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Transformation of Certain Principles Governing the Formation and Activity of Public Authorities / Трансформация отдельных принципов формирования и деятельности органов публичной власти

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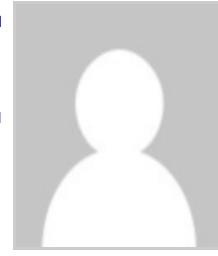
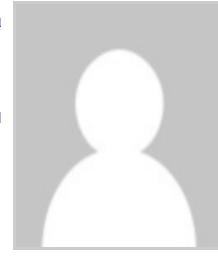
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Аннотация: Предметом исследования являются общественные отношения, связанные с реализацией отдельных принципов формирования и функционирования органов публичной власти различных уровней. Анализируется принцип выборности должностных лиц законодательных органов государственной власти и представительных органов местного самоуправления, а также глав субъектов Российской Федерации. В статье исследован вопрос о трансформации принципов деятельности органов публичной власти с точки зрения сочетания публичных и частных интересов, реализуемых в деятельности властных структур. Особое внимание уделяется принципам поддержания доверия граждан к действиям государства, принципу народосбережения и принципу ответственности органов власти перед избирателями (институту отзыва выборного лица).

Основными выводами проведенного исследования являются предложения по закреплению в законодательстве образовательных цензов в отношении должностных лиц федеральных и региональных органов государственной власти. Представляется целесообразным закрепить требование о наличии высшего образования у лиц, претендующих на должности главы государства, глав субъектов Российской Федерации, а также депутатов законодательных органов власти. Необходимым является также создание и отражение в законодательстве механизмов отзыва населением всех выборных должностных лиц, если они недобросовестно относятся к реализации своих полномочий и не оправдывают возложенного на них народного доверия. В условиях демографических вызовов также целесообразно закрепление принципа народосбережения в деятельности публичной власти.

Ключевые слова:

государственный орган, публичная власть, принцип, выборность, назначаемость, ответственность, депутат, представительный орган, отзыв, легитимность

The effective functioning of the entire state body system is only possible if a balance is ensured between the implementation of public and private interests.

This is only possible thanks to the implementation of principles governing the formation and activity of government bodies. In addition, government legitimacy directly depends on compliance with the principles of the formation of power structures.

There are two principles of the formation of public authorities: electability and appointability. The principle of electability should be the basis for forming federal government bodies and legislative bodies of subjects and senior officials. Moreover, electing government heads by popular vote rather than by parliamentary means is advisable. Thus, it will be possible to talk about the actual implementation of democracy as a constitutional norm. It should also consider the presence of the so-called "mandate of trust" on the part of the President of the Russian Federation. In recent years, there has been a practice where regional elections are usually won by candidates proposed by the head of state or appointed by the head of state to temporarily perform the duties of the highest officials. A. N. Guturova expresses the opinion that such a situation does not meet the principle of democracy [\[1\]](#). In this situation, there is a contradiction between the decentralization of power in accordance with the principle of federalism and the tendency to build a clear hierarchy of executive authorities under the leadership of the head of state. Amendments

were made to the Basic Law of our country, which defined the position of the President of the Russian Federation as the head of executive power. Article 110 Part 1 of the Constitution of the Russian Federation was supplemented with a provision according to which the President of the Russian Federation exercises the general leadership of the Russian Federation Government.

In addition, the Federal Law "On the General Principles of the Organization of Public Power in the Subjects of the Russian Federation" states that the President of the Russian Federation is called upon to ensure the coordinated functioning and interaction of all bodies included in the unified public authority system [\[2\]](#).

Separately, the formation of local self-government bodies should be mentioned. Being closest to the people, these power structures should be created exclusively via elections. However, the legislator has provided several options for the formation of municipal heads: either at municipal elections, by a representative body from its own composition, by a representative body from the proposed candidates, or, if there is no representative body, then at a gathering of citizens [\[3\]](#). At the level of a constituent entity of the Russian Federation, the issue of choosing one way of forming the head of a municipality is being fundamentally resolved. Many subjects prefer not to define the heads of municipalities by the population. Municipalities themselves only fix the choice of subject in their charters.

As sociological studies show, the population's activity level in elections of municipal authorities in rural areas is higher than in large cities [\[4\]](#), indicating the need and expediency of their formation by election.

The principle of electability of public authorities is designed to increase public confidence in the State and its officials.

Another point I would like to focus on concerns the existence of certain qualifications imposed on candidates for positions in federal authorities and on candidates for heads of subjects. Our legislation sets age limits, residency requirements, and the requirement not to have financial assets abroad. The legislator says nothing about educational qualifications. Only for holding the position of a judge the requirement of higher legal education is legally established. Such a large state as Russia should be governed by literate, highly educated, and qualified citizens. Therefore, it is expedient to consolidate the requirement of higher education for candidates for president, deputies of legislative authorities, and candidates applying for the positions of government and municipal heads in the Russian Federation.

Let us now focus on the characteristics of certain principles of public authority activities, as their implementation is directly related to the effectiveness of the entire state mechanism, ensures national security (as a manifestation of public interest), and guarantees individual rights (to realize private interest). Along with the customary and legally fixed, theoretically grounded principles of legality, humanism, justice, democracy, hierarchy, transparency and secrecy, collegiality and unity of command, etc., developing social relations, the changing position of the country in the international arena, the need to solve new problems, and dictate the emergence of new principles that should also underlie the activities of public authorities.

In its decisions, the Constitutional Court of the Russian Federation formulated the principle of maintaining citizens' trust in the law and the state's actions. However, on a theoretical level, this principle is given due attention neither in the theory of state and law nor in

branch legal sciences (constitutional and administrative law). There is no consolidation of it at the legislative level. Nevertheless, it began to take shape back in the Soviet period: "The attitude of Soviet society to the basic law was imbued with the spirit of respect and patriotism, the principle of legality was proclaimed as the main principle of the activities of state bodies" [\[5\]](#). The content of this principle should include "reasonable stability of legal regulation; the inadmissibility of making arbitrary changes to the current system of norms; ... predictability of legislative policy; the ability of participants in legal relations to foresee the consequences of their behavior ..." [\[6\]](#). This principle combines public and private interest, as citizens trust in the authorities. On the one hand, it will ensure complete protection of the violated right using all possible administrative and judicial procedures. On the other hand, it will ensure the legitimization of decisions and their voluntary execution, increasing the efficiency of the functioning of power structures.

To maintain public confidence in the activities of public authorities, it is also necessary to pay attention to the compliance of legal norms with moral norms, especially when it comes to applying legal liability measures to persons who have committed offenses [\[7, 8\]](#).

Researchers also pay attention to the formation of such principles in the activities of state bodies, such as protecting the people and human potential development [\[9\]](#). In accordance with the principle of people-protecting, public authorities must, firstly, ensure a steady increase in the country's population, secondly, maintain a sufficiently high quality of life, and thirdly, contribute to preserving the numerous unique national cultures of the peoples inhabiting Russia. Modern globalization processes pose a threat to the preservation of the original civilizational culture of the people. Therefore, one of the state's priorities should be the preservation and transfer of traditional spiritual and moral values to future generations. According to I. Y. Semenova, to implement this principle, it is necessary to pursue a social policy that would be aimed at solving problems related to increasing life expectancy, motivating a healthy lifestyle, strengthening the institution of the family and the spiritual and moral image of the youth, ensuring the highest possible standard of living, food security, and responsible management of natural and energy resources [\[10\]](#).

A people-protecting index has been developed, making it possible to evaluate state bodies' efforts to increase the population and grow human capital. It includes about fifty indicators that allow you to analyze migration processes, education level, health status, longevity, well-being of citizens, assess life safety, business activity, labor market, social infrastructure, ecology, etc.

The issues of people protection are paid attention to at the state level and within the framework of the functioning of civil society institutions. In 2019, the Strategy of People's Conservation was announced at the World Russian People's Council. In it, along with the goals and objectives already mentioned above, attention is drawn to increasing the migration attractiveness of Russia for compatriots living abroad. Russian migration potential can be developed through the promotion of Russian culture, the Russian language, and achievements in science and education.

For the practical implementation of the principle of people-saving in the activities of state bodies, it is necessary to provide appropriate sections in strategic planning documents. In addition, the adoption of any government decision that may impact migration processes and the population's well-being level should be preliminarily assessed in terms of the impact on the index of people saving.

Another principle that needs to be implemented is the principle of the responsibility of bodies and officials to the voters. It should be recognized that it is fair to consolidate provisions in normative acts, according to which it is possible to recall an elected official in the event of a loss of confidence on the part of the population. Thus, in the Charter of the municipality of the Yeravninsky district of the Republic of Buryatia, Article 57 provides for the possibility of recalling a deputy of a local self-governing body in cases where voter discontent is associated with a violation of legislation by an official, with systematic (two or more times) evasion from receiving citizens, from considering their complaints and applications, from contact with voters on their an invitation to participate in meetings, gatherings, conferences of citizens, or with the commission of offenses that discredit the title of deputy or head of a municipality [\[11\]](#). The charters of the municipalities of the Ivanovo, Kaluga regions, and many others also contain provisions for the possibility of recalling elected officials by voters and expression of distrust by the population to the head of the municipality or other elected officials. In the charter of the municipality of Krasnodar, responsibility in the form of a recall is provided only for the head of the municipality [\[12\]](#). It seems expedient to consolidate the possibility of the population being able to recall all elected persons of public authorities.

An analysis of the legislation on the institution of recalling elected officials at the level of the constituent entities of the Russian Federation shows that it can be established both in relation to the heads of the constituent entities and in relation to deputies of the legislative authorities of the constituent entities. However, not all subjects consolidate this form of democracy. So in the Krasnodar Territory, the law "On the procedure for recalling the head of the administration (Governor) of the Krasnodar Territory" was adopted, according to which recalling the governor is possible in two cases: firstly, in the case of a violation by the head of the regional legislation's administration, and secondly, for repeated gross non-performance of their duties without valid reasons. Both of these grounds must be confirmed by the Krasnodar Regional Court [\[13\]](#). In relation to deputies of the Legislative Assembly of the Krasnodar Territory, the public recall procedure is not fixed.

As for fixing the ability to recall an elected official at the federal level, it is not provided for in our country's legislation. However, there is a debate about the need to consolidate it. Opponents of its introduction point out that the presence of a mechanism to recall a deputy would lead to a revision of the election results, be used as a tool in the political struggle, and be too costly for the budget. It is necessary to agree with V. V. Grebenyuk's opinion, who, formulating arguments for the introduction of the ability to recall elected officials at the federal level, indicates that a recall would be an effective mechanism for "removing unscrupulous representatives of the people from power who do not justify the public trust entrusted to them and who are not able to properly exercise the powers granted to them" [\[14\]](#).

It seems expedient to legislate the current mechanism for recalling elected officials at all levels of public authority, as it will comply with the principle of democracy and increase the efficiency of the functioning of power structures, increase the level of their personal responsibility, and, consequently, increase public confidence in the government. In these conditions, public and private interests will be most fully realized and protected.

Principles as fundamental ideas do not remain unchanged and permanently established by the system. They must be transformed and supplemented with the changing political and economic foundations of the state to meet the urgent needs of both the individual and society as a whole. The principle of electability should ensure the effectiveness of the

publicity of the government, the presence not only of control over society but also by the institution of personal responsibility to it (the institution of recalling an elected person), educational qualifications, and the implementation of the activities of public authorities based on the idea of saving people.

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