

УДК 1 (075.8)

## The Principle of Powers Separation in the Practice of the Russian Federal Status

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Received 14.08.2009, received in revised form 21.08.2009, accepted 28.08.2009

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*In the given work, we analyze today's Russian problems, connected with violation of the principle of powers separation in the process of the state governance of the society: the real place of the executive power supreme body within the system of powers separation; practical rights of the head of the state; federalism in the light of the requirements of the principle of powers separation; constitutional and the real status of the Parliament*

*Keywords: the principle of powers separation; democracy; Parliament; President; Government; Federation Subject; Federalism.*

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### Point

Nowadays, we may often observe a certain anxiety in the articles of most native social-political sphere researchers, the anxiety, which concerns «the rolling back» of the Russian democracy by means of the executive power over-accretion in comparison to the constituent and judicial powers [1], and, besides, this process is connected with the increase of the Russian parliament institutional weakness [2]. On the basis of the analysis of the federal status dynamics, of the place and the role of various parties in the real politics, and changes in the electoral system, the scientists come to conclusions of a possibility of a significant intensiveness already in the nearest future [3]. On the whole, these fears are not baseless; moreover, one of them is a violation of the principle of powers separation.

### Example

In science and political practice, the given principle is considered to be one of the fundamentals of democratic society governance – it is an axiom. Though, we should bear in mind that in Lenin's interpretation this principle was presented as a method of deception of «the working masses», as far as it was allegedly nothing else but «a separation of the administrative labour», which veiled the exploitative essence of the bourgeois federal status. And it is not excluded that the lack of attention, having been paid to the principle of powers separation in the native social philosophy and political science, and, moreover, in the practice of state administration of the society, is to some extent determined by the traditional mentality as of theoreticians, so of practitioners. Of course, the citizens, for the most their part, are as well not ready to percept

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adequately the democratic governance, as far as authoritarianism of their conscious has been formed by the centuries of the empire and most efficiently by the decades of the Soviet power and it cannot be radically changed in the course of two decades.

The main purpose of the principle of powers separation is in the following: to exclude the dominating position of one of three government departments (in most cases – the executive one), as far as it inevitably leads to dictatorship in this or that form, and consequently, to denial of rights and freedoms of the person. In the Constitution of Russia there is a *formal* mechanism, appealed to avoid possible conflicts between the constituent and executive powers, to exclude the situation of the executive power absolute domineering (for example, President's appointment of the Chairman of the Government only with the sanction of the State Duma, a possibility of motion of the vote of censure to the Government by the lower house of parliament), but, unfortunately, such a system of checks and balances does not prevent the executive power over-accretion.

The Constitution of Russia declares the principle of powers separation as one of the fundamentals of the country democratic development (art.10). But the Constitution itself fixes the conditions, under which the given principle cannot fail to be violated. First of all, it is a position of the Government within the system of powers separation: in practice, it absolutely depends on the Head of the State – in the process of formation, functioning and resignation. Of course, the Chairman of the Government is assigned by the President only with the sanction of the State Duma, but it is a purely formal fragment of the system of checks and balances, as far as if the State Duma thrice refuses to give such a sanction, then it is dissolved by the Head of the State – there is no any other alternative. Consequently, if he wishes so much, the President

always can achieve an assignment of the person, he needs, for the post of the Chairman of the Government, though dissolution of the lower house of parliament is a serious political crisis for the whole country. Further, on the basis of constitutional norms, the State Duma seems to be able to control the superior body of the executive power (in order it could not draw «the blanket of power» over it too much) by means of censure vote motion. But it is also nothing more, than a formality, as far as if the Government is defeated for the second time in the course of three months, then it makes the President chose: whether resignation of the Government, or dissolution of the Duma. Deputies always understand quite well, that the Head of the State has no reason to dismiss the Government, which has been formed by him and which is fully subordinated to him. Possibly, precisely, in the force of «the instinct of self-protection», the State Duma defeated the Government (in 1995) and declared the vote of censure only once for the whole history of the new Russian federal status, but it looked more like a farce, as far as it did not take the risk to repeat it in three months, in order not to give the President any lawful bases for dissolving it.

So, in practice the lower house of parliament turns out to be unable to control the supreme body of the executive power and the upper house of parliament – neither. The matter is that the Federation Council is formed with a gross violation of the principle of powers separation, which presupposes a distinct differentiation of government departments according to the means of formation, structure and functions, not allowing «mixing» of powers in one and the same organs. Though, in our country half the members of the upper house of parliament are representatives of the executive power of the Federation subjects, having been assigned *personally* by the leaders of the executive power supreme bodies of regions, districts, and republics. But, these chief

executive officers of the subjects of Federation are *personally* suggested by the President and are always assigned without a hitch by regional parliaments.

Actually, from the part of the President it is a control over the Federation Council with a help of the instrument of governors assignment, but it is precisely what makes the function of constitutionalization control of the Federation Council *senseless*.

Right on the basis of the mentioned comments we can come to a conclusion of institutional weakness of the Russian parliament, which is not able to play its role in the system of democratic state powers separation, and consequently, it is quite in order to raise the question of our federal status democraticity on the whole.

The attitude to the principle of powers separation in the state management practice can be seen on the example of dynamics of the native federalism. The RF Constitution declares the authority of Federation (art.77). In the world science and practice, federalism is perceived as a variety of parts within the frames of the integral, defining separate common features. First of all, this variety concerns the ways of regulation of the inner organization subjects. These subjects must be free in their choice of a most suitable model of inner power-management structure (of course, this freedom is limited by the interests of the federal integrity). Federalism presupposes a significant heterogeneity of constitutional models of the Federation subjects. This heterogeneity contributes to a maximal adaptation of regional power structures to specific conditions of concrete subjects, and such kind of pluralism optimizes a healthy competition among the Federation subjects, and it stimulates all-round development as of the regions, so of the federal integrity. Precisely, such an understanding of federalism gives positive practical results to the peoples of Germany, USA, Canada and others.

In modern Russia, population of the Federation subjects does not elect the governors (the presidents of republics), and it is already a violation of constitutional rights of the citizens and the Federation subjects' status. According to the latest legislation, the President of RF proposes a candidacy for the post of the governor to the parliament of a corresponding Federation subject. Outwardly, deputies of the regional parliament are free in their choice of voting «for» and «against», but having thrice rejected the proposed candidacies, the «stubborn» regional parliament is dissolved by the President. Moreover, the head of the state has a right to remove the governor from his post by reason of «the loss of confidence» (and the interpretation of this reason can be rather wide).

The right of the President to dissolve regional parliaments, before their term is over, is similar to his right to dissolve the State Duma, after it has thrice defeated a candidacy for the post of prime-minister, proposed by the head of the state (art.111 the RF Constitution). But, dissolution of the regional parliaments is provided neither by the letter, nor by the spirit of the Constitution.

In practice, up to this day, all the candidacies for the post of region heads, having been proposed by the President, were «elected» by the regional parliaments, thereat, by the majority of deputies' voices. Today's situation is formally characterized by the fact that the head of the state does not appoint the heads of Federation subjects, but only proposes candidacies, while local parliaments elect them. In fact, taking into account possible sanctions, the heads of the regions are appointed by the President, and regional parliaments are dependent on the President. Right here, we can observe the Russian approach to the principle of powers separation.

General conception analysis of our federalism, as it has been perceived in the Constitution, and later on detailed and realized

in to life, proves that: after the legislative reforms have been done, the influence of the Centre (first of all, of the President) on the regions has become so strong, that there has been left very little of our federalism.

A detailed research of the Russian presidential powers brings to the conclusion that in this country the regime of the personal power of the head of the state has been built and is constantly strengthened. Some researchers consider it to be a normal process in the light of historical, political and cultural traditions of our nation (the necessity of «a strong hand», «a host»), but political history knows one more «tradition»: an extreme personal power usually becomes a dictatorship. That is why democratic regime is in so much need of the principle of powers separation, in order to create quite strict institutional limitations, being able to check as «the will to power», so «the traditional mentality»

According to the letter of the Constitution, President of Russia is the head of the state, and consequently, he enters neither of the government departments, as far as he himself forms the Government and exercises general leadership of its activity. In fact, today the executive power supreme body is the apparatus of the head of the state. In reality, the President may repeal any enactment of the Government not only by reason of its inconformity with the law, but with the presidential decree as well; the President approves the structure of the executive power supreme bodies; appoints the members of the Government and forces them to resign. That is why article 10 of the Constitution looks like a typical formality, the article, which has announced the principle of powers separation: «The organs of the constituent, executive and judicial powers are independent».

So, this brings up a natural question: should we explain a constant accretion of the executive power (= presidential power) only by the drawbacks

of the constitutional regulation? We suppose that all the politics of the ruling elite of the country is aimed for it. Its result is an institutional weakness of the parliament, «the pocket government», absence of an independent judicial power, as far as the judges of all three of the supreme courts of the country – the Constitutional, Supreme and Supreme Arbitration Courts are appointed by the upper house of parliament according to the proposal of the President, while a half of the upper house of parliament consists of «the people of the President».

We also consider the latest reforms of the election legislation to be rather dangerous for the democratic future of the country. First of all, we should note that these reforms demonstrate a vivid tendency to mono-party membership (while *formally* we preserve our multi-party system). It is the rising of the lower-house-of-the-parliament parties' passing barrier from five to seven percent. In December, 2007, the State Duma Elections proved the efficiency of this measure for the ruling elite: «the ruling party» is unrivaled, the communist party has relatively a few places and is not dangerous for the regime, because it is not so popular among younger generations and people of the middle age, the Liberal Democratic Party has also few places, besides it is highly adaptive and, as a last resort, it can be just fictitious-oppositional, and the youngest party is a «pocket» one from the very beginning. Thereat, the most oppositional parties have turned out to be «outboard».

Besides, the cancellation of the State Duma's half the membership election according to the majoritarian electoral system is also rather illustrative – today, elections go on only according to the party lists. It gives a possibility to get rid of so-called independent deputies in the lower house of parliament, who can be uncontrolled and can form an opposition to the power. But, this is not the end of the story. Even

the deputies, having been elected on the majority-proportional basis (party lists), lose the remnants of their deputative independence, as far as the law introduces elements of «the imperative mandate», i.e. having deserted his party faction, the deputy automatically loses his deputy mandate of the lower house of parliament.

Such measures as, prohibition of regional and interregional parties, and also of party blocs (which, we should underline, are a common phenomena abroad), set one thinking. Blocs are obviously very dangerous for the powers: they can become too popular among people and form an opposition to the powers or become «the ruling party» competitors. We should also underline the fact, that the modern election legislation presupposes more than forty reasons for registration rejection or striking off separate candidates and party lists.

### **Resume**

Let's repeat: the principle of power separation is one of the fundamentals of the democratic political regime. But, according to K. Popper, democracy inevitably presupposes bloodless change of government in the result

of free election. There, where such a change is impossible, there is no democracy. We would find difficulty to quarrel with this statement. But, «bloodless change of government» presupposes a *free competition* between political elites (parties), and a real dependence of the parties, having won in the elections, upon the electorate: they will not be re-elected, if they are not able to govern the county efficiently, and, as a consequence, the citizens will stop trusting them. But, it is impossible to speak about free competition in the conditions of real and legally provided domineering of one of the parties. And likewise, it is impossible to speak about democratization of the state governance in the conditions of so strong accretion of the executive power at the expense of constituent and judicial powers.

Having so highly-illustrative lessons of our history before us, we, the Russians, should understand better than others, that violation of the principle of powers separation, an excessive concentration of power in one centre can result in «the rollback» of the forming civil-society elements, in the total violation of the citizens' rights, i.e. in a complete destruction of the existing elements of the modern democracy.

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