

Секция: Право

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CONSTITUTIONAL AND LEGAL RESPONSIBILITY AS A FACTOR LIMITS OF POWER

The meaning of the democratic tradition and the theory of constitutionalism is not in the totality of legal norms, but in the constitutional limitations of state power. The theoretical basis for such a limitation is the doctrine of constitutionalism, the "rule of law" as the basis for limiting the state and state arbitrariness. The essence of constitutionalism motivated by a person's belief in the existence of constitutional means of establishing state restrictions [1, p. 3-43].

State power, the scale of its presence and functioning should be determined by the legal boundaries of the activities of its public law institutions

The legal regime for limiting state power established by constitutional acts, for example, statutory laws on the head of state, the status of deputies, and local self-government. The *regime* of limiting state power is a set of legal means, methods, types and mechanisms of legal regulation in the sphere of exercising power. It establishes the state of legal legitimacy of state power.

Legal restrictions on the functioning of public authorities, officials, civil servants – this is the legislatively defined boundaries of activity, in which their legal status, legal powers, competence, duties, measures of responsibility are fixed.

The preservation of civil society is due to the rational and legal organization of public authorities at all levels – municipal and state, their interaction and responsibility. Constitutional and legal responsibility has political qualities in the system of legal guarantee of the public legal interests of the state. Including protection of the interests of private entities. Consequently, the grounds, subjects and procedures of public legal responsibility must have a legal way of expressing constitutional and legal responsibility in an institution as a guarantee of the constitutional legal order.

Constitutional law has indicators of the special regime of this branch of law – the formation of its goals, principles, functions, a special method of legal regulation, the specifics of the status of subjects, guarantees of rights and freedoms, legal procedures [2, p. 138-165]. Sanctions of constitutional and legal responsibility complete the legal logic of this branch of law. This is the peculiarity of the regime of constitutional and legal responsibility, which embodied in its definition and distinctiveness.

Constitutional and legal responsibility is provided for in the sphere of constitutional and legal relations and entails the onset of negative legal consequences - legal sanctions against the guilty person. It provides for the application of sanctioned articles of constitutional acts and is a coercive means of influencing an individual as a result of a constitutional violation, that is, violation of the rules or failure of a public legal entity to fulfill its constitutional obligations.

This definition consolidates the essence of this responsibility, but does not exhaust all of its legal features.

1. Distinctive features of constitutional and legal responsibility are that such responsibility is a kind of social responsibility. However, it has a political and legal character, since it arises as result of a violation of the order of public relations in the exercise of the powers of public authorities. This constitutional order protecting by the constitution. It is the main way of legal

consolidation of the political responsibility of public authorities and operates only within the scope of constitutional law.

2. Constitutional and legal responsibility is a functional institution of constitutional law, its subsystem. It includes the principles and norms that establish the legal basis, the procedure for admission and the range of subjects that can be brought to legal responsibility for violation of the norms of constitutional legislation.

3. It is distinguished by the legal grounds for the onset of legal liability, in contrast to other types in the national legal system. On the basis of its principles and norms, the legal foundations and the range of subjects of power are formulated, which are subject to legal responsibility in the public law branches of law (criminal, administrative, procedural, municipal law) and the private law branch of law (civil, labor, family). Thus, constitutional and legal responsibility fulfills a system-forming function and determines the goals, principles and limits of actions that are common to types of sectoral responsibility.

4. Structurally, constitutional and legal responsibility is not isolated from other institutions of constitutional law and is included in their content as an obligatory element. For example, the institutions of the foundations of the constitutional system, executive power, human and civil rights and freedoms, local government, etc.).

5. It is established in the presence of special legal grounds – legal facts (constitutional tort) – behavioral deviations of the subjects of constitutional legal relations from the constitutional legal model.

6. Legally established for a special circle of subjects endowed with the constitutional and legal status of the subject of an offense - state authorities, their officials (state, self-government, citizens' associations). For violation of constitutional obligations, individuals bear administrative, criminal or civil liability.

7. This is a form of state coercion (constitutional and legal). Its measure determined by special constitutional and legal sanctions (for example, early termination of the powers of a state body, local self-government; cancellation or suspension of a constitutional legal act, etc.). The legal basis for the application of constitutional and legal sanctions (coercive measures) to the subjects is the assessment of the social significance of the tort, state and public condemnation. Such coercion is associated not only with the state, but also with the social mechanism (for example, the withdrawal of candidates from a political party).

8. Individualization (specification) of the subjects of constitutional and legal tort carried out in the jurisdictional legal acts of the competent authorities – the instances of responsibility. It takes place in special procedural forms (procedures) of its implementation. There is no single procedural form for the application of constitutional and legal responsibility. The application of any measure of constitutional and legal responsibility corresponds to a special procedure and the subjects who appoint and execute it. For example, the procedure for removing the head of state from office differs from the procedure for canceling an illegal act or early dissolution of a state body.

9. It does not have a direct constitutional terminological consolidation, and its content considered from the meaning of constitutional legislation, confirmed by legal positions expressed in the decisions of the bodies of constitutional jurisdiction.

10. It carried out on basis of a system of fundamental principles – normative (imperative) ideas of this legal institution. Among them are such general principles of legal responsibility as constitutional legality; certainty and validity of the basis of responsibility; the inevitability of its onset; equality of grounds; personification and individualization; inadmissibility of double attraction for committing one tort; optimality of the procedural form. The principles of constitutional and legal responsibility follow from the

interpretation of its meaning. The principle of bringing to constitutional and legal responsibility in proportion to the committed offense. The principle of inadmissibility of establishing a simplified procedure for constitutional and legal responsibility (for example, the procedure for recalling elected officials should not be simplified compared to the procedure for electing a deputy and at the same time differ from the procedure for establishing a referendum). The principle of the judicial procedure of prosecution (as a guarantee of reasonable prosecution in order to prevent the evaluation of other mechanisms of prosecution as a way of political influence on unwanted competitors, opponents, etc.).

11. The social value of the institution of constitutional and legal responsibility measured by the goal of protecting and protecting the constitutional legal order. The functions of constitutional responsibility aimed at preventing violations of normal constitutional legal relations (preventive function). The punitive function aims to punish the perpetrators by applying sanctions to them, such as restricting rights, terminating powers, depriving them of the status of public education. For example, the removal from office of senior officials, the liquidation of a public association. Punishment is permissible only if there is a list of constitutional tort, which determined by law. The restorative function aimed at restoring the constitutional order, the rule of law and ensuring the direct regulation of the constitution. It contributes to the normalization of constitutional and legal relations between the branches of government, between the central government and local authorities.

Literature

1. Barendt E. Constitutional Fundamentals: Fundamental Principles. In: Feldman, D, (ed.) English Public Law. Oxford University Press: Oxford. 2004. P. 3-43.
2. Конституционное право: учебник / под общ. ред. П.П. Баранова, А.Ю. Мамычева. Москва: Юстиция. 2017. 410 с.