recommendations, but as direct instructions from the head of state, for failure to comply with which

legal responsibility may arise.

Provided by Chapter 4 of the Law on the State Council of the Russian Federation, which consists of one article 17, the principles of its decision-making on issues of interaction between bodies that are part of the unified system of public authority require an additional research. But even with a close approximation, one cannot fail to notice obvious contradictions in the definition of the subject of legal regulation.

The title of chapter 4 «Basic principles of decision-making by the State Council in the exercise of its functions» on the subject is broader than the title of art. 17 «Basic principles for the adoption of decisions by the State Council on issues of interaction between bodies that are part of the unified system of public authority». Content of paragraph 1 of art. 17, on the contrary, significantly expands the scope of legal regulation, establishing the principles of interaction between bodies that are part of a unified system of public authority. It regulates not the basic principles of decision-making by the State Councils of the Russian Federation, but the general principles of interaction between the bodies that are part of the unified system of public authority.

There is no doubt that such obvious contradictions in the logic of legal regulation, defects of a legal and technical nature should be eliminated in the process of further improving the legal framework for the activities of the State Council of the Russian Federation.

## **7. Conclusions**

The amendments introduced in 2020 to the Constitution of the Russian Federation launched a large-scale constitutional reform, during which fundamental changes are taking place in the mechanism for exercising state power and local self-government, and in the summary, in public power. One of the most important changes, which at present has not received a well-deserved scientific attention, was the creation of a fundamentally new constitutional state authority - the State Council of the Russian Federation. The research conducted within the framework of this article allowed the authors to consider in a critical aspect certain issues of its constitutional and legal status in the context of the ongoing constitutional reform, as a result of

which the following main conclusions were formulated:

1. Determination, as a result of the 2020 constitutional amendments, in the Constitution of the Russian Federation and in the Federal Law on the State Council of the Russian Federation, of a new constitutional and legal provision of this body can be considered as a process of forming a completely new state authority with tasks to ensure the coordinated functioning and interaction of bodies that are part of a unite system of public authority.

2. Despite the fact that the State Council of the Russian Federation in Russian history is the sixth state body with a similar name, its constitutional and legal status is unique. Historically, these are completely different bodies in terms of the goals of education, the legal status in the system of state bodies, composition, tasks, results of activity, with the only coinciding feature - the name. Even despite the fact that de jure the modern State Council of the Russian Federation is a continuation of the State Council created in 2000 by the decree of the President of the Russian Federation, its constitutional and legal status, functions, composition, structure and other constitutionally significant characteristics indicate that in 2020 there was a fundamentally new state authority was formed.

3. A comparative legal analysis of constitutional legislation on state councils in foreign countries showed that, despite the same name, the status and functions of these state institutions in different countries differ greatly (advisory body under the head of state, executive body of state power, legislative body, constitutional review body). At the same time, in states in which the state council is an advisory body under the head of state, it does not perform the unique function of representing the interests of the subjects of the federation, since they are unitary in their structure. Today, among the well-known foreign institutions, the closest to the State Council of the Russian Federation in terms of composition, goals and objectives of activity is the National Governor Association of the US, but since it is not a government body, their comparative study will be unreliable.

In the comparative legal aspect, the State Council of the Russian Federation is a unique constitutional state body, formed on the basis of modern domestic principles of state building, taking into account the existing constitutional practice.

4. The fact that the State Council of the Russian Federation has competence, functions with a state enforcement character, decisions signed by the President of the Russian Federation and, in this regard, have a generally binding character, it can be considered as a new constitutional and legal structure - a constitutional state body created in order to implement the constitutional powers of the President of the Russian Federation to ensure the coordinated functioning and interaction of bodies that are part of the unified system of public authority, to determine the main directions of domestic and foreign policy. That is why we can consider it like a state authority.

5. The renewed composition and structure of the State Council of the Russian Federation as a whole make it possible to ensure the implementation of the tasks assigned to it. At the same time, the clearly insufficient representation of local self-government bodies in its composition does not allow to fully take into account the interests of different levels of public authority. This situation does not comply with art. 12, 130 of the Constitution of the Russian Federation, guaranteeing local self-government as an independent and independent institution of public authority. In addition, the analysis of the legislation does not allow making the only conclusion about which bodies are other working bodies of the State Council of the Russian Federation provided for by federal law. It seems that during the activity of the State Council of the Russian Federation, these issues will find their solution.

6. As a result of the constitutional reform of 2020, the tasks of the State Council of the Russian Federation changed, its functions were legislatively enshrined, which reflected the imperious nature of its activities. In the articles of the Law on the State Council of the Russian Federation, regulating the procedure for making decisions and the mechanism for their implementation, upon detailed examination, some defects of the logic of legal regulation and legal technique are found. They cannot be

resolved without amending the legislation. And first of all, it is necessary to find differences between the principles of interaction of bodies that are part of the unified system of public authority, and the principles of making decisions by the State Council of the Russian Federation, which are equal at the present.



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