CONSTITUTIONAL AND LEGAL ANALYSIS OF THE LEGAL NATURE OF PUBLIC CONTROL OF POWER

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ABSTRACT
This article is devoted to the constitutional legal analysis of the legal nature of public control of power. We affirm that a study of the legal nature of the concept of “public control of power” in constitutional law will allow us to identify specific priorities for ensuring the exercise of the right of citizens of the Russian Federation to exercise public control.

Keywords: Public control. Constitutional and legal aspects. Russian Federation. Public Chamber.

INTRODUCTION
Public control as one of the most important civil society institutions in the Russian Federation is widely analyzed in the scientific works of O.V. Pishchulin, V.V. Grib, L.Yu. Grudtsyna, D.S. Mikheeva, G.N. Chebotaryov, V.E. Chirkin, S.A. Avakyan, A.A. Uvarov, A.I. Lapshina and several other authors. These works provide the basis for the analysis of the theoretical content of the institution of public control in relation to its social essence. However, the share of research devoted to the study of the legal nature of public control of power is extremely small. In this regard, the main purpose of this research is a comprehensive constitutional and legal study of the legal nature of public control of power, in order to expand and clarify the conceptual and categorical apparatus of the science of constitutional law in the field of public control, forming an integral concept of public control, and the subject of research - the regulatory framework of public control, as well as scientific views on the legal nature of public control of power in the Russian Federation as a constitutional category.

METHODOLOGY
This article in the process of cognition of state-legal phenomena were used: a) General scientific methods (formal-logical, systemic, structural-functional, concrete-historical); b) General logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); c) private scientific methods (technical and legal analysis, specification, interpretation, etc.) (ZALESNY, GONCHAROV, 2019: 129-142; ZALESNY, GONCHAROV, 2020: 1-6).

RESULTS
It seems that public control of power as a legal institution appeared simultaneously with the emergence of the state and law. In the pre-state period of social development, the control of the power of leaders, priests, and...
elders elected in the community (clan, tribe, and union) was carried out by all adult members of society, as a rule, from the age when they became able to carry weapons, but it was different in content. If in the state epoch of the existence of human society the state apparatus is, on the one hand, an instrument of suppressing the interests of subervient classes to the will and interests of classes ruling in this era of human development, and on the other hand, a means of resolving irreconcilable contradictions between them in the name of preserving and developing the state in general, in the pre-state period of social development, the top of the community consisted of its individual representatives due to the presence of one or another of the last in useful and necessary for the survival of the entire community.

That is, the delegation of authority in a pre-state society to its managing representatives was carried out exclusively voluntarily, in the interests of the entire community and on the basis of respect and respect for these public leaders. As F. Engels rightly noted in this connection: “The most miserable police officer has more “authority” than representatives of the clan, but even the head of the military power of a civilized state could envy the elder of the clan, who enjoys “not out of a stick acquired respect” society” (LENIN, 2020). Moreover, while in the pre-state period of social development, the public control of power by community members was absolute, unlimited in the interests of all its members, then with the advent of the state it is permanently denied and violated by the state apparatus, serving the interests of the ruling classes in society, threatening in some cases, the very possibility of social development. So, G.V.F. Hegel noted that public control is: “The provision of the state and those under its control from abuse of power by departments and their officials is, on the one hand, directly in their hierarchy and responsibility, on the other - in the rights of communities, corporations, whereby the introduction of subjective arbitrariness into the authority entrusted to officials poses an obstacle for itself and in some cases insufficient control from above is supplemented by control from below” (1990).

With the advent of the state and law, society itself is changing, acquiring new features due to the new level of social development. A number of scientists highlight the following criteria of a society (state-organized): “it is not part of a larger system; marriages are concluded between representatives of this association; it is replenished mainly at the expense of the children of those people who are already its recognized representatives; the association has a territory that it considers to be its own; society has its own name and its own history; it has its own management system; association exists longer than the average life expectancy of an individual; it is united by a common system of values (customs, traditions, norms, laws, rules), which is called culture” (BABOSOV, 2004: 179). With the advent of the state and law, the institution of public control of power receives legal consolidation in the current legislation. However, this process was quite lengthy and painful.

It seems that several historical stages of the formation and development of public control of power as a legal category can be distinguished: 1) in the era of the slave-owning socio-economic formation; 2) in the era of the feudal socio-economic formation; 3) in the era of the capitalist socio-economic formation; 4) in the states of socialist orientation; 5) in the era of globalization.

In the era of the slave system, the possibility of public control of power by laws was almost universally ignored. In those countries in which it was nevertheless envisaged, public control of the authorities acted either as an echo of the primitive communal public organization (for example, in Ancient Rome, the state-policies of Ancient Greece) (GIBBON, 2005; GUILLOU, 2007), or as a result of the established parity of the main ruling political classes during the period of maximum weakening of the old ruling classes before the change of socio-economic formations (MARX, ENGELS, 1955-1974). However, it should be noted that from the mechanism of public control of power in the era of the slave-owning socio-economic formation, for example, in Ancient Rome, slaves were excluded, which were nothing more than a variety of things (Finley, 1980), as well as the female part of the population and children, power over by which pater familias (the father of the family, homeowners) was almost limitless for a long time (NOVITSKY, 2007).

The very fact that public law (jus publicum) and right of quirits (jus quiritum) appeared in the Roman law testified that, on the one hand, the rules of law began to protect the interests of society as a whole, determining the legal status of the state and its bodies, as well as their obligations towards citizens (in this case, these legal provisions were generally binding and could not be changed by agreement of individual citizens), and on the other hand, legal customs were codified and laws adopted by the National Assembly were given Supreme force. Cicero noted that the state needs interaction with public structures in order to avoid tyranny and usurpation of power (CICERO, 1993: 33-34). At the same time, not only lawyers and statesmen of the era of the republic in Ancient Rome, but also in its imperial period, declared the need for society to control power and its participation in government. In particular, the Roman emperor Marcus Aurelius wrote about the need to maintain a high level of civic activism and responsibility in society in connection with the fact that socially useful activities and the presence of a civic
position, firstly, are inherent in every human person, and secondly, they strengthen the state itself making it resistant to negative influences from the outside: “How do you yourself enter into the composition of civil society, in the same way all your actions should be included in the civil life” (AURELIUS, 1999: 288).

In the 2nd and 3rd centuries of our era, slave-owning economic relations are transformed, replaced by new forms of exploitation, slaves are no longer the main productive force, preserved only as servants in the homes of wealthy Romans and Greeks, and the basis of the economy is the work of formally independent, but economically unfree farmers - columns, meteks and freedmen. In connection with the weakening of the political power of the slaveholder class, the central government was forced to appeal to the opinion of the broad masses of the free population, introducing into the legal system the criteria of justice, the common good, and the interests of the people. Thus, the Roman lawyer Ulpian, whose judgments were recognized as a source of law in the late period of the Roman Empire, saw justice as the highest principle of law, about which he wrote: “The precept of the law is: to live honestly, not to harm another, to give each one his own” (lat. luris praecpta sunt haec: honeste vivere, alterum non laedere, suum quique tribuere) (ULPIAN, 2020).

The renewed interest in public control of power in the era of the feudal socio-economic formation was largely due to the struggle for power of the main political classes of medieval society: feudal lords, clergy, merchants, peasants, free citizens, united in guilds and other professional associations. Each political class competing with the feudal class justified its right to participate in government, to limit the arbitrariness of the monarchy, appealing to the rights, freedoms and legitimate interests of society (people) as a whole. At the same time, the ideas of freedom and equality were largely based on religious beliefs. So, the German preacher of the times of the Reformation, Thomas Munzer, personifying the interests of the free peasantry and citizens, advocated the revival of the early Christian ideals of equality and fraternity, declaring the right of the people to exercise constant control over the state apparatus and determine the most important directions of state policy, using any tools, including rebellion and other forms of disobedience (STROBEL, 1795).

Despite the fact that the uprisings of peasants and townspeople against the feudal lords ended in their complete defeat, but the result of such performances was the cheaper church services, the emergence of cheap Protestant religions, the undermining of the clergy as a political class, and the growing influence of the upper layers of the political classes of philistines and wealthy peasants on public administration and directions of development of public policy. This was reflected in the regulatory framework of that period. For example, in 1529, Catholics made a decision at the 2nd Speyer Reichstag (Landtag) to abolish the princes’ right to determine the religion of their subjects (that is, in essence, recognize Lutheranism rather than Catholicism as the state religion), giving communities the possibility of self-government in religious affairs (POLYANSKY, 1987: 368-371).

The real flourishing of the idea of public control of power was gained during the Renaissance, which became the quintessence of the increased strength and influence of the third estate in medieval Europe (merchants, wealthy citizens, guilds, prosperous part of the free peasantry). Thus, the French lawyer, philosopher and MP in Paris, Jean Boden, who was not an opponent of the monarchy, nevertheless noted that there should be three restrictions for absolute power: a sovereign in its activity is bound by the laws of God, the laws of nature and the laws of man, common to all peoples (BODIN, 1579: 1). At the same time, human laws should be established in accordance with the interests of peoples, on the basis of their general agreement, since it is the people who act as the bearer of sovereignty and its source. In turn, the English philosopher Thomas Hobbes, who was a supporter of the theory of social contract and recognized the monarchy as the best form of government, nevertheless believed that the people, subject to the will of absolute power, had the right to resist the will of the sovereign, if the latter, contrary to natural laws, forces the people to killing and torturing oneself, or to not resisting outside violence (HOBBES, 2020).

These ideas were realized during the English Revolution of the 17th century, when opponents of the monarchy and supporters of the republican form of government declared the need to subordinate the activities of government officials to the rights, freedoms and legitimate interests of society (people). The first democratic parties, for example, the Leveller Party, even made attempts to codify their demands in the form of a single document - the “Agreement of the Free People of England”, in which the free people of England, by concluding a mutual agreement, were recognized as authorized to form a people's government as the bearer of supreme power (all other officials should have been accountable to parliament), had the right to monitor the proper implementation of laws by both the parliament and other officials (AGREEMENT, 2020). At the same time, at the level of individual regions of England, the townspeople, on the one hand, made attempts to influence the supreme power by mass filing of petitions, petitions, demands (DMITRIEVSKY, 1946: 81), and, on the other hand, they made decisions at the level of city magistrates to limit the arbitrariness and lawlessness of the central
In general, in the era of late absolutism and the Renaissance, legal scholars and philosophers developed three main approaches to the possibility of exercising public control of power: 1) a number of authors believed that this people's right to control the organization and activity of the state mechanism has an earthly origin and is absolute, not limited in nature (for example, P. Holbach, G. Baboeuf, M. Robespierre, J. -J. Russo, S. Montesquieu) (HOLBACH, 2020; BABEUF, 2020; ROBESPIERRE, 1959); 2) according to other scientist, the right of the people to exercise control of power is derived from a social contract concluded between the people and the government, mutually limiting their rights in the interests of the welfare of the people and the state (in particular, I. Kant) (KANT, 1995: 214); 3) third authors believed that all power has a divine character, but the arbitrariness and lawlessness of the rulers should be limited to society in fulfillment of the divine plan (for example, J. Boden, T. Hobbes) (BODIN, 1579: 1).

In Russia, these views were developed in the works of a number of lawyers and philosophers, for example, M.M. Speransky, who interpreted civil liberty as such a state of society when its members do not depend on the whims of those in power, but on a law that exists for the common good and safety of people (SPERANSKY, 2020), A.N. Radishchev, who declared the idea of sovereignty of the rights of the people to break the bonds of enslavement and non-fulfillment of a social contract, in the case when the power of the state is used not in his interests (RADISHCHEV, 1952), B.N. Chicherin, who considered power obliged to follow moral laws, and the state, to serve and reflect the interests of people who have the right to initiative in management (CHICHERIN, 2013: 232), P.I. Novgorodtsev, who justified the expansion of the representative principle in management as the basic basis of the rule of law (NOVGORODTSEV, 2020), as well as N.G. Chernyshevsky, who expressed conviction about the need for full submission of officials to the will and interests of the people (CHERNYSHEVSKY, 1950: 652-653). The Institute for Public Control of Power also had an attempt at practical implementation during the Decembrist uprising in 1825. The practical implementation of the idea of public control of power came after a series of bourgeois revolutions in France and the United States in the horse of the 18th century. It is in the era of the capitalist socio-economic formation that formal consolidation and detailing of the public control of power as a legal category are necessary.

For the first time, the basic foundations of public control of power were enshrined in the Montagnard Constitution of France of 1793, adopted by the National Convention dated 24.06.1793, and the US Constitution of 1787. In particular, the Montagnard Constitution of France contained:

1) The Declaration of Human and Citizen Rights, which enshrines: subordination of the government to the idea of ensuring that a person uses his natural and inalienable rights; equality of people by nature and before the law, their equal access to public positions; the sovereignty of the people, which was expressed in the prohibition of the exercise of power belonging to them by any part of the people, the unconditional ability of the people to review, transform and change their constitution, the equal right of any citizen to participate in the formation of the law and in the appointment of their representatives and their agents; people's right to resist oppression;

2) The Constitutional Act, in which, in particular, the rights of the people to: election of governing bodies, public arbitration mediators, judges, criminal and civil; local government through the formation of municipal assemblies and other local authorities; guarantees of the rights of citizens (THE, 2020). The US Constitution of 1787 enshrined, in turn: the widely ramified mechanism of popular representation in the Federal bicameral parliament; the rights of individual states within a single state; detailing the rights of citizens in government (THE, 2020b).

A new stage in the development of public control of power as a legal category occurred during the emergence and existence of socialist states (in particular, the USSR, China, and several others). The necessity of organizing public control of power back in the 19th century was argued by the classics of Marxism. In particular, K. Marx and F. Engels in their "Address of the Central Committee to the Union of Communists" wrote:

Along with the new official governments, they (workers) must immediately establish assembled, revolutionary workers’ governments, whether in the form of local governments, municipal councils, whether through work clubs or work committees, so that bourgeois-democratic governments not only immediately lose their support in the workers, but also see themselves from the very beginning under the supervision and threat of the authorities behind which the whole mass of workers ...” (Marx- Engels, 1955-1974).
It was within the framework of Marxist-Leninist teachings that a consistent criticism of the fake nature of the people's rights to exercise public control in bourgeois societies and states was given, the impossibility of representatives of the exploited majority to be elected to central and regional parliaments due to the high cost of election campaigns and election fraud was substantiated. The first Soviet constitutions (USSR and RSFSR) provided for: the destruction of all exploitation of man by man; the complete elimination of the division of society into classes; merciless suppression of the exploiters; the establishment of a socialist organization of society and the victory of socialism in all countries; power belongs to a system of councils consisting of representatives of the people (THE, 2020c). In the future, the system of public control of power was carefully detailed. For example, the Law of the USSR dated 30.11.1979 № 1159-X "On National Control in the USSR" provided for an extensive mechanism for the participation of public representatives in the control of the organization and activities of the power mechanism (ABOUT, 1979). This allowed representatives of the broad masses of the population in socialist states, on the one hand, to be elected to government bodies of all levels, to form not only councils of people's deputies, but also judicial authorities, to take a direct part in the implementation of state power, for example, in the form of popular assessors. Public control of power in the era of globalization is particularly important for a number of reasons:

1) the free and independent development of nation-states is extremely hindered by the negative impact of the international community, which de facto reflects the interests and needs of the global governing elite in the person of the global governing class (GONCHAROV, 2016: 1517-1523);

2) in the context of multiplying color revolutions and controlled chaos, the existence of an effective mechanism for public control of power will largely determine the viability of individual national societies and states and their preservation on the political map of the world;

3) it is the ability of the population to self-organize in controlling the formation and functioning of power at all levels that will affect both the legislative consolidation of the rights, freedoms and interests of citizens, and the reality of guarantees of their observance and practical implementation (OGENEVA, 2015);

4) economic stagnation in the world will inevitably result in cuts in budget expenditures, which will primarily affect the interests of the poor classes of the population and, therefore, the preservation of social guarantees, rights and freedoms of citizens will depend on their ability to defend their interests.

CONCLUSIONS

Under public control of the authorities should be understood a system of legal forms, principles, norms and public institutions representing associations of citizens whose mass and voluntary activities are aimed at monitoring the formation and functioning of state authorities and local self-government, as well as the activities of authorized legal and physical persons who are endowed by applicable law with a specific set of authority exercised by them independently, whether on together with public authorities and local self-government, or on their behalf and (or) on their behalf. The institute of public control as a legal category, which was consolidated with the advent of the state and law, went through several historical stages of formation and development, generally corresponding to socio-economic formations (from slave-owning to capitalist in the era of globalization).

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