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Research Article

TRANSFORMATION OF PUBLIC AUTHORITIES – A WAY TO IMPROVE THEIR EFFICACIOUS PERFORMANCE

ALEXANDER M. TSALIEV
North Caucasus Mining and Metallurgical Institute
ORCID ID: 0000-0002-5534-0251

The article reveals the relevance of the research topic taking into account the current international situation and the Russian political, legal and socio-economic reality. The objectives of the research are the need for scientific substantiation of the transformation of public authorities in order to ensure their organizational and legal unity and consistency as a condition for enhancing the effectiveness of their activities. The unfounded and flawed nature of the constitutional norm on the autonomous organization and functioning of state and local authorities is revealed. Proposals are proposed and substantiated on the need to include the principle of responsibility of heads of public authorities among other principles of responsibility. A proposal is made on the need to expand the range of subjects of legislative initiative in order to democratize the legislative process more. Logical, historical, comparative-legal, systemic and functional research methods are used.

Key words: *Constitution of the Russian Federation, public authorities, state authorities, local authorities, responsibility of officials, subjects of legislative initiative*

Introduction

In today's international context, when the collective West led by the United States openly confronts Russia and economic and political sanctions imposed on Russia are constantly reinforced, the need to improve the efficacious performance by public authorities – state and local ones – becomes more and more obvious. The solution to this problem is complicated by the multiethnic and multi-religious population of Russia, its large territory covering 11 time zones, differing backgrounds of the peoples living on its territory in terms of state legal structure.

The need for public authorities' performance enhancement is also justified by the current expansion of constitutional regulations and current statutory codes of a social nature. However, it should be kept in mind that constitutional obligations of the state in social matters, as it is correctly stated in the literature, are notable for the lesser degree of formal certainty than the obligations regarding enforcing civil and political rights and freedoms. There is a wider range of independent judgments by legislators and executive authorities the framework of which is established by the state of the economy, the unemployment level, the state of health care facilities and resources and other conditions (Ebzeev, 2016: 385). Also, it is quite obvious that to ensure fulfillment of the state's commitments not only the proper economic development of the country is required, but also the best possible organization of federal, regional and local authorities, the forms of their interaction.

Per the amendments introduced into the Russian Federation Constitution in 2020, the aforementioned authorities were unified into the definition of authorities included in the *single system of public authorities,*

which is quite logical and much needed in the context of the current political reality and weakened interaction between these authorities inevitably affecting the level of coherence, consistency and effective performance.

It should be noted that the term 'public authority' initially absent in the Constitution of the RF was first introduced by the Constitutional Court of the RF in its Order No. 17-P dated June 10, 1998. Subsequently, through a series of decisions, it conceived legal propositions that allowed speaking about the existence of such a public authority form as municipal authority along with state authority. In the Russian Federation Law 'On Amendments to Russian Federation Constitution' dated March 14, 2020, public authority is mentioned multiple times (Art. 71, 80, 131, 132) and included in the definition of the Federal Law 'On General Principles for Organizing Public Authority in Russian Federation Constituent Entities' dated December 21, 2021. However, it shall be emphasized that a lot of questions regarding public authorities arise, specifically on the public level. We will mention at least the most general and fundamental ones: whose interests does it serve? What stands behind the authority? What is the source of collective will? History has provided various answers – God, a monarch, the people (Tikhomirov, 1990: 5).

Materials and Methods

In terms of theory, one of the first works where the issues of organizing public authority are considered in a comprehensive manner is a famous collective monograph (Avakyan, 2014), where S.A. Avakyan, a constitutional scholar, quite reasonably assumes that 'public authority is represented by three organizational forms: a) state authority; b) public authority; c) authority of the local self-government. Registering the public authority as a separate form of authority is quite logical and can be argued by the fact that 'society still has a right to both independent 'being' and some influence on the state' that is difficult to argue with. Meanwhile, the subject of this research is the issues of state and local authorities as major forms of public authority. As V.E. Chirkin rightfully notes, having gained state authority, a sociopolitical stratum of society strives to change living conditions using this power – primarily for its own benefit. Yet, any sociopolitical stratum takes some measures to improve living conditions of the society in general, other strata as well. This is what its well-being and time in power depend on as well (Chirkin, 2013: 204).

Any forms of authority can be effective only when they have to rely on anything but force, and when they are legitimate, they demonstrate the greatest concern about members of society creating proper living conditions for them. It is the society itself that should compel the authority to do so, since it is the society that eventually defines its meaning and essence. Any attempts at seizing public power, bypassing the existing laws are illegal and may not receive any social support. As it was claimed long ago, 'whoever gets into the exercise of any part of power by other ways than what the laws of the community have prescribed hath no right to be obeyed... since he is not the person the laws have appointed, and, consequently, not the person the people have consented to' (Locke, 1988: 377).

Results

Thus, the following conclusion can be drawn: the more the authority relies on the laws, the closer it is to the people, and, therefore, the more legitimate it is. As the authors of the collective monograph note, out of three types of legitimate authority (or domination), it is an intricate symbiosis of elements of rational-legal, traditional imperial and charismatic dominance that is typical for the Russian constitutional system (Karasev, 2019). This can be indicated by the presidential election of Yeltsin in 1996. In our opinion, this is an objective reflection of the Russian reality when it is impossible to opt for any one type of legitimate authority exclusively.

When authority turns into intrinsic value, as this happened several times over the course of history, in our country as well, society will revolt against it sooner or later. Examples are near at hand. Our contemporary history is the evidence. Unfortunately, per the old Russian tradition, while fighting against the totalitarian authority of the Soviet times (which is not similar to a strong state authority!) we have rushed from one extreme to another. Many have turned their hatred to the old system into displeasure with the state. The pseudo-democrats have been particularly successful in this matter, since they have managed to shatter and weaken the state authority to the point where it is practically helpless.

Discussion

In their time, American and Western 'well-wishers' persuaded our newbie reformers (which was an easy thing to do considering their low level of professionalism and a lack of practical experience) that to democratize the country it was necessary to break the unified vertical power structure, so that local self-governing bodies could solve the issues of the local significance themselves without any pressure from above. And they actually managed to push through that provocative idea aimed at destroying the unified Russian authority on the level of constitutional legislation. Thus, Art. 12 of the Russian Federation Constitution secured the provision that 'local self-governing bodies are not included in the system of state bodies.' Commenting on this constitutional code, some authors wrote exciting things about demonstrating complete separation from the principle of 'democratic centralism' that made local soviets so-called 'agents' of a super-centralized state at the local level, the basis for the hierarchical pyramid of a unified state authority (Topornin, Baturin & Orekhov 1994: 103). However, the absurdity of that provision was obvious for all sober-minded and unprejudiced specialists, since the state authority was stripped of its footing, foundation – the local authority, and the latter was left without the relevant support of the state authority, which is the issue we have covered in our papers multiple times (Tsaliev, 2018) and where we were supported by some specialists and practitioners.

According to A. Tyazhlov, former Head of the Administration of the Moscow Region, this Federal Law was written and adopted at the request of the International Monetary Fund to destroy the system of government. For information purposes, it should be noted that there is a large department dealing with local self-government issues in the International Bank of Reconstruction and Development, and the Council of Europe that we joined, making a condition for Russia from the very start: to reform local self-government based on the 'Law On Local Self-Government', and which we were advised to adopt as soon as possible – in spite of the fact that we did not have our own experience in developing such legislation and practice of its application. I.V. Vasiliev, a well-known specialist in the field of local self-government, rightly notes: 'Striving to return to the civilized path of social life, the new Russian leadership made a strategic mistake in declaring the development of the institution of local self-government a goal for the nearest future, almost to the present day. The experience of foreign states was never taken into account despite all the irrevocable confirmations of the need for the gradual adoption of local self-government and for the involvement of the state in this process. Certainly, history has many sides, and many cases can be found where a state was built based on self-government structures, from below, so to speak. But such an experience was not for us. We build local self-government from above, and those historical examples of the conditions similar to ours are useful' (Vasilev, 2004).

However, we ignored the Russian historical experience of interaction between state and local bodies and to avoid it completely, the authors of the Russian Federation Constitution secured the provision that 'local self-governing bodies are not included in the system of state bodies' in Art. 12, Chapter 1 – Fundamentals of the constitutional system. And this is while the local self-government in the United States and many other countries, including European, were not separated from the state authority system. According to T. Dye, 'local self-government isn't mentioned in US Constitution... from a constitutional point of view, local government forms a part of the state authority' (Dye, 1973: 230) and it is directly subordinate to the bodies of state authority.

Meanwhile, advisors from the United States and Western countries literally imposed on us the idea of establishing autonomous local authorities and their independent functioning. And those authorities even believed that, and they acquired special ambitions about their status. In practice, independent forms of their activities imposed on us from the outside on the legislative level resulted in almost strange incidents. Thus, after yet another set of American sanctions, deputies from the Digora Settlement District (Republic of North Ossetia–Alania) delivered an indignant decision: *'To deny the entry of the President of the United States Barack Obama into the territory of the Digora District'.*

Our amusement aside, folk wisdom often proves the foolishness of the legislation, in this case – the disruption in state and local authorities secured in the previous constitutional legislation despite the common sense and historical experience of the Soviet period, when the bodies used to interact and to arrange their work based on the principle of democratic centralism. It was set forth in Art. 3 of the USSR Constitution of 1977, RSFSR Constitution of 1978 and meant the electivity of all the state authorities from the bottom

upwards; accountability of these bodies to the people; the binding nature of decisions by superior bodies for inferior ones; the combination of unified leadership with initiative and creative activities on the local level; responsibility of every state authority and every official for their entrusted work. Such a principle seems to correspond essentially to the democratic principles of organizing authority and the forms of its execution. It largely serves as the basis for establishing and functioning of authorities in democratic states as well. However, since public authorities of the Soviet State had functioned on its basis as well, it became subject to intentional, unreasonable and cynical criticism by the liberal democrats. RSFSR Supreme Soviet deputies fell for it as well and in April 1992, they excluded it from the Russian Constitution for no good reason.

We assume that the aforementioned principle of government and functioning of authorities is quite justified, since it combines the way authorities are elected by the people as the source of power and the vertical hierarchy of public authorities, so it cannot be rejected as a vestige of the Soviet past. In this regard, we would like to recall the opinions of President of Russia V.V. Putin that 'innovations are not about denying the past, but about its development'; 'we will inevitably turn to the experience of the national constitutional legislation to work out recommendations for building a legal state'. Still, in the Yeltsin's times, everything Soviet was rejected as the vestiges of the past, and the provision on the division of public authorities into state and local ones was secured as an innovation provided that the local authority would function almost autonomously, which resulted in weakening of the entire authority of the Russian Federation.

Recognizing the goals and objectives of the American and Western political and oligarchical elite allegedly concerned with the 'democratization' of our state and its government institutions, President of the Russian Federation V.V. Putin has made significant efforts in recent years in order to strengthen and enhance the performance of authorities for our country to reach the required rates of stable social and economic development and to ensure an adequate standard of living for its citizens. Undoubtedly, a lot has been done to that end, and the most prominent evidence is our successes in the military-industrial complex, international politics, the fight against the coronavirus and another quite dangerous social disease – terrorism. Still, the time has long since come to ensure the best possible organization of the very system of government. Today's efforts on organizing a unified public authority on federal, regional and local levels cannot be perceived as anything else. This is indicated by the proposals made by President V.V. Putin in 2020 for amendments to the Russian Federation Constitution regarding legislative and organizational and practical unification of state and local authorities in the framework of unified *public authority*.

As was rightly noted in the Opinion of the Constitutional Court of the Russian Federation dated March 16, 2020, 'The principle of unity in the public authority system suggests well-coordinated actions of various tiers of authority as a cohesive whole for the benefit of citizens'. It is set forth in Cl. 2, Art. 1 of the aforementioned Federal Law that for the implementation of this principle 'The President of the Russian Federation ensures well-coordinated functioning and interaction of bodies included in the uniform system of public authority in the Russian Federation'. Thus, on the one hand, all the public authorities report to the President of the Russian Federation, which increases his personal responsibility for the state of affairs in the society and state, and, on the other hand, the President receives supreme powers of authority regarding solution to foreign and domestic policy issues of Russia. As for the last aspect, according to the updated Russian Federation Constitution, the powers of the President of the RF have been broadened when it comes to solving organizational and personnel issues. First of all, this is about judicial and prosecutorial authority. Thus, in accordance with new amendments to the Constitution of the RF, the President of Russia presents to the Federation Council not only candidates for positions of judges of Constitutional and Supreme Courts, but candidates for positions of their heads – Chairpersons and their Deputies. Also, according to Cl. 3, Art. 83 of the updated Russian Federation Constitution, he is entitled to terminate the powers of the aforementioned officials.

As for the RF Prosecutor's Office, it should be noted that now its powers are set forth directly in Art. 129 of the Russian Federation Constitution, which is indicative of the significance of this government body and its functions in the government system. Consequently, the powers of the President of the RF regarding heads of the Russian Prosecutor's Office have been expanded as well. Now, they can be relieved of office by the President of the Russian Federation without any consultation with the Federation Council that is required when they are assigned to their positions.

Considering the status of the RF Prosecutor's Office, the requirements for prosecutors of the Russian Federation are higher as well. Thus, according to Part 2, Art. 129 of the Russian Federation Constitution, such a position can be taken by 'Russian Federation citizens who do not have citizenship of a foreign state or residence permit or other document certifying the right of a Russian Federation citizen to permanent residence on the territory of the foreign state. According to the procedure established by Federal Law, the prosecutors may not open and have accounts (deposits), store cash money and valuables in foreign banks located beyond the borders of the Russian Federation'.

One of prerequisites for efficacious performance by public authorities is the responsibility of officials and government agencies for the assigned matter. This issue is described quite thoroughly in the aforementioned Federal Law. Thus, basic powers of a senior government official in a Russian Federation constituent entity, in accordance with Art. 25, provide for the following rights: to issue a warning, to give a reprimand to the head of the municipal entity, the head of the local administration for a failure to properly fulfill their duties on ensuring that local self-government bodies exercise certain state powers delegated to the local self-government bodies by the federal laws and/or laws of the Russian Federation constituent entity; to remove the head of the municipal entity, the head of the local administration from office in the cases stipulated by law; to appeal to the representative body of the municipal entity with an initiative on the dismissal of the head of the municipal entity in some cases, including the systematic failure to reach the indicators required for assessing the efficacious performance of the local self-government bodies according to the procedure established by Federal Law 'On General Principles for Organizing Local Self-Government'.

Along with the powers of a senior government official from the Russian Federation constituent entity, Art. 29 of the Federal Law provides for liabilities as well. In particular, the President of the Russian Federation has the right to issue a warning, to give a reprimand to the senior government official from the Russian Federation constituent entity for the failure to properly fulfill their duties. The President of the Russian Federation also has a right to remove a senior government official of the Russian Federation constituent entity from office: due to a loss of confidence by the President of the Russian Federation; due to distrust expressed to them by a legislative body of the Russian Federation constituent entity; in case of non-compliance with a decision of the Russian Federation Constitutional Court, etc. It is even more surprising then that *none* of the 13 principles for the performance of the bodies included in the unified system of public authority in the constituent entity of the Russian Federation set forth in Art. 2 of the aforementioned Federal Law No. 414-FZ, *provides for responsibility for any violations of law, missteps and shortcomings in their performance*, although these are described in detail in the relevant articles of the law. It is quite obvious that it needs to be secured among the aforementioned principles. The more so, since responsibility, particularly its special legal forms, is a major prerequisite for the efficacious fulfillment of functions by the public authorities. Otherwise, they would not have been granted the relevant authority and liabilities.

To improve the efficacious performance of public authorities it is also necessary to define their objectives clearly in order to establish the number and types of the aforementioned authorities. All this will allow establishing the required scope and balance of powers for each authority, so that they could solve their institutional tasks. Currently, in accordance with Part 2, Art. 4 of the Federal Law, the system of state authorities in any Russian Federation constituent entity includes: the legislative body of the Russian Federation constituent entity, the senior government official of the Russian Federation constituent entity, the supreme executive body of the Russian Federation constituent entity, other state authorities of the Russian Federation constituent entity established in accordance with the constitution (charter) of the Russian Federation constituent entity. It should be noted that per the aforementioned Federal Law, a human-rights ombudsman of the Russian Federation constituent entity, a children's rights ombudsman of the Russian Federation constituent entity and a control and accounts body of the Russian Federation constituent entity supervising regional budget execution also qualify as other state authorities of the Russian Federation constituent entity. In the past, other state authorities of the Russian Federation constituent entities included constitutional (charter) courts, but they have currently been eliminated per the Federal Constitutional Law 'On Introducing Amendments to Certain Federal Constitutional Laws' dated December 8, 2020. In our opinion, the decision about eliminating the constitutional (charter) courts in Russian Federation constituent entities was made as a result of departmental and subjective interests in spite of the need for those courts in the society, which was noted several times in the press and at various

forums, as well as at the All-Russian Congress of Judges. Thus, it is noted in the Decree of the 8th All-Russian Congress of Judges 'On the Status of the Judiciary of the Russian Federation and Major Areas of Its Development in 2012–2016' dated December 17, 2016, that 'constitutional (charter) courts of Russian Federation constituent entities are undeservingly left unnoticed, although they serve as an extra guarantee for citizens' rights, including the right to judicial defense'. Elimination of constitutional (charter) courts hardly enables enhanced performance by state authorities. It was these courts that could be created by a Russian Federation constituent entity in accordance with Part 1, Art. 27 of the Federal Constitutional Law 'On the Judiciary of the Russian Federation' to consider the issues of conformity of laws of Russian Federation constituent entities, regulatory legal acts, state authorities of the Russian Federation constituent entity and local self-government bodies of the Russian Federation constituent entity with the constitution (charter) of the Russian Federation constituent entity as well as with the interpretation of the Russian Federation Constitution (Charter). The aforementioned issues are inherent to the nature of performance of any state authorities and they cannot be resolved once and forever. Authors and executors of the idea of elimination of regional justice understand this clearly, so instead of the constitutional (charter) court of the Russian Federation, they suggested establishing a Constitutional Council under a legislative body of the RF constituent entity, although its status and essence do not allow resolving the aforementioned issues of constitutional justice, because no one can guarantee the necessary validity of the laws and regulatory legal acts adopted in Russian Federation constituent entities that will not enable the efficacious performance of state authorities, legitimacy and construction of a law-governed state the critical principle of which is the division of the state authority into legislative, executive and judicial branches as set forth in Art. 10 of the Russian Federation Constitution. This principle of performance of the bodies included in the unified system of public authorities is also set forth in the Federal Law 'On General Principles for Organizing Public Authority in Russian Federation Constituent Entities' dated December 21, 2021.

Also, it should be noted that Part 2, Art. 11 of the Russian Federation Constitution states 'that state authority in Russian Federation constituent entities is exercised by state authorities established by these entities'. However, both this article and the previous article of the Russian Federation Constitution contradict the decision about eliminating constitutional (charter) courts of Russian Federation constituent entities as well as assigning peace justices to the federal level, although the name 'courts of Russian Federation constituent entities' remains. Loss by a Russian Federation constituent entity of almost all judicial authority not only contradicts Art. 10 and 11 of the Russian Federation Constitution and the Federal Law 'On General Principles for Organizing Public Authority in Russian Federation Constituent Entities' dated December 21, 2021, but also goes against the efficacious and legitimate performance by state authorities of Russian Federation constituent entities.

To enhance the performance of state authorities in Russian Federation constituent entities, the legislative process of the current regional practice needs to be improved and it is suggested that a prosecutor from the Russian Federation constituent entity be included in the list of subjects of the legislative initiative within the framework of this Federal Law. The Parliament of the Republic of North Ossetia – Alania has been ahead of the Federal Law in this regard for longer than ten years. Back in 2010, the aforementioned suggestion was secured in Art. 76 of the Constitution of the Republic of North Ossetia – Alania. We believe that the number of subjects in the legislative initiative should be expanded further. Thus, in accordance with Art. 5 of the Constitution of Ossetia dated 1918, legislative proposals for approval by the National Congress of the Ossetian people could be introduced not only by the Ossetian National Council, but by individual citizens as well as various institutions, after their preliminary consideration by the Ossetian National Council and its positive assessment. Unfortunately, the current Constitution of the Republic of North Ossetia – Alania as well as the main laws of the RF constituent entities do not consider citizens and their associations to be subjects of a legislative initiative.

In the Soviet period, in accordance with the Russian Constitution, constitutions (charters) of the Russian Federation constituent entities, the right to legislative initiative was also granted to non-governmental organizations. Currently, while the Russian Federation and its constituent entities, republics in particular, are called democratic states in their major laws, non-governmental organizations are deprived of a right to legislative initiative. It is quite obvious that in no way is this consistent with the process of democratization of public life, a constitutional provision claiming the people as the source of power.

Conclusion

Considering the aforementioned, it is suggested that the range of subjects of the legislative initiative should be expanded. This is quite consistent with the indicated recently adopted Federal Law. In accordance with Part 2, Art. 10 of this Law, Russian Federation constituent entities are given the opportunity to provide for the right for a legislative initiative in their constitution (charter) for other bodies, organizations, senators of the Russian Federation – representatives of legislative and executive authorities of this Russian Federation constituent entity and other officials, as well as for citizens living on the territory of this Russian Federation constituent entity. This provision is not imperative, but rather declarative by nature, so it cannot be used by all Russian Federation constituent entities. In my opinion, this leads to the violation of a critical constitutional provision about everyone's equality before the law and the court, regardless of their place of residence, social status, etc. However, the legislative trend towards broadening the range of legislative initiative subjects is obvious. Undoubtedly, this will enable the expansion of democratic procedures in the legislative process, greater involvement by citizens in the management of state affairs and establishment of institutions of civil society.

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Information about the author

Alexander M. Tsaliev – Honored Lawyer of the Russian Federation, Member of the Presidium of the Council of Judges of the Russian Federation, Doctor of Juridical Sciences, Professor, Department of Public Law and Authorities, North Caucasus Mining and Metallurgical Institute (State Technological University) (44 Nikolaev st., Vladikavkaz, North Ossetia – Alania Republic, 362021, Russia; e-mail: aronaron666@mail.ru).

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