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Responsibility of Members of the Government in Russian and Foreign Constitutional Law

Responsabilidad de los miembros del gobierno en el derecho constitucional ruso y extranjero

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ABSTRACT

The article presents a study of one of the most important institutions of constitutional law - the constitutional and legal responsibility of members of the government. The authors review Russian and foreign studies on collegial and personal constitutional legal responsibility. The conclusion made is that the constitutional and legal responsibility of members of the Government of the Russian Federation is rather voluminous, but poorly studied concept that does not have sufficient legislative regulation for the clear performance of their official duties.

Keywords: Collective responsibility, constitutional and legal responsibility, foreign governments, government of the Russian Federation, officials.

RESUMEN

El artículo presenta un estudio de una de las instituciones más importantes del derecho constitucional: la responsabilidad constitucional y legal de los miembros del gobierno. Los autores revisan estudios rusos y extranjeros sobre la responsabilidad constitucional, legal colegiada y personal. Se llega a la conclusión de que la responsabilidad constitucional y legal de los miembros del Gobierno de la Federación de Rusia es un concepto bastante voluminoso, pero poco estudiado, que no cuenta con una regulación legislativa suficiente para el claro desempeño de sus funciones oficiales.

Palabras clave: Funcionarios, gobierno de la Federación de Rusia, gobiernos extranjeros, responsabilidad colectiva, responsabilidad constitucional y legal.

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INTRODUCTION

In the Russian Federation, as well as in foreign countries, the practical value and theoretical relevance of the legal institution of personal constitutional and legal responsibility of government members is becoming increasingly important, given that in today's conditions for the formation of the rule of law, substantial and complex requirements are imposed on the management mechanism (Zhadan: 2018, pp.68-74). In the rule-of-law state, each official and each management body must well perform their functions and powers for the effective functioning of the entire system of state power (Gutorova et al.: 2020). To ensure it, members of the government should bear not only collective responsibility as members of the highest collegial body of executive power, but also personal responsibility for the activities performed to the representative and judicial branches (Kolas: 2020). However, the absence of specific legislative consolidation of constitutional and legal responsibility, as well as its legal mechanism ensuring effective implementation of the constitutional and legal duties of members of the government, can lead to ambiguity and declarative compliance with the Basic Law of the state and legislation. The relevance of the constitutional and legal responsibility of the government members also follows from the requirements for legislative acts that determine their legal status (Trofimova: 2019, pp.63-70).

To investigate this issue, we should turn to some of the fundamentals of constitutional and legal responsibility and the peculiarities of the status of the government members (Bogush: 2019, pp.119-131). It seems necessary to clarify the legal nature of the measures of influence applied personally to ministers subject to constitutional rules (Khodusov: 2020, pp.471-478). For complete and objective research, it seems possible to use the experience of foreign researchers regarding the constitutional and legal responsibility of the members of supreme bodies of the executive branch and its constitutional and legal implementation mechanisms (Vinnik&Kolesnikov: 2020, pp.2124-2131).

METHODOLOGY

The methodological basis of the research is represented by a system of general and private scientific methods of cognition, which ensured the most objective examination of the subject of research from the standpoint of its internal logic. The use of dialectical, system-structural method allowed us to analyze and generalize the Russian and foreign theory of personal responsibility, and then build the concept of constitutional and legal responsibility of government officials. The theoretical-prognostic and legal modeling and the comparative legal plan were used as private legal methods. They helped compare different points of view regarding constitutional and legal responsibility and allowed us to analyze the legislative norms of both the Russian Federation and foreign states in this area. The study used general scientific methods of cognition, such as deduction and induction that contributed to the creation of an optimal research concept; analysis and synthesis, which made it possible to investigate the nature and structure of constitutional and legal responsibility of government officials in a comprehensive and integrated manner. At the same time the study complied with the requirements of the principle of unity in logical knowledge of the essence and system of state power.

RESULTS

The global constitutional and legal practice operate with the concepts of "collective (collegial)" and "personal (individual)" constitutional and legal responsibility of members of the government (Gafurov: 2018, pp.12-15). According to Adam Tomkins, collegial responsibility means that all ministers in government must take responsibility for the policies, decisions and actions of the government, even if they did not personally develop or accept them, or personally disagree with them (Tomkins: 2003). John McGarry argues that collegial

responsibility includes three rules: unanimity, confidentiality, and trust. The unanimity rule specifies that all members of government must publicly support and abide by government policies. If the minister believes that he cannot publicly support the government's policy, then he should resign (McGarry: 2014). The confidentiality rule requires that discussions between ministers, both in government and in committees, regarding the formulation of public policy must remain confidential. The rule of trust means that the government must have the confidence of the House of Commons (parliament - author), and if there is no trust, then it must resign. Ian Loveland argues that collegial responsibility is essential to maintaining public confidence in the unity and purpose of government and helps prevent unwanted economic or political consequences. Disagreements between government members can have dire consequences, such as reduced investment from abroad, a surge in inflation and various other forms of economic and political instability (Loveland: 2012).

Consequently, foreign researchers view the collegial responsibility of government members in the context of ensuring the authority and dignity of the executive branch. That is, the commission of any act by representatives of the executive branch leads to a decrease in the authority of the entire body and, in the future, to the termination of its political activities. In the event of collective constitutional and legal responsibility, the government, which has made a significant omission or miscalculation in its work, resigns in full.

A parliamentary form of government does not require clearly articulating the grounds for government responsibility, since political responsibility plays a decisive role here, especially if the government is a coalition. Therefore, the collegial responsibility of the government should be considered as constitutional and legal, which will be characterized by the presence of an external assessment of the government's activities and constitutional and legal procedures for prosecution. As a result of non-fulfillment or improper fulfillment of obligations established by regulatory legal acts, the Government must resign.

Each member of the group of authorized persons (board), in carrying out the activities of the government, must bear personal responsibility for a certain field of activity. Thus, along with collective responsibility, each official should bear personal responsibility for the state of affairs in his/her department. If there is a significant flaw in his/her work, the official, as a rule, should retire.

The personal responsibility of officials is the cornerstone of domestic and foreign research. M.V. Baglai argues that each government official is assigned individual responsibility for both his activities and the state of affairs in the department, and, in the event of serious shortcomings in the course of work, gives grounds for the resignation of the minister (Baglai: 2015). A.V. Krysanov represents personal constitutional and legal responsibility by its implementation in the form of the resignation of each individual member of the Government (Krysanov: 2014). A.V. Nazarov believes that personal responsibility is based on the fact that a real administrative process involves not systems, organizational structures or their links, but specific people (Nazarov: 1998). In all cases, the implementation of the constitutional and legal responsibility of members of the Government of the Russian Federation consists in the announcement of resignation by the President of the Russian Federation by an appropriate decree.

Foreign researchers also single out some aspects of personal constitutional and legal responsibility. For example, Michael Dougherty reveals personal responsibility through the practice of general unanimity of government: ministers should not publicly express disagreement with the government's line. A minister who does not share responsibility for government policy should resign (Doherty: 1988). Joyce Peter attributes the personal responsibility of members of government to the relationship between an individual minister and the legislature. Legislators have the right to obtain the resignation of a minister if errors and/or shortcomings in his activities were discovered, or errors and/or shortcomings were discovered in civil servants acting on his behalf (Joyce: 2002). John McGarry argues that each minister is individually accountable to parliament and the public, both for his behavior and for the actions of his departments and government officials (McGarry: 2014). Nick Howard argues that the personal responsibility of ministers is necessary to ensure accountability of the elected government ministers to parliament for the actions of their departments, which, in turn, are staffed by civil servants not elected by parliament (Howard: 2013). Barbara Peich, setting forth cases of the

responsibility of ministers in Australia, suggests such a classification of the bases for personal responsibility of ministers: first, "ministerial acts", which include improper performance of duties, including abuse of ministerial powers; secondly, "ministerial quality", that is, politico-legal mistakes of ministers; thirdly, "private quality", implying violations by ministers of moral and ethical norms, personal discrepancy of the dismissed person with a title of minister (Peich: 1990, pp.141-161).

Thus, personal responsibility lies in the totality of measures the relevant authorities take for the actions committed related to the unfair performance of public administration functions. The grounds for the responsibility of officials may be not only an offense, but also improper exercise of powers, making mistakes and omissions in the process of exercising their functions. Inappropriate and untimely elimination of them entails an unfair attitude to their duties, which can be the reason for the loss of trust and a decrease in the authority of the authorities before the population. One can state the presence of a certain unity in the views of Russian and foreign researchers regarding the content of the personal responsibility of officials. They also agree that the personal responsibility of an official is in a single relationship with the collegial responsibility of the government.

However, the differences in the legal systems of states also determine some features of the mechanism for the implementation of responsibility. Parliamentary republics and monarchies limit the head of state in making a decision on the resignation of the government and unilaterally on its future fate. In this case, the parliament has great opportunities. In presidential republics, on the contrary, the government is primarily responsible to the head of state, who heads the executive branch. In the case of the mixed form, the application of sanctions against the government is somewhat volatile and inconsistent (Kondrashev: 2011, pp.163-164).

DISCUSSION

The Russian legal reality is that the personal constitutional and legal responsibility of members of the Government of the Russian Federation does not have a clear legal basis. To resolve this issue, one needs to refer to their legal status. Each member of the Government of the Russian Federation has the powers set in law in the spheres entrusted thereto. Thus, the Chairman of the Government of the Russian Federation heads the Government of the Russian Federation. Its functions include: determining the main lines of business and organizing the activity of the Government of the Russian Federation; signing of acts of the Government of the Russian Federation; systematically notifying the President of the Russian Federation of the work of the Government of the Russian Federation, etc. Deputy Prime Ministers of the Russian Federation carry out activities to coordinate the work of federal executive bodies, charge them with various tasks, etc. The federal ministers are entitled to participate in the development and implementation of the general policy of the Government of the Russian Federation, manage the federal ministries, supervise the subordinate federal ministries, coordinate and manage the activities of subordinate federal executive bodies (agencies, services).

These powers are an integral part of the constitutional and legal status of members of the Government of the Russian Federation. In case of failure to perform or improper performance of the relevant powers, the President of the Russian Federation of the State Duma can initiate an issue concerning his/her removal from office. Thus, we can see the personal responsibility of each member of the Government of the Russian Federation for his/her activities and for the activities of the entrusted ministries. The personal constitutional and legal responsibility of members of the Government of the Russian Federation is one of the elements of relations with the legislative body, which by means of applying measures of responsibility can neutralize "improper" behavior and possible consequences by exercising constitutional powers. Thus, the resignation of a member of the Russian Federation may occur as a result of mistakes or shortcomings noted by the Parliament in the activities.

The Federal Law "On Parliamentary Control" indicates some forms of control over the activities of officials of the Government of the Russian Federation, which are carried out by the chambers of the Federal Assembly. Article 15 stipulates that the State Duma has the right to appeal to the President of the Russian Federation either with a proposal to dismiss members of the Government of the Russian Federation whose activities were unsatisfactory, or to make representations about their removal from office. However, as Russian practice shows, appeals are of a recommendatory, informational nature, because the President of the Russian Federation has quite extensive powers in the system of separation of powers, which indicates a distortion in the system of checks and balances and does not allow establishing the necessary balance of powers between legislative and executive bodies.

Article 7 of the Federal Constitutional Law "On the Government of the Russian Federation" sets an exhaustive list of grounds for the resignation of the Chairman of the Government of the Russian Federation and establishes his release from office by the President of the Russian Federation: first, in cases of a request by the Prime Minister of the Russian Federation to resign their powers. It is believed that this list does not have grounds for dismissal of the Chairman of the Government of the Russian Federation, for which the President of the Russian Federation could apply the proposal of the chambers of the Federal Assembly. Hence it follows that the legislation does not have individual measures of constitutional and legal responsibility between the chambers of the Federal Assembly and the Chairman of the Government of the Russian Federation: the main decision is taken by the President of the Russian Federation. Given the above, it seems quite logical that a number of foreign countries have enshrined the practice of expressing no confidence in the Chairman of the Government, which entails his/her dismissal from office. At the same time, the composition of the Government remains the same (for example, Article 67 of the Federal Republic of Germany Constitution (Maklakov: 2000), etc.). It seems that this practice is quite appropriate for Russia as well.

In case of initiation by the chambers of the Federal Assembly of the procedure for the resignation of other officials of the Government of the Russian Federation, the President of the Russian Federation may also disagree with their opinion and leave these officials in the current composition of the Government of the Russian Federation. At the same time, individual federal executive bodies are subordinate and accountable to the President of the Russian Federation and, accordingly, are responsible precisely to him. The rest of the ministers are also responsible to the President of the Russian Federation, although their activities are managed by the Chairman of the Government of the Russian Federation. Thus, the President of the Russian Federation also has the leading role in the appointment, replacement and dismissal of members of the RF Government.

1. The theory of constitutional and legal responsibility needs a more accurate and correct understanding of the category of collegial and personal constitutional and legal responsibility of members of the government. Legislative improvement of its regulation is a necessary step for the process of legal registration of constitutional and legal responsibility as a full-fledged type of legal responsibility in the Russian Federation.

2. As foreign experience shows, the consolidation of constitutional and legal responsibility of government members is a combination of measures taken by the relevant authorities for a set of committed actions related to the unfair implementation of the functions of public administration. Members of foreign governments are responsible under a special procedure, determined by constitutional norms and to special bodies. The Russian reality is that the basis for the responsibility of members of the RF government is not only the commission of offenses, but also the improper exercise of authority, making of mistakes and omissions in the process of exercising the functions of state administration.

3. In the Russian Federation, members of the RF government are responsible to the RF President and the chambers of the Federal Assembly. However, the responsibility of the Government is ensured not by a parliamentary assessment of its work, but by the decision of the President of the Russian Federation, since the opinion of the State Duma is not a decisive factor that predetermines the resignation of the Government

of the Russian Federation. The mechanism for implementing the constitutional and legal responsibility of members of the RF Government is formed in such a way that the President of the Russian Federation has exclusive powers in terms of its implementation.

4. A specific number of grounds for the constitutional and legal responsibility of members of the Government of the Russian Federation, which do not go beyond the norms of the Constitution of the Russian Federation and other regulatory legal acts, must be determined without additional vague and subjective conditions.

CONCLUSION

The lack of a precise outline of the management functions, tasks and powers of officials, as well as the mechanism for implementing constitutional and legal responsibility of members of the RF government, is a traditional drawback of the legislative acts of the Russian Federation regulating the status of officials. In the Russian legal system, registration of constitutional and legal responsibility of members of the Government of the Russian Federation, and ordering of its application needs legislative improvement. A clearer legislative consolidation of the collegial and personal responsibility of members of the Government of the Russian Federation for breach of the Constitution of the Russian Federation, regulatory acts and judicial decisions is seen as an actual and necessary step in its legal ordering and implementation.

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