The Institute of Public Control as An Element of the Mechanism for Implementing the Constitutional Principle of Democracy in Russia

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Abstract

This article is devoted to the constitutional and legal analysis of the place of the Institute of public control in the mechanism of implementation of the constitutional principle of democracy in the Russian Federation. The article substantiates the position that the institutionalization of the category “public control” in constitutional law requires the study of its place and role in the compositional structure of democracy, serving in turn, the constitutional and legal guarantee for its implementation.

Keywords: Public control. Constitutional analysis. Essence. Russian Federation.

O Instituto de Controle Público como Um Elemento do Mecanismo para Implementar o Princípio Constitucional da Democracia na Rússia

Resumo

Este artigo é dedicado à análise constitucional e jurídica do lugar do Instituto de controle público no mecanismo de implementação do princípio constitucional da democracia na Federação Russa. O artigo consubstancia a posição de que a institucionalização da categoria “controle público” no direito constitucional requer o estudo de seu lugar e papel na estrutura compositiva da democracia, servindo, por sua vez, a garantia constitucional e jurídica de sua implementação.

Palavras-chave: Controle público. Análise constitucional. Essência. Federación Rusa.

Introduction

Public control as one of the most important institutions of civil society in the Russian Federation is widely analyzed in the scientific works of V.V. Grib, L.Y. Grudtsyna, D.S. Mikheev, G.N. Chebotarev, A.A. Uvarov, A.I. Lapshina, I.M. Yapryntsev, S.V. Gromyko, E.V. Kirichek, M.M. Kuryachey, as well as a number of other authors. These works form the basis for the analysis of the theoretical content of the Institute of public control in relation to its social essence. However, the share of studies that consecrate the place of the Institute of public control in the mechanism of implementation of the constitutional principle of democracy in the Russian Federation is extremely small. In this regard, the main purpose of this research is a comprehensive investigation of the place of the institution of public control in the mechanism for implementing the constitutional principle of democracy in the Russian Federation in order to expand and clarify the conceptual and categorical apparatus of the science of constitutional law in the sphere of public control, forming an integral concept of public control, and the subject of research is the regulatory framework of public control, as well as scientific views on the role and place of the title of public control in the mechanism for ensuring the implementation of the constitutional principle of democracy.

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).
Public control of power is derived from the people's right to democracy, guaranteed by the latest international and national legislation as the bearer of state sovereignty and the only source of power in a particular national state. In this regard, it seems necessary to study the compositional structure of democracy (that is, the structure of the right of the people to exercise democracy) and the place, role and significance of public control in the implementation of this people's right. It seems that the right of citizens of the Russian Federation to exercise democracy has a complex structure and is a combination of several rights:

1) The right to direct (direct) exercise of power - the referendum and free elections are its highest forms (based on Parts 2 and 3 of Article 3, Part 2 of Article 130 of the Constitution of Russia). It is through the implementation of this right that the entire system of state authorities and local self-government is organized and empowered by their officials.

2) The right to indirect exercise of power through the system of state authorities and local self-government (based on Part 2 of Article 3, Part 1 of Article 130 of the Constitution of Russia).

3) The right to participate in the management of state affairs, local self-government and territorial self-government directly (in particular, the gathering of citizens), or through their representatives (for example, public election observers, jurors) (based on Part 3 of Article 3, Article 32, 130, Part 1 of Article 131 of the Constitution of the Russian Federation).

As M.N. Maleina notes, the authorized and obligated subjects participate in personal non-property legal relationship (Maleina, 2000: 16-21). From this it follows that the structure of the right to democracy contains two more mandatory elements:

1) The right of the people (authorized subject) to protect their right to democracy (this right is guaranteed to the people by Part 4 of Article 3, Articles 45, 46, 133 of the Constitution of Russia).

2) The obligation of a wide range of obliged entities (state authorities and local self-government, their officials, employees of municipal and state institutions and enterprises, other legal and natural individuals exercising public authority, or endowed with authority to an indefinite number of persons) not to violate the right of the people on democracy.

This obligation is reinforced by quite severe measures of responsibility in relation to violators. For example, obstructing a citizen from freely exercising his voting rights or right to participate in a referendum, violating the secrecy of voting, as well as obstructing the work of election commissions, referendum commissions or the activities of a member of an election commission, referendum commission related to the performance of his duties, in accordance with Article 141 of the Criminal Code of the Russian Federation is criminally punishable and punishable up to imprisonment (CRIMINAL, 1996).

The right of the people to exercise democracy is a subjective personal constitutional right. The content of subjective law is a multifaceted concept requiring the disclosure of its structure. According to M.I. Matuzov, a key element in the structure of subjective law is opportunity (MATUZOV, 1972: 97). Therefore, as G.B. Romanovsky rightly notes, the following structure of subjective law was built: the possibility of action; the possibility of a claim; the possibility of protection; the possibility of using a social good (this right is highlighted by some authors as an additional one) (ROMANOVKY, 2001:42-43). With regard to the possibility of democracy in action means, first, the possibility to directly implement the government through initiating, conducting or participating in a referendum or through implementation of passive or active voting rights (election of officials of bodies of state power and bodies of local self-government or election of them himself), or through participation in the implementation of territorial public self-government, and secondly, the impact on public authorities and local governments to compel the latter to comply with the law, as well as implementation, protection enshrined in law the rights, freedoms and legitimate interests of citizens, as well as all forms of their associations.

The possibility of acting in the structure of subjective law consists in the possibility of influencing the state mechanism as a whole, since it is, in the opinion of a number of authors, that it is the institutional basis for ensuring the rights and freedoms of a person and citizen (LYUBASHITS, MAMYCHEV, 2015: 279-289). Thus, the right to democracy implies that the people take informed actions to exercise their power in order to ensure the preservation and development of the state and society as a whole, as well as the realization of the rights, freedoms and legitimate interests of citizens, as well as any form of their associations.
The possibility of demanding in the structure of the people's subjective right to democracy means that the population (society) has legislatively fixed powers to carry out actions expressed in a persistent, categorical request to state bodies and local self-government and their officials to fulfill their obligations under the current legislation to exercise their rights, freedoms and legitimate interests of citizens, as well as any forms of their associations, as well as ensuring the preservation and development of the state and society as a whole.

According to the Constitution of Russia, people can exercise this right in person by applying to state and local authorities personally, as well as by sending individual and collective appeals (Article 33), including with a view to implementing their law-making initiative (YAPRYNTSEV, 2016: 41-46), by applying to law enforcement bodies and the court with a requirement to ensure the protection of the rights, freedoms and legitimate interests of citizens, as well as any forms of their associations (Part 2 of Article 46), or by appeal in accordance with international treaties of the Russian Federation in international bodies for the protection of human rights and freedoms, if exhausted all available domestic remedies (Part 3 of Article 46).

The possibility of demand can be realized in practice individually by a citizen, or by a group of citizens, as well as through their organized communities (for example, through the activities of social movements, political parties, trade unions, etc.). At the same time, it seems that the organized activity of citizens in formulating their legal requirements for state authorities and local self-government, as well as their officials, is the most effective and efficient. As noted by a number of authors, it is the participation of civil society structures in legal relations that acts as the main organized form of expression of democracy (TROFIMOV, 2012: 147-170).

The possibility of protecting in the structure of the people's subjective right to democracy means that the population (society) has legislatively fixed rights to protect their rights, freedoms and legitimate interests of citizens, as well as any forms of their associations (Part 2 of Article 45 of the Constitution of Russia), by any means, not prohibited by law. At the same time, this norm of Article 45 of the Constitution contradicts the Universal Declaration of Human Rights adopted by resolution 217 A (III) of the UN General Assembly of December 10, 1948, which secures the right of the people to revolt as a last resort against tyranny and oppression (Universal, 2020), at that time how the legislation of Russia in principle ignores the right of the people to forcibly overthrow the government, oppressing the people, neglecting their rights, freedoms and legitimate interests.

In addition, such a legislative approach to defining the limits in which people exercise their ability to defend in the structure of the subjective right to democracy (restricting the right of the people to oppose tyranny and oppression by rebellion) contradicts Article 4 of the International Covenant on Economic, Social and Cultural Rights the prohibition of state authorities in national states to restrict the rights of citizens (including the control of public authority) if these restrictions are not compatible with the nature of these rights and prevent the general welfare in a democratic society. In addition (International, 1989), Part 4 of Article 15 of the Constitution of the Russian Federation establishes the provision that universally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system, and if other rules are established by an international treaty of the Russian Federation than those stipulated by law, then the rules of the international treaty apply.

The possibility of using a social good in the structure of the people's subjective right to democracy means that the population (society) has a legislative system of powers, firstly, regarding the inviolability of the people as the bearer of state sovereignty and the only source of power (Part 4 of Article 3 of the Constitution of Russia threatens with persecution of any official persons and public authorities who are trying to seize power and take power over themselves), secondly, by recognizing human rights and freedoms and the citizen directly acting (they determine, in accordance with Article 18 of the Constitution of Russia, the meaning, content and application of laws, the activities of the legislative and executive authorities, local self-government and are ensured by justice).

The ability of the people to use the social boon in the exercise of democracy means that the results of the activities of public authorities, any organizations and institutions exercising public powers should be of a socially useful nature, contributing to the realization of the rights, freedoms and legitimate interests of citizens and their associations, in particular, as well as the preservation and development of the state and society as a whole. This will allow, in the opinion of a number of authors, the formation of “controlling democracy” in the Russian Federation with the participation of civil society institutions (GOLUSHKOV, 2006: 25-32).

Public control of power allows the people (society) to implement the entire system of rights that make up the structure of the people’s right to democracy. Subjects of public control their powers derived from the subject of democracy (of the people) that they are endowed with the power to exercise public control over the activities of
state authorities and local self-government, their officials, the work of other bodies and organizations exercising public authority. In this regard, it appears that the procedure of formation of subjects of public control of the authorities should exclude or minimize participation of state authorities and local self-government. Otherwise, it turns out that the control over the activities of state authorities and local self-government bodies and organizations exercising public authority, will implement a structure, and they have also formed (that is, the control will be of a fictitious and declarative).

The objects of public control as a whole coincide with the objects of democracy, since it is a question of exercising control over the activities of state authorities and local self-government, as well as bodies and organizations exercising public powers to which the people have been delegated authority. The activities of subjects of public control allows to ensure:

1) The real nature of the rights that make up the structure of democracy. Thus, the more developed system of civil society institutions, which are based on the subjects of public control, the less likely, on the one hand, the opposition of state authorities and local self-government, any other agencies vested with public authority, activities for the implementation of public control, and on the other hand, the more comprehensive it is, affecting all levels of the system of state and municipal management. In this regard, a number of authors have noted that the development of the Institute of public control should be a priority of the political tasks of the Russian Federation (Kuryachaya, 2018: 99-104). Otherwise, the right of people to democracy becomes declarative, which immediately leads to the usurpation of power, its misappropriation as separate authorities and their officials and authority are not in the public interest and in the interest either of individuals or of separate socio-political class.

2) Participation of most people in their implementation. Without the activity of subjects of public control, participation of people in implementation of democracy simply to vote in elections and referendums of various levels, which are quite rare, as most bodies of state power and local self-government in the Russian Federation and their officials shall be elected for a term of four years. As rightly pointed out in this regard, a number of authors, elections and referendums in the mechanism of public control over the state is clearly insufficient to ensure the implementation of the principle of democracy, as through them the people can only withdraw confidence from the candidates for the next term election, however, the control over activity of already elected (formed) bodies of power and administration, as well as their officials, requires a more flexible and permanent forms of social control (KOLOMYTSEVA, 2008: 158-161; YAPRYNTSEV, 2017: 27-33). The activities of organs of public control, particularly at the grassroots level, is constant, regular, allowing to monitor the formation and functioning of state authorities, local self-government bodies and organizations exercising public powers continuously.

3) Control over delegated authority in real time. As rightly pointed out by S.V. Gromyko: “The Modern reality is that in our society under the influence of the profound changes in patterns of social organization and cooperation was the replacement of centralized hierarchical structures flexible network types of organization, the increasing role of self-organization of citizens to solve specific problems, the growing authority of the individual. Information and knowledge in modern society have become not only an important factor of production, the driving force of the economy, but also acquired a different socio-political significance. Social control is the mechanism that allows the public to monitor the government at all stages of initiation, any decision, adoption, implementation and evaluation of the result” (GROMYKO, 2019).

4) In this regard, it seems that the role and significance of public control in the Russian Federation as a comprehensive, multi-level and constantly functioning system, acting as a guarantor of the realization of the people's right to democracy, will increase.

5) Control over the legality of the activities of government agents (represented by state and local authorities, their officials, as well as any institutions and organizations exercising public authority). Through the functioning of public control bodies, people are given the opportunity to verify the legitimacy of activities and acts of government, for example, by conducting a public examination of the regulatory legal acts of local governments. In case of detection as a result of public control measures, regulatory acts that contradict the current legislation violate the rights, freedoms and legitimate interests of citizens are detected, public control entities have the right to appeal to law enforcement bodies and the court with a statement about their suspension or cancellation (recognition is illegal and not applicable). As noted by a number of authors, civilian (public) control over the activities of public
authorities in the sphere of ensuring the constitutional rights and freedoms of a person and citizen in the Russian Federation can significantly minimize the cases of their violation, thereby ensuring their real nature (KIRICHEK, 2013: 1094-1100; PUSHKAREV, 2005: 146-148).

6) Control over the effectiveness and usefulness of agents of power for the people. At the same time, through the activities of subjects of public control, an assessment is made of achieving the goal-achievement of power, which is characterized by how much the authorities realized the expectations and requirements of the population in the process of fulfilling their functions and tasks. Evaluated as the feasibility of the functioning of the authorities (compares the resources spent and the results of activities), and the effectiveness of their activities (analyzes the degree to which the company expects the results of the work of the authorities).

7) The responsibility of agents for violating the people's will. The real nature of the people's right to democracy implies the application to officials of public authorities and local self-government, bodies and organizations vested with public powers, various measures of responsibility for violating applicable laws, rights, freedoms and legitimate interests of citizens of the country.

Thus, public control is the basic guarantee of the implementation of the constitutional principle of democracy in the Russian Federation. It seems that an effective and multi-level system of public control of power in our country acts as the main socio-economic condition for the preservation and development of Russian statehood in the era of the global economic crisis (ZALESNY, GONCHAROV, 2020: 1-6).

CONCLUSIONS

The study of public control and the compositional structure of democracy in Russia made it possible to determine their interconnectedness and interdependence as constitutional and legal institutions and phenomena of state and legal reality.

The place of public control in the compositional structure of democracy is determined by its role as a basic guarantee that provides this right, which has a complex structure and is a combination of several rights (the right to direct exercise of power, the highest forms of which are a referendum and free elections; the right to indirect exercise of power through a system of public authorities and local self-government; rights to participate in the management of public affairs and, local government and territorial self-government directly, or through its representatives), the real nature.

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