

THE ROLE OF LEGAL RESPONSIBILITY IN THE IMPLEMENTATION OF THE PRINCIPLE OF THE UNITY OF PUBLIC AUTHORITY IN RUSSIA**

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The subject. The article presents a comprehensive general theoretical analysis of the institution of legal responsibility and its role, taking into account the consolidation of the new constitutional and legal principle of the unity of the system of public power.

The purpose of the research is to confirm or disprove hypothesis that it is necessary to legislate a full-fledged mechanism of legal responsibility of state bodies and local self-government bodies in order to implement the constitutional principle of the unity of public power.

Methodology. The formal legal method, the method of comparative legal analysis, dialectical method and systemic approach were used.

The main results, scope of application. The authors found the manifestation of dualism in the work of the institution of legal responsibility. It consists in the ability to bear responsibility both to the state, in connection with various offenses, and to the population itself. A brief description of the loss of trust as a basis for the responsibility of officials is given, taking into account contemporary legislation. Directions for the further development of this legal institution are highlighted. The article examines the opinion of the Russian Constitutional Court on the legitimacy of using the loss of trust as a basis for the responsibility of public authorities. The article examines the normative legal acts, which fix the mechanism for the implementation of the principle of maintaining trust in the activities of the authorities on the part of society. For example, in relation to state civil and municipal employees, a prohibition has been established on statements about the activities of authorities and their assessment, if such actions are not included in the list of their official duties. Such a mechanism for maintaining public confidence in the work of government bodies should contribute to strengthening the unity of the public power system. At the same time we can talk about the existing trend towards a decrease in the level of public confidence in the work of authorized bodies exercising public authority. The corruption and bureaucratization of the activities of officials, the expansion of the powers of law enforcement agencies, a decrease in the independence of the political opposition are pointed to among the possible reasons most often. In this regard, the paper proposes expanding the grounds for responsibility when implementing the procedure for recalling an official.

Conclusions. It is necessary to consolidate a full-fledged legislative mechanism of legal responsibility of state bodies and local self-government bodies, which will contribute to the implementation and strengthening of the new principle of the unity of public authority.

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1. Introduction

The recent amendments to the Constitution of the Russian Federation established the principle of the unity of the public power system embodied in Section 3 Article 132 of the highest law. The principle sets the obligation of the state authorities and local self-government bodies to maintain continuous interaction aimed at efficient solution to urgent issues in the interest of society. The urgency of the study of the principle lies in the fact that until recently there was no definition of public power in the legislative framework, which was a legal gap.

The unity of the public power ensures the possibility to resolve economic, political, and other issues at those levels of power that are objectively relevant (the federal, regional or local ones). At the same time the unity of power does not allow to justify ineffectiveness of a power body by stating its independence within the autonomous subsystem of the public power. We believe such trend in the legal policy to be highly prospective and aligned with the modern legal realities as it is aimed at maintaining the integrity of the relatively independent power subsystems of state and local levels.

It is worth emphasizing that further application of this principle to the legislative and law enforcement areas is also an important issue. The achievement of these goals can be ensured by establishing common institutions and principles of the public power system functioning for all bodies regardless of their level. Legal responsibility, which has a system-based structure and a set of integrity requirements, is the key institution in this respect. Therefore, the investigation of the role and principles of functioning of the system of legal responsibility of public authorities in the context of its unity is gaining urgency.

2. Concept and structure of public power

The presence of power is a definite feature of any human community: the family, the state, the team etc. It enables the existence of such formations and helps to stand against destructive phenomena due to the use of structural

formations: authority, obligation, responsibility, incentive, coercion, etc.

Initially the social power had characteristics of corporativeness as it extended only over the clan or tribe members without reference to the territory. The territory principle of the power organization was formed much later and related to the community members' desire to settle within a certain place. Therefore, the principle of cooperativeness gave way to the public power. Publicity allows to put distance from blood-related connections in society and extend the influence of power equally over all members of society considering the territorial boundaries. This feature of the power allows to form society that reside in a certain state and keep it united. The public power is not personified as its impact is directed towards indefinitely big number of subjects within the state boundaries [1, p. 17].

It is worth mentioning that up to 2020 understanding the structure and organization of the public power had had the character a doctrine without legislative formalization. Only due to the recent amendments to the Constitution of the Russian Federation the "public power" category gained the normative content resulting from the declaration of the principle of its unity (Art. 132). The "public power" is mentioned in several articles of the highest law, which gives the term real normative content (Section 1 Art. 67; clause "g" Art. 71; Section 2 Art. 80; clause "e.5" Art. 83; Section 3 Art. 131; Section 3 Art. 132 of the Constitution of the Russian Federation). A clear structure of the public power has also been defined: it includes state authorities and local self-government bodies. The Conclusion of the Constitutional Court of March 16, 2020 No. 1-Z states that local self-government bodies "are part of the public power integrated system of the political union of the multinational people of Russia. Otherwise, it would entail a breach of state unity of the Russian Federation... which is a constitutional and legal nonsense"¹.

¹ The Conclusion of the Constitutional Court of the Russian Federation N° 1-Z of 16 March 2020 "On the conformity with the provisions of chapters 1, 2 and 9 of the Constitution of the Russian Federation of the Law Enforcement Review 2021, vol. 5, no. 4, pp. 43–54

The provision of the public power category at the constitutional level is a major achievement of Russian legal system that makes the foundation for studying and improving the links between state and municipal bodies that are to function within an integral and consistent system.

At the same time, unfortunately, the ultimate text of the Constitution does not contain the indication of the role and importance of public organizations (political parties, different forms of political movements, participants of demonstrations and marches, etc.) in the public power system. Ignoring such organizations and public associations contradicts the essence of the public power that must be built based on the principles of democracy [2, p. 20].

The public power is the basic element of democracy that serves as the medium for realization of the interests of society [3, p. 5]. Public authorities include the subjects that perform the management function forming the state and local levels. State authorities, regardless of how they are understood, form the entire structure of the state apparatus that carries out the state functions. Every state authority is an independent structural unit and an element of the state mechanism with its specific competence. Material, administrative and coercive powers of the state are accumulated in the state authority so that it could perform the management activity.

Municipal bodies act in the interests of urban and rural settlements. The local level of the public power is quite clearly detached from the state one due to the population's ability to define the system of municipalities, solve the municipal property issues and manage local budgets. These issues are beyond the competence of the state bodies, thus, the responsibility for the decisions taken is placed on the population. Therefore, two

basic principles of local self-government bodies that serve as the foundation for their activity can be definitely distinguished: the principles of independence and responsibility [4, p. 21].

3. Public power as subject of responsibility

When studying the new amendments to the Constitution of the Russian Federation one more important aspect that is not reflected in the recent changes can be noted, in particular, the lack of the indication of the need to create a mechanism for the power bodies' legal responsibility that would facilitate strengthening the unity of the public power. The development of effective legal institutions is becoming an essential issue in modern legal research [5, p. 196]. Such a mechanism is needed since the developing model of the civil state is inconceivable without recognizing the state authorities to be full-fledged subjects of legal responsibility [6, p. 23]. Legal responsibility plays a major role in the process of the power bodies functioning as it has the property to block different illegal behaviors at the national scale [7, p. 8].

Recent studies indicate the growing trend of centrism based on the idea of the state conservatism [3, p. 6]. As a result, several characteristic features inherent to modern relations of the state and society have appeared. Firstly, it is citizens' conscious distancing from state and political problems, disinterest in the work of political organizations including that of the direct democracy institutions. Secondly, the lack of any reaction of most members of society to the problems of legality of the performance of the public power. There is the right of choice in the democratic state and the society members prefer to solve their social problems while giving least importance to political ones. The nature of the relations of citizens and power bodies is shifting from the desire of society members to establish and strengthen this connection towards the strive to preserve the existing ones. In these conditions, the legitimacy of the power begins to be associated not with the legality of the methods for the regulation of social relations but with the overall stability of the chosen political line [8, p. 9]. In general, we tend to share the above-mentioned characteristics of the existing relations of society and the public authorities.

provisions of the Law amending the Constitution of the Russian Federation with a view to "Improving the regulation of individual questions of the organization and functioning of public authority" that have not yet entered into force, as well as the conformity with the Russian Federation Constitution of the procedure for the entry into force of Article 1 of that Law in connection with the request of the President of the Russian Federation. Collection of Laws of the Russian Federation, 23.03.2020, no. 12, Art. 1855.

We believe that one of the ways to overcome the above-mentioned trends in the relations between society and power is the formation and normative regulation of the mechanism for implementation of legal responsibility regarding the public authorities. At the same time, we think that this mechanism shall be built based on the wide definition of legal responsibility that includes its positive aspect. It will allow to talk about responsible activity on the part of the public authorities.

Unlike negative responsibility, positive responsibility is not temporary in nature and is not implemented with compulsory methods. It is a psychological attitude exists on a constant basis and is perceived by the subject himself and involves the awareness of the need for behavior that complies with the law both in the present and the future [9, p. 35]. For instance, anticorruption awareness aimed at forming the intolerance to corrupt behavior in officials plays an important role in strengthening positive responsibility [10, p. 258]. The quality level of the subject's execution of his legal responsibilities and the awareness of his civil duty to the power bodies and society depends on his personal level of the positive responsibility development. Despite the person's control over his behavior, this form of implementation of legal responsibility involves a positive response to the control executed by the state and the institutions of civil society [11, p. 208].

Responsibility in its positive sense is closely connected with accountability and involves it. However, responsibility is not limited to only the content of accountability, since in most cases it is characteristic only of state officials involved in the state mechanism. The public power is wider in content; therefore, the number of subjects differs and includes municipal officials, the representatives of state companies, employees of mass media and other organizations. The control on the compliance with the legal norms is performed over all subjects of the public power due to the measures of responsibility and a "transparency zone". The need for transparency in the work of the power bodies caused the formation of a new principles of functioning of the public subjects, in particular the principle of

transparency [12, p. 58]. It allows to prevent the gap in trust between citizens and the power through availability of information about all decisions and actions of the competent bodies [13, p. 16]. Nowadays this principle is of major importance as the sociological surveys show slow dynamics in the growth in the level of trust of citizens to the power bodies activity [14, p. 98].

The current legislation contains a specific list of ways to access information about the power bodies activity, moreover, the list is open [15, p. 145]. A failure to comply with the principle of transparency causes the measures of negative responsibility. In most cases the violation involves withholding information about the officials' income, including the provision of false information [16, p. 256]. Apart from maintaining society's trust to the power bodies activity, the principle of transparency is aimed at eliminating corruption of the public power subjects [17, p. 203]. In this context responsibility for concealment of the officials' income can be viewed as a preventive measure against corruption offence in public authorities [18, p. 660]. Along with many other measures, it is the result of the attempt to develop the most effective intersectoral model to prevent corruption [19].

However, despite the positive aspect of responsibility the mechanism of this institution contains the negative aspect which enables public authorities to limit themselves when executing power activities. Positive and negative aspects of responsibility are dialectically interconnected and aimed directly at preventing offence [20, p. 17].

A characteristic feature of the legal liability institution of public power is the dualism of its manifestation associated with bearing responsibility towards the state bodies and the population. Since the population is a direct participant of the execution of public power, the power bodies must involve the population and social organizations in the work of different legal institutions. A similar situation is happening with the institution of legal responsibility. Thus, the population establishes its channel of self-expression turning society into a full-fledged organization that interacts with the state [21, p. 7]. Therefore, the Constitutional Court of the Russian Federation confirmed the legitimacy of the population's loss of trust as a cause for

responsibility that is implemented by recall of elected officials².

However, there is a widespread opinion among researchers about the excessively complicated recall procedure and insufficient number of reasons for applying this measure of responsibility. The disadvantages include a big number of citizens' signatures needed to initiate a recall and unreasonably high requirements for the determination of the results of implementing this measure of responsibility [22, p. 37]. However, the measure of recall does not fully reveal its potential as it is absent at the federal level and in essential number of regional regulations due to the proportional election system in the formation of representative bodies. Therefore, in order to increase the society's trust and the recall institution's efficiency, a list of reasons shall be extended and the implementation of this measure at the federal level shall be provided.

4. Loss of trust as the basis of public authorities responsibility

An efficient interaction between public power and society can be built only on the basis of mutual trust, cooperation in solving actual problems, and minimizing the harm caused or threats of harm. A major role in ensuring this belongs to the institutions for monitoring and control over activity of the subjects of power. They facilitate the establishment of the rule of law in public relations that develops as a result of the systematic and strict observance of legal norms by all participants in legal relations [23, p. 24]. At the same time, the rule of law is impossible without the compliance of the legal responsibility mechanism with the criteria of effectiveness [24, p.

212]. In case of offense in the form of abuse of authority or in case of other actions that threaten the stable development of society and the state, a proper mechanism of responsibility shall be provided for in the legislation. Such a mechanism would contribute to the restoration of violated rights and eliminate recurrence in the future.

One of the main requirements imposed on public power is its legitimacy, which is manifested in the trust that society has in it and in public bodies. The principle of maintaining citizens' trust ensures reasonable stability in the legal system and provides an opportunity to adapt to changes in the legal landscape over time [25, p. 7].

When speaking about the general level of public trust in the work of authorities, it should be recognized that today there is much room for improvement. In this regard, many researchers believe that there is a tendency for a decrease in the level of public trust in the work of authorized bodies that exercise public power. The possible reasons for this are diverse and include corruption and bureaucratization of the officials' activity, the expansion of the powers of law enforcement agencies, the decreasing independence of the political opposition. There is a number of ways to increase the indicator of trust, such as the improvement of the work of public chambers, a search for new forms of public control and monitoring of the power subjects' activity by the civil society institutions [26, p. 10]. In this regard, we believe that one of the options contributing to the establishment of trust-based relations between the population and public authorities can be the establishment and legislative consolidation of a full-fledged mechanism of public authorities' legal responsibility for the results of their activity.

Certain elements of the mechanism of responsibility are in the process of being integrated in the regulations. "Trust" and "loss of trust" categories are widely used by the legislator in the process of regulating labor, administrative and constitutional relations [27, p. 258]. The Supreme Court of the Russian Federation recognized the possibility of applying the measure of responsibility in the form of the dismissal of public civil servants due to loss of trust in accordance with clause 7.1 of Part 1 of Art. 81 of the Labor Code of the Russian

² Ruling of the Constitutional Court of the Russian Federation from April 2, 2002 No. 7-П «По делу о проверке конституционности отдельных положений constitutionality of certain provision of the Krasnoyarsky Region Law "On the order of recall of a deputy of a local representative self-government body" and the Law of Koryaksky Autonomous District "On the order of recall of a deputy of a local representative self-government body, an elected official of local self-government in Koryaksky Autonomous District" in connection with the complaints of applicants A.G. Zlobin and Yu.A. Khanaev. Collection of Laws of the Russian Federation, 8.04.2002, no. 14, Art. 1374.

Federation³. The measure may be applicable if an official commits a corruption offense or does not provide information about his or his family members' income or property in accordance with Part 9 of Art. 8 of the Federal Law of December 25, 2008, No 273-FZ "On Combating Corruption".

Article 15 of Federal Law No 132-FZ of July 1, 2017, which was introduced into Federal Law No. 273-FZ, established a special register of employees of public authorities who were dismissed due to loss of trust associated with a corruption offense. This has brought such dismissals to a qualitatively new level that is completely different from the usual dismissal of an employee.

Loss of trust itself can be expressed in reasonable doubts the employer has about in conscientiousness and decency of the civil servant and his ability to work effectively in the future. Such doubts are associated with noncompliance with anti-corruption restrictions by the official when performing state and municipal functions. In such cases, the official can be dismissed from his position with termination of the service contract under Art. 59.1 or Art. 59.2 of the Federal Law No. 79-FZ (Part 4 of Art. 59.3) [28, p. 155]. At the same time, the Constitutional Court of the Russian Federation clearly indicated in its definition that the dismissal based on loss of trust is legitimate only if there is a report on the results of the audit carried out by the competent HR division of the public body⁴.

Despite the active use of the category of trust and its loss in the legislation (including that from the part of the population), the norms of law do not provide for qualitative and quantitative indicators for its definition. We believe that one of the ways to determine trust on the part of the

population is online and offline surveys. A similar method is used to establish another similar indicator at the local government level - the degree of satisfaction of the population with the activity of local self-government bodies of urban and municipal districts, which is calculated as a percentage of the number of respondents surveyed [29, p. 9]. The possibility of implementing the basis of responsibility in the form of a loss of trust both on the part of the state in relation to officials and on the part of the population in relation to public authorities of any level can ensure the manifestation in practice of the proclaimed principle of the unity of public power and its further development in the current legislation.

5. Challenges in implementing responsibility of public authorities

It is impossible to cover all issues associated with the implementation of legal responsibility of public powers within one article, therefore, we focus on key points. The first challenge is the fact that public authorities and their officials are a part of the state mechanism that directly participates in the normative regulation of legal responsibility. Therefore, the establishment of legal responsibility of public authorities implies self-limitation which is not characteristic of the state system. Although the principle of mutual legal responsibility is gradually being reflected in the current legislation and slowly but is getting equipped with mechanisms for its implementation, there were, are and will be a number of challenges [30, p. 20]. Firstly, an emphasis should be made on the responsibility for preparing the decisions which consequences come to light over several years or decades. In particular, based on Federal Law No. 273-FZ from December 29, 2021 "About education in the Russian Federation"⁵, postgraduate programs stopped being the post-university education and became the third level of higher education. Furthermore, the defense of the thesis (graduate qualification work) within the university walls did not directly result in awarding of the Candidate of Science degree. It took those responsible for the higher education reform eight years along with considerable pressure from scientific community to understand that the western

³ Determination of Judicial Chamber for Civil Cases of the Supreme Court of the Russian Federation of 17.04.2017 no. 59-KG17-3. Consultant Plus.

⁴ Determination of the Constitutional Court of the Russian Federation of September 25, 2014 no. 1858-O "On the refusal to accept for consideration the complaint on the violation of constitutional rights of the citizen O.D. Bronnikova, clause 2, part 1 of Art. 59.2 and part 3 of Art. 59.3 of the Federal Law "On the State Civil Service of the Russian Federation". Consultant Plus.

⁵ Collection of Laws of the Russian Federation. 2012, no. 53, Art. 7598.

model is ineffective in Russia. Therefore, Federal Law No. 429-FZ of December 8, 2020 "About amendments to legislative acts of the Russian Federation"⁶ restored the old model of postgraduate education. The return to the time-tested model means the recognition of ineffectiveness of western recipes. Furthermore, a question comes up regarding the reformers' responsibility as despite the public money spent there was no breakthrough in research resulting from the model. We witnessed several changes in the name of the corresponding ministry, a big team change followed by a division of the ministry into two autonomous units during the last reform. It can be stated that there is no responsibility of both the public body and its officials. It leads to the question of what responsibility is implemented for. The answer is quite simple: for a waste of public money. There might be certain goals, but they were misinterpreted and did not meet the criteria of truth.

This example is not the only example of this type and provides basis for the statement regarding dilution of legal responsibility and the lack of its clear definition. In this sense it is necessary to turn to the vast research in the personal responsibility of civil servants of the Soviet period, which is currently being groundlessly criticized due to its strong ideologization. One has to agree that there is much ideology in the research as it was not possible to get published otherwise at that time. If we remove the ideology of the Soviet period, the Soviet researchers offer the analysis of the responsibility of specific officials, state bodies, and in particular for the decisions made. The problem lies in the fact that the decisions made are carried out within the framework of the authorities given to public bodies and officials, therefore, such activities are legitimate. But then the question arises: what kind of responsibility can we talk about if the actions were carried out within the framework of the competencies? It seems that the issue lies in the qualifications of the officials responsible for making such decisions, as well as in the alignment of the actions with the goals of social development, the

principles of the rule of law, and the absence of formalism in such actions. This brings us to the western concept of "dry" formalism that has already been adopted in Russia. In this concept, the emphasis is shifted to the legitimate actions themselves without assessing their consequences, which can be both positive and negative. In this regard, "strategy" of the public authorities' enthusiasm for the application of western "recipes" to the national development is to be revised, especially in the context of sanctions and double standards.

To a substantial extent, the legal responsibility of public authorities and their officials has a declarative nature. Moreover, it concerns major issues of the state, society, and the individual. The current legislation is full of various declarations expressed in the wording "increase responsibility"; "are responsible"; "are guided by responsibility"; "responsibility in accordance with the applicable law", etc. There is nothing negative in the wording provided there are mechanisms for the implementation of legal responsibility. Thus, paragraph 109 of the Decree of the President of the Russian Federation "On the Strategy of National Security of the Russian Federation" states: "The provisions of the Strategy are mandatory for all state and local self-government bodies..."⁷. The Strategy does not contain any mechanisms of legal responsibility. Federal Law of June 28, 2014 No. 172-FZ "On strategic planning in the Russian Federation"⁸ shows that responsibility is one of the planning principles (Article 7). The legislator indicates that those involved in planning are also responsible for the results and efficiency. At the same time, the legislator does not specify what kind of responsibility the subjects bear and there is an impression that the law implies only the positive responsibility. However, responsibility is an integral legal phenomenon, and the positive component alone is not effective without support from the

⁶ Collection of Laws of the Russian Federation. 2020, no. 50, Art. 8074.

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⁷ Decree of the President of the Russian Federation of December 31, 2015 No. 683 "On the national security strategy of the Russian Federation". Collection of Legislation of the Russian Federation. 2016, no. 1, Art. 212.

⁸ Collection of Legislation of the Russian Federation. 2014, no. 26, Art. 3378.

negative responsibility at the information (psychological) level. Article 45 of the above-mentioned law does not solve the problem as well by stating that “the persons guilty of violating the legislation of the Russian Federation and other regulatory legal acts in the field of strategic planning bear disciplinary, civil and administrative responsibility”. An analysis of the current legislation shows that the general norms of the Civil Code of the Russian Federation are not adjusted to special characteristics of these types of offenses, the Code of Administrative Offenses of the Russian Federation provides for the responsibility for violating the strategic planning legislation. Thus, we come to the conclusion that there is a mere declaration without any mechanisms for implementing the legal responsibility of state bodies and their officials for ensuring national security.

In the light of the overall theme of this research it should be noted that the unity of public power presupposes both the system integrity of their legal responsibility and unacceptability of uncertainty. The system integrity of legal responsibility can manifest itself in several ways. Firstly, it ensures legal responsibility for the development of the normative legal acts at all levels, their implementation by public authorities and officials, and control over implementation. Secondly, it involves the unacceptability of dilution of responsibility between different state bodies through continuous reforms and redistribution of powers that are not conditioned by the needs of national development.

6. Conclusions

The recent amendments to the Constitution of the Russian Federation proclaimed the principle of the unity of public power which has entailed the need for establishing a mechanism for interaction of all levels of power for solving national problems and proper coordination of actions. To succeed in the implementation of the new principle, a considerable number of changes need to be implemented at the federal and regional levels and the adoption of qualitatively new regulations is required. We believe it is extremely important to reflect the system of

legal responsibility of public authorities for the results of their activity within the upcoming changes in the legislative framework. Such a system must be viewed from the broadest possible perspective including both the customary negative manifestation of the complex institution of responsibility and its positive aspect. The establishment of the proper legal grounds and measures of legal responsibility and the mechanism for their implementation in relation to public authorities and their officials both within the framework of federal and regional legislation will contribute to strengthening the principle of the unity of public power in the Russian Federation.

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