

RETIREMENT OF A HIGHEST OFFICIAL OF CONSTITUENT ENTITY OF THE RUSSIAN FEDERATION DUE TO LOSS OF PRESIDENT'S CONFIDENCE: CONSTITUTIONAL ISSUES

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The subject. The article is devoted to the retirement of a highest official of a constituent entity of the Russian Federation in 2020 due to the loss of confidence of the President of the Russian Federation. Special attention is paid to the grounds for loss of such confidence, legal and social nature of confidence and different aspects of restriction of electoral rights for citizens.

The purpose of the paper is to demonstrate that the retirement of a highest official in constituent entity of the Russian Federation vindicates electoral rights of citizens and decreases a level of confidence to public power of government and law. Moreover, the aim of this article is to prove that practice of the retirement of a highest official in constituent entity of the Russian Federation not always meet legal standards of negative constitutional legal responsibility.

The methodology of the study includes general scientific methods (analysis, synthesis, description) and logical interpretation of Russian legal acts. Social definitions such as confidence and post-truth were analyzed by methods of philosophy and sociology.

The main results and scope of their application. The author describes retirement of a highest official in a subject of the Russian Federation as a measure of constitutional responsibility and constitutional legal coercion in scope of practice in 2020. The author realizes, that President's decrees do not consist legal and appropriate basis for such retirement of a highest official in a subject of the Russian Federation, that is why this measure due to such practice cannot be qualified as negative constitutional legal responsibility.

The author suggests ways to improve the mechanisms for applying measures of constitutional coercion in cases of retirement of a highest official in a subject of the Russian Federation due to the loss of confidence of the President of the Russian Federation for prevention of public power abusing, such as: 1) establishing in the federal law formally defined constitutional violations, that threaten the foundations of the constitutional system, morality, health, rights and lawful interests of other persons, ensuring defense and security of the state, the presence/absence of which is determined in the manner of a "preliminary" trial by the courts; 2) introduce measures of constitutional legal prevention or restraint against the highest official in a subject of the Russian Federation; 3) in the decrees of the President of the Russian Federation provide specific grounds for the loss of trust, established by the court. In addition to this, the author suggests to change federal law regulation to give a right for citizens, that live in a subject of the Russian Federation, to sue the President's decree about the retirement of a highest official in a subject of the Russian Federation. This measure will guarantee a real judicial protection for electoral rights for citizens.

As a result, the article extends constitutional knowledge about measures of constitutional legal enforcement to highest officials in a subject of the Russian Federation.

1. Introduction.

The constitutional institution of retirement of a regional highest official in connection with the loss of the confidence of the President was introduced into the Russian legal system in 2004 with the adoption of Federal Law №. 159-FL of 11.12.2004 «On Amendments to the Federal Law «On the General Principles of the Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation» and the Federal Law «On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation». This federal law established the procedure for granting the powers to the highest official of the Russian Federation regions by the proposal of the President of the Russian Federation to the parliament of the subject of the Russian Federation.

It is objectively, that once the President of the Russian Federation presented the appropriate official of the subject to the appointment, he gave him confidence and had the right to refuse later this trust to him. In this case, the constitutional electoral rights of the population of the relevant subject of the Russian Federation, the principle of democracy, were not affected, since the head of the region was not an elected.

At the same time, as A.A. Kodrashev rightly points out, the removal of the heads of the subjects from office due to the loss of the confidence of the President was the political responsibility [1, p.22].

As we know, in 2012, in connection with the adoption of Federal Law №. 40-FZ of 02.05.2012 «On Amendments to the Federal Law «On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation» and the Federal Law «On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation», direct elections of governors were returned in Russia, however, the institution of loss of the presidential confidence remained, but was supplemented with grounds for such loss of confidence.

It is necessary to agree with A.A. Kodrashev that in general, over the last 12 years,

the responsibility of governors has evolved along a certain sinusoid: from the subjective discretion of the head of state and the complete absence of a legal regulation of this institution and returning to a system, in which the decision of the President of the Russian Federation on the responsibility about governors is not legally connected with their illegal actions [2, p.266].

The history of the development of the institute of dismissal from the post of governor with a detailed and reasoned analysis of the existing doctrinal and practical problems in this area is presented in a remarkable scientific article by A.A. Kodrashev, published in March 2020 [1].

At the same time, the practice of implementing the constitutional norms about dismissal from office in connection with the loss of the confidence of the President in 2020 has highlighted new problematic aspects in this institution, which will be analyzed in this article.

2. Grounds for losing the confidence of the President of the Russian Federation.

Earlier, we have already paid attention to both the legal nature and law enforcement practice on the issue of governor's removal in connection with the loss of the President's confidence [3; 4].

When the President of the Russian Federation exercised his powers on this issue in 2020, two significant events occurred, that actualized the scientific analysis in this area and the concentration of the focus of attention of scientists and practitioners: for the first time an attempt was made to challenge the decree of the President of the Russian Federation in court; residents of the subjects of the Russian Federation through different forms of mass public events expressed disagreement with the fact of the removal of the governor, whom they elected.

Until 2012 the federal legislation did not contain grounds for losing the confidence of the President of the Russian Federation, which caused reasonable criticism of the scientific community [5; 6, p. 73; 7, p.88].

At the same time, the dismissed mayor of Moscow, Yu.M. Luzhkov, for the first time publicly raised the question, that he had not been presented with grounds for losing confidence in him by the

President, Dmitry Medvedev. In the published letter of Yu.M. Luzhkov, addressed to the President of the Russian Federation D.A. Medvedev the day before his dismissal from office, we read: «I did not get a clear answer to the question: what is the basis of distrust? After a short but meaningless discussion, I was asked to submit an application «of my own free will», and then, «I will leave quietly». But if this does not happen, I will be released by the Presidential Decree with the above grounds.».

Today the grounds for the loss of confidence of the President of the Russian Federation in accordance with subparagraph «d» of paragraph 1 of Article 19 of Federal Law № 184-FL of 06.10.1999 «On General Principles of the Organization of Legislative (Representative) and Executive Bodies of State Power of the subjects of the Russian Federation» (hereinafter-Federal Law № 184-FL) are the identification of the highest official of the subject of the Russian Federation (the head of the supreme executive body of state power of the subject of the Russian Federation):

- facts of corruption or non-regulation of conflicts of interest as offenses, provided for by Federal Law № 273-FL of December 25, 2008 «On Combating Corruption»,

- establishment of the facts of opening or having accounts (deposits), storage of cash and valuables in foreign banks, located outside the territory of the Russian Federation, possession and (or) use of foreign financial instruments in relation to the highest official of the subject of the Russian Federation (the head of the highest executive body of state power of the subject of the Russian Federation) during the period when such person was a registered candidate for this position.

At the same time, such a phenomenon as «facts of corruption» is not known to the science of constitutional, criminal and administrative law. Nevertheless, the legislator considered it possible to use this construction to describe the composition of a corruption offense.

As V.N. Prokhorov rightly notes, the grounds specified in the legislation do not guarantee that federal intervention in the form of the removal of the governor from office will be proportionate to the committed offenses. For example, a conflict of interest, as well as the

presence of accounts in foreign banks, depending on the specific circumstances, may be an innocent and(or) insignificant violation of the established norms by the governor [8, p. 127].

There is an approach in the science of constitutional law, which is regarding the qualification of the removal of governors in connection with the loss of the confidence of the President as a measure of constitutional-legal responsibility, which is characterized by formally defined grounds for occurrence [9; 10; 11].

At the same time, the clarification in the federal legislation of the grounds for the loss of presidential confidence, unfortunately, did not affect the content of the decrees of the President of the Russian Federation, none of which reflected the actual grounds for the loss of confidence.

It is necessary to agree with A.A. Kodrashev that the existing grounds for loss of confidence are still allow the President to arbitrarily dismiss governors [1, p. 25, 27].

3. The practice of retirement (removing governors from office) due to loss of confidence in 2020.

In this article we will consider the relevant decrees, adopted by the President of the Russian Federation in 2020. Both in relation to the Head of the Chuvash Republic and the Governor of the Khabarovsk Territory the decrees contain the same phrase: «On the basis of subparagraph «d» of paragraph 1 and subparagraph «a» of paragraph 9 of Article 19 of Federal Law № 184-FL, I decree: to remove ... full name ... from the post of Head/Governor in connection with the loss of confidence of the President of the Russian Federation». At the same time, neither subparagraph «d» of paragraph 1, nor subparagraph «a» of paragraph 9 of Article 19 of Federal Law № 184-FL, specified in the preamble of the decrees, contain any other grounds for early termination of powers, except for corruption.

At the same time, the events preceding the dismissal of these heads of regions were actively covered in the mass media and clearly did not indicate the identification of corruption-related offenses against these persons. So, against the Head of the Chuvash Republic, there were actions that did

not correspond to the ethics of behavior in public service, and a criminal case was initiated against the Governor of the Khabarovsk Territory.

In accordance with paragraph 6 of Article 29.1 of Federal Law № 184-FL, the highest official of a subject of the Russian Federation has the right to appeal to the Supreme Court of the Russian Federation the relevant decree of the President of the Russian Federation within ten days from the date of its official publication. The Supreme Court of the Russian Federation must consider the complaint and make a decision no later than ten days from the date of its submission.

This right to judicial protection was exercised by M.V. Ignatiev, the former Head of the Chuvash Republic. On May 20, 2020, a case was registered in the electronic file of the Supreme Court of the Russian Federation, considered in the order of administrative proceedings, on the claim of M.V. Ignatiev to challenge the Decree of the President of the Russian Federation № 68 of 29.01.2020 «On Early Termination of the powers of the Head of the Chuvash Republic» (case № АКПИ20-276). On July 9, 2020, the case was dismissed due to the death of the plaintiff. However, the plaintiff's widow - L.Yu. Ignatieva unsuccessfully tried to appeal against the termination of the proceedings in the case.

It should be noted, that in cases of challenging normative legal acts, according to paragraph 28 of the Resolution of the Plenum of the Supreme Court of the Russian Federation № 50 of 25.12.2018 «On the practice of consideration by courts of cases and Acts, containing Explanations of legislation and having normative properties», the court does not have the right to discuss the question of the expediency of adopting the disputed act by an official, since this falls within the exclusive competence of state authorities of the Russian Federation and their officials.

Thus, using the method of legal modeling of the relevant judicial process, taking into account the author's experience in administrative litigation in cases of challenging normative legal acts, including in the Supreme Court of the Russian Federation, it is possible to assume that the court will not be able to assess the expediency of removal from office (political component), but at

the same time will not be able to evade the assessment of the existence of grounds for the adoption of the contested decree.

According to part 9 of Article 213 of the Code of Administrative Procedure of the Russian Federation, the burden of proving the conformity of the contested normative legal act with the procedure for its adoption, and its content with normative legal acts, that have greater legal force, is assigned to the official, who adopted the contested normative legal act. Consequently, the burden of proving the validity of the loss of confidence (compliance of the grounds with subparagraph «d» of paragraph 1 of Article 19 of Federal Law № 184-FL) will be assigned to the President.

On the other hand, the Supreme Court of the Russian Federation could, by analogy, apply the approach, taken by the Constitutional Court of the Russian Federation in the matter of the dismissal of the head of a municipality in the event of an unsatisfactory assessment of its activities.

The author remind, that in the Decision of July 16, 2013, № 1241-O, the Constitutional Court of the Russian Federation formulated a legal position, according to which the decisions of the representative body of the municipality, related to the removal of the head of the municipality, should not be arbitrary, and the procedure for their adoption is subject to judicial review. Thus, checking the legality and validity of law enforcement decisions of a representative body of a municipality on the issue of evaluating the activities of the head of a municipality, based on the results of his report, is not within the competence of the Constitutional Court of the Russian Federation. Subsequently, taking into account this definition, a stable judicial practice has developed in the courts of general jurisdiction, according to which the court does not have the right to interfere in the activities of local self-government bodies, including evaluating the activities of the head of a municipality on the merits, since this is the exclusive competence of a representative local self-government body. As a result, when considering this category of cases, the courts examine only the issues of the procedure for resigning on this basis.

In this case, the Supreme Court of the Russian Federation may consider the trust of the President, which was denied to the governor, the

exclusive competence of the guarantor of the Constitution and avoid assessing the presence/absence of grounds for the loss of such trust, checking only the procedure for the adoption of the decree and its publication, which are quite difficult to violate.

According to the general rules of qualification, the subject must be charged with a specific *corpus delicti*. Taking into account the fact, that the suspended persons have the opportunity to appeal against these decrees, the subject of the appeal is unclear in this case: on which of the two corruption grounds did the loss of trust occur? The uncertainty in the issue of the «charge» automatically violates the constitutional right of citizens to judicial protection of violated rights, since it does not allow to build an adequate line of defense.

Taking into account the peculiarities of the distribution of the burden of proof in the modeled process, in order to find out the specific reason for the removal from office, a person, who was the highest official of a subject of the Russian Federation, must file an appropriate administrative claim with the court to the defendant-the President of the Russian Federation, what is quite paradoxical.

What is more, the case will be considered by the judges of the Supreme Court of the Russian Federation, appointed by the Federation Council on the proposal of the defendant-the President of the Russian Federation. In this regard, we will remember a part from an interview with Yu.M. Luzhkov – his answer to the question about the possibility of challenging the Presidential decree seems relevant: «No, I have not yet made this decision (on challenging) and probably will not accept it. And I will not accept it for this reason: I do not believe that this Supreme Court will make a decision, that will contradict the presidential decree».

4. Removal from office of the governor in connection with the loss of the confidence of the President as a measure of constitutional-legal coercion.

Constitutional-legal coercion as a branch type of legal coercion is a system of measures of

power influence, applied to the subjects of constitutional law, to prevent and resolve constitutional conflicts in a special order, enshrined in the norms of constitutional law, expressed in causing legal damage to the subjects of influence.

The essence of constitutional-legal coercion consists in the power influence on the constitutional status of the subject of legal relations in order to resolve constitutional conflicts and does not include ideological forms of the influence of law on the legal consciousness of the subject.

The system of constitutional and legal coercion consists of the following measures, distinguished by the criterion of their primary purpose:

- measures of constitutional-legal prevention;
- measures of constitutional -legal restraint;
- measures of constitutional-legal restoration (protection);
- constitutional-legal responsibility;
- measures of constitutional-legal support for legality of procedure.

In our opinion, neither the Decree of the President of the Russian Federation «On the early termination of the powers of the Head of the Chuvash Republic» of 29.01.2020 № 68, nor the Decree of the President of the Russian Federation «On the Early Termination of the Powers of the Governor of the Khabarovsk Territory» of 20.07.2020 № 473 can be qualified as measures of constitutional-legal responsibility, although they look like such kind of responsibility due to their form, but there is no legally established basis for the occurrence of this legal responsibility – a constitutional offense in the form of acts of corruption, provided for in subparagraph «d» of paragraph 1 of Article 19 of Federal Law № 184-FL.

Moreover, in the case of the Governor of the Khabarovsk Territory, who was actually dismissed from office in connection with the initiation of a criminal case, part 4 of Article 29.1 of Federal Law № 184-FL provides, that the President of the Russian Federation in accordance with the procedure, established by the criminal procedure legislation of the Russian Federation, was entitled on the recommendation of the Prosecutor General of the Russian Federation to temporarily suspend a

governor from performing his duties, if this person is charged with committing a crime, which would comply with the principles of presumption of innocence and non bis in idem and would be a measure of constitutional-legal restraint.

A number of researchers rightly note the conflict of these constitutional norms (subparagraph «d» of paragraph 1 of Article 19 and part 4 of Article 29.1 of Federal Law № 184-FL), which in the same situation allow the President to dismiss the governor from office due to loss of confidence, and temporarily remove him from office for the period of investigation, which no longer corresponds to the constitutional principle of equality, enshrined in part 1 of Article 19 of the Constitution of the Russian Federation [1, p. 28; 8, p. 36].

There is a question about the legal nature of the loss of confidence of the President of the Russian Federation, regardless of the revealed facts of corruption, since the decrees, which are considered in this article, demonstrate, that in practice the grounds for the loss of confidence of the president are interpreted much more widely, than the list established by law, the definition of which is the exclusive prerogative of the President.

In this context, the results of V.N. Prokhorov's study of the legislation of foreign countries, reflected in his dissertation, are also interesting, according to which in no foreign federal state is the loss of confidence of the head of state fixed as a basis for the removal from office of the head of the subject in the federation. At the same time, the legislation of no foreign federal state provides for the possibility of removing the elected head of the subject of the federation from office, depending on the discretion of the head of state, except in exceptional circumstances [12, p. 6].

It is obviously, such measure of coercion has not yet met the criteria of guilty legal responsibility (constitutional-legal), although this is exactly what it should be – a measure of constitutional-legal responsibility.

5. The removal of the governor due to the loss of the President's confidence violates basis of the constitutional system and rights of citizens.

Many researchers recognize the

competition between the discretionary powers of the President to remove governors from office due to the loss of trust and the constitutional principles of federalism, equality, the presumption of innocence, the constitutional right to judicial protection, but the main contradiction, in our opinion, is with the principle of democracy and electoral rights of citizens.

The elected heads of the subjects, who won in process of free elections, to whom the population of the corresponding region expressed their confidence, are subject of removal from office. At the same time, as S.V. Narutto correctly notes, there is no legal subordination between the President of the Russian Federation and the head of the subject [13], which would allow making a decision on the termination of the powers of the governor. In fact, of course, such subordination is difficult to deny.

In this case, as noted by A.N. Gutorova, the President without approval from anyone, without taking into account the opinions of the people, who chose the highest official, decides that [14, p. 464].

For example, according to official data of the Central election Commission of the Chuvash Republic, the results of the elections of the Head of the Chuvash Republic, on 13 September 2015, M.V. Ignatiev supported 65,54% or 362 301 voters.

According to the official data of the Election Commission of the Khabarovsk Territory, according to the results of the election of the Governor of the Khabarovsk Territory, held on September 9, 2018, S.I. Furgal was supported by 35.81% or 126,693 voters, and his closest rival scored 35.62% of votes.

As R.M. Dzidzoev notes, the essence of direct elections of governors is in contradiction with their dismissal due to loss of trust, because it is the electorate, that the head of the subject is obliged to trust, and this electorate has the right to recall the governor, not the President of the Russian Federation, who deprives the highest official [15]. M.G. Mirzoev holds a similar position, noting that the position of the President of the Russian Federation is theoretically placed above the opinion and interests of the voters of the relevant subject, which contradicts the foundations of democracy [16].

Moreover, such a contradiction cannot be justified by the constitutional powers of the

President, enshrined in Article 80 of the Constitution of the Russian Federation to protect the state integrity of Russia and to ensure the coordinated functioning and interaction of the bodies, that are part of the unified system of public power by virtue of the following.

According to Article 3 of the Constitution of the Russian Federation, the only source of power in the Russian Federation is its multinational people, who exercise their power directly, as well as through state authorities, and the highest direct expression of the power of the people is a referendum and free elections – elections, according to the results of which the head of the subject is elected, who is endowed with the only source of power and the bearer of sovereignty (the population of the subject) with state powers. Consequently, since the legal nature of the governor's powers is based on popular sovereignty, his arbitrary removal from office detracts from the results of the highest direct expression of the power of the people and contributes to the emergence of constitutional conflicts, a vivid example of which is the situation, that has developed in connection with the removal the Khabarovsk governor.

In accordance with part 3 of Article 55 of the Constitution of the Russian Federation, the electoral rights of citizens and the right to participate in the management of State affairs may be restricted by federal law only to the extent necessary to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of other persons, to ensure the defense of the country and the security of the State.

It is obviously, that when governors are removed from office, the electoral rights and the right to participate in the management of state affairs of citizens, who voted for the corresponding candidate, as well as the passive electoral right of the heads, are restricted.

Therefore, such restriction of the electoral rights of citizens in the form of removal the governor, whom was elected by them, is possible only for the constitutionally significant purposes of protecting the foundations of the constitutional system, morality, health, rights and legitimate

interests of other persons, ensuring the defense of the country and the security of the state. In this regard, grounds for the loss of the President's confidence should also be acts, that threaten the foundations of the constitutional system, morality, health, rights and legitimate interests of other persons, ensuring the defense of the country and the security of the state.

The current legislative structure of the dismissal of the heads of regions from office due to the loss of confidence in no way takes into account the electoral rights, realized by the residents of the subjects of the federation. Moreover, the situation looks paradoxical, when comparing the institutions of the loss of confidence of the President of the Russian Federation and the expression of distrust by the legislative body of the region.

Thus, according to Part 2 of Article 19 of Federal Law № 184-FL, the regional parliament has the right to express distrust to the governor in the following cases:

- the publication of acts, that contradict the Constitution of the Russian Federation, federal laws, the constitution (charter) and the laws of the subject of the Federation, if such contradictions are established by the relevant court, and the governor does not eliminate them within a month from the date of entry into force of the court decision;

- other gross violation of the Constitution of the Russian Federation, federal laws, decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, the constitution (charter) and laws of the subject of the Federation, established by the relevant court, if this resulted in a mass violation of the rights and freedoms of citizens;

- improper execution by the governor his duties.

The decision of the regional parliament about distrust to the governor is sent to the President of the Russian Federation for consideration to resolve the issue of removing. A positive decision on this issue by the President of the Russian Federation entails the resignation of the governor.

At the same time, the President of the Russian Federation did not support, for example, the decision about distrust of the Altai Territory

parliament. Thus, the expression by the regional parliament of distrust is not unconditional and does not automatically entail the early termination of his powers [17].

This situation can be justified in the system of appointment of governors by presidential proposal. At the same time, this unconditional expression of distrust by the legislative (representative) body of state power to governors is seen as unfounded within the framework of the returned model of their direct elections.

It seems, that for the early termination of governors, elected as a result of the direct expression of the will of the population (direct democracy), it is necessary and sufficient within the framework of a similar democratic form, in particular, by decision of the legislative body of state power, representing the interests of the same population (representative democracy).

The legislator has chosen a completely different approach to the question of the grounds for expressing distrust, the judicial guarantee of establishing legally significant facts, and granting the highest official the right to eliminate the identified violations. Such a significant difference in the legal regulation of the above-mentioned legal institutions, in our opinion, has no objective grounds.

The establishment of the grounds for removal from office is intended to guarantee the constitutional right of citizens to elect and be elected to state authorities, to participate in the management of state affairs both directly and through their representatives (Article 32 of the Constitution of the Russian Federation).

As follows from the legal positions of the Constitutional Court of the Russian Federation, the coercive measures, provided by the federal legislator, must comply to the requirements of justice, be proportionate to the constitutionally enshrined goals and protected interests, as well as the nature of the committed act; such measures are permissible, if they are based on the law, serve the public interests and are not excessive; in cases, where the constitutional norms allow the legislator to establish restrictions on the rights, in order to prevent the abuse of the right, he should not use excessive measures, but only necessary and

conditioned by the constitutionally recognized goals (Decisions № 8-P of May 14, 1999 and № 10-P of November 14, 2005). This raises the question of the proportionality of the measures of constitutional-legal coercion, applied to the elected governors in the form of removal from office due to the loss of the President's confidence.

We believe, that such measures of constitutional-legal coercion will be proportionate and constitutionally justified if they comply with the principles of: legality of coercive measures; priority of human and civil rights and freedoms; ultima ratio (last resort); proportionality of measures to resolve a constitutional conflict; effectiveness of such measures.

In order to achieve these principles, it is possible to:

1) the establishment in the federal law of formally defined elements of constitutional offenses, that pose a threat to the foundations of the constitutional order, morality, health, rights and legitimate interests of other persons, ensuring the defense of the country and the security of the state, the presence/absence of which is determined in the order of «preliminary» judicial proceedings by the supreme court of the region;

2) introduce measures of constitutional-legal prevention or restraint against governors, if signs of grounds for loss of confidence of the President of the Russian Federation are revealed in relation to them, in particular, to provide for the obligation, and not the right of the President of the Russian Federation, to temporarily suspend the governor from performing duties, if signs of grounds for loss of confidence are revealed in relation to him before the relevant court decision comes into force;

3) give specific grounds for the loss of confidence, established by the court decision that has entered into force, in the decrees of the President of the Russian Federation on the early termination of powers in connection with the loss of confidence.

6. Public confidence in the public power in the context of removal governors of the Russian Federation.

The category of «trust» is not genetically constitutional or legal, it has a sociological and

psychological nature. Thus, F. Fukuyama draws the attention on the role of trust as a condition for the formation of social communities and a factor of their activity effectiveness [18].

For the first time, the categories of «trust» and «distrust» in law were studied systematically by A.N. Kokotov in his monograph «Trust. Distrust. Law.» [19]. This approach, as precisely noted by K.V. Aranovsky and S.D. Knyazev, made it possible to bring legal science closer to legal reality, to move away from simplified normativism and present law in its anthropogenic nature, in relation to a social person, and not exclusively as a system of norms, given to society by the legislator, the state, or derived from natural law dissolved in nature [20, p. 222].

The presence of the phenomenon of trust in constitutional law is due to the general role of law as a social regulator, as a form of public relations, that reflects or incorporates other social regulators. Such initial regulators, according to A.N. Kokotov, include faith as a complex combination of intellectual, moral, volitional, and sensory imperatives - and not only religious faith, but everyday faith, expressed in trust or distrust of someone or something [21, p. 21]. Trust was previously considered by some researchers as a form of faith [22, p.7,8].

According to E.Y. Dugin, trust can be considered not only as a systemic property of information and communication processes, but also as a specific power, that determines the nature of the relationship between management structures and society [23, p. 60].

N.A. Arapov draws attention to the special role of trust in constitutional law, noting that the phenomenon of trust and the idea of maintaining the trust of legal subjects expressed in a well-known principle are related to constitutional law [24, p. 173].

However, if earlier trust was based more on the reliability of the source of information, careful verification of facts, the presence of reliable, relevant and acceptable evidence, now sociologists note a trend towards trust based on «post-truth» era [25; 26]. The term «post-truth» was gained wide popularity during the Brexit-Referendums, dedicated to the issue of the UK's exit from the EU,

and later-in the election campaign for the US presidential election in 2016. The term «post-factual politics» (Postfaktische Politik – German) is usually understood as a set of political thoughts and actions in which facts do not occupy a central place, and the effect of the statement prevails over its truth [26, p.63].

This phenomenon is a consequence of the oversaturation of modern society and the information space with unverified information, which characterizes our time as the era of post-truth.

It is obviously, that the adoption of decisions on the basis of post-truth, guided by the need to demonstrate the authority of the presidential power and the responsiveness to the management process, are characteristic of the implementation of state policy in the Russian Federation. In this connection, the effect of removal from office due to the loss of the President's confidence is more important as a power management influence and is not related to the establishment of the truth about the grounds for its adoption.

At the same time, there is another problem about the trust of the people to the government due to arbitrary application of legal norms about loss of the presidential confidence. Thus, the Constitutional Court of the Russian Federation has formulated a principle of maintaining confidence in the law and the actions of the state, which follows from the constitutional principles of legal equality and justice in a democratic State, governed by the rule of law. The principles of legal certainty and the maintenance of citizens confidence in the law and the actions of the state guarantee citizens that state-authorized decisions are based on strict compliance with legislative requirements.

The level of trust to the public power, concentrated in the figure of President of the Russian Federation and governors, is the first indicator in the list of indicators, approved by the President to assess the effectiveness of the activities of the governors. Consequently, the public's trust in the President of the Russian Federation is linked to the activities of the highest official of a constituent entity of the Russian Federation, which seems unfounded in the context of the electability of this official.

Citizens of the region are not informed about

the specific legal basis for the loss of presidential confidence to their governor, therefore we could not speak about the maintaining citizens' confidence in the law and the actions of the state, since citizens do not have information about the facts on the basis, of which the President of the Russian Federation actually canceled the results of the direct expression of the will of citizens in regional elections. At the same time, the governor is the head of the subject, who is responsible for maintaining confidence in the President of the Russian Federation. It seems, that the logical connection of these circumstances has been broken.

At the same time, the state authorities and legislation do not directly provide a possibility for protecting the electoral rights of citizens in this situation. In particular, paragraph 6 of Article 29.1 of Federal Law № 184-FL establishes a special administrative plaintiff in cases of challenging the relevant presidential decree – the dismissed head of a subject of the Russian Federation. In this regard, the legal successor of this person (widow), as well as a resident of the Khabarovsk city, were denied judicial protection in an attempt to challenge this decree. The question about the possibility of legal succession in these legal relations is discussed, but we suggest, that such right to challenging of presidential decree in this case must be guarantee to a citizen-resident of the relevant subject of the Russian Federation.

Therefore, in order to guarantee the electoral rights of citizens and their real protection, we consider it necessary to amend the federal legislation in terms of granting the right to challenge in the Supreme Court of the Russian Federation the decree of the President of the Russian Federation on the dismissal of the governor of the subject to a group of citizens, permanently residing in the territory of the relevant subject, by filing a collective administrative claim.

7. Conclusions.

In conclusion, we note an interesting circumstance, that the federal law, which introduced into the legislation the institution of the removal of the governor by the President of the Russian Federation and the articles about the

responsibility of officials of the executive authorities, was introduced into the Federal Assembly of the Russian Federation by the President of the Russian Federation and was rejected by the Federation Council on July 7, 2000, and subsequently adopted only by the State Duma.

At that time the Federation Council of the Russian Federation consisted of two representatives from each subject of the Russian Federation: the head of the legislative (representative) and the head of the executive bodies of state power.

The chamber of the Russian Parliament, which directly represented the interests of the regions, did not support the introduction of the institution of dismissal of governors. Consequently, the federal legislator did not develop a coherent position about this question, and therefore could not solve the more complex question of the proportionality and constitutional justification of this measure of constitutional-legal coercion.

Based on the above, the legislation and law enforcement practice on the removal of governors due to the loss of the confidence of the President of the Russian Federation needs to be improved in order to ensure the rule of law, protect democracy, constitutional electoral rights of citizens and minimize the risk of discretion in the application of this measure of constitutional-legal responsibility.

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