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The obligation of bodies of constitutional justice to appeal to the court

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Abstract

The article analyzes the Constitution of Russia, current legislation, the judiciary practice of the regional constitutional bodies, their postulation history, and the mechanisms for legal obligation's implementation. The study is based on the application of a general system-structural method. Findings show that the RF Constitutional Court follows the policy of the authorities but simultaneously adheres to centralized constitutionalism. In addition, the objects of normative control were identified and classified.

Keywords: Constitutional, Control, Obligation, Federation, Federation.

La obligación de los órganos de justicia constitucional de apelar ante la corte

Resumen

El artículo analiza la Constitución de Rusia, la legislación vigente, la práctica judicial de los órganos constitucionales regionales, su historial de postulación y los mecanismos para la implementación de la obligación legal. El estudio se basa en la aplicación de un método estructural general del sistema. Los resultados muestran que el Corte Constitucional de Federación Rusa sigue la política de las autoridades, pero al mismo tiempo se adhiere al constitucionalismo centralizado. Además, se identificaron y clasificaron los objetos de control normativo.

Palabras clave: Constitucional, Control, Obligación, Federación, Federación.

1. INTRODUCTION

The Constitutional Court as a specialized body of constitutional control in Russia was established based on the amendment of the Constitution of the RSFSR as of 1978. The emergence of a new institution accompanied important changes in the political and legal system of the country and ensured a new role for the Constitution - the actual functioning as a fundamental legal act with supremacy and supreme legal force. The creation of the Constitutional Court in Russia marked the beginning of effective constitutional control, designed to ensure the operation of the Constitution of the Russian Federation throughout the state, the protection of the constitutional system, rights and freedoms of citizens (ERSHOV, 1998). To date, the named judicial body, the legal positions of which covered the provisions of all branches of law, demonstrates a crucial role in the functioning of the Russian legal system (DI GREGORIO, 2019). The definition of its activity is not limited to the much-formalized categories of negative legislators and interpreters of constitutional provisions (BENIAMINOVA & LARICHEV, 2019).

According to the main law, the functions of the Constitutional Court in complaints of violation of constitutional rights and freedoms of citizens and at the request of the courts are to verify the constitutionality of the law applied or to be applied in a particular case, in the manner established by federal law. It is worth noting that in none of these cases did the federal body of constitutional control doubt the fundamental possibility of these bodies to send appropriate

appeals. On the other hand, a substantial question arises: what is meant by the application of the law by the constitutional court in a particular case, what is the basis for making a request (BUTT & LINDSEY, 2018)?

Indeed, the main content of the activity of the court is the identification of the actual content of the regional constituent act and verification of whether normative acts of lower legal force comply with such regional constituent act. The indicated activity differs from the consideration of cases not related to normative control and abstract interpretation when the act is applied in the sense that a legal effect occurs (is fixed) that directly follows from the content of the legal provision. Therefore, the aim of this work is to identify and classify the objects of normative control, the verification of which is perceived by the Constitutional Court of the Russian Federation and the bodies of constitutional justice as possible as part of the latter's request for constitutionality of the law (BUTT, 2018).

2. METHODS AND MATERIALS

The study is based on the application of a general system-structural method. In addition, the dialectic and systemic methods were used to determine and classify the objects of normative control. For classification, the following criteria were selected, such as the degree and nature of the substantive connection of the object of normative

control in the case of the regional body of constitutional justice. Along with the law, a request for the constitutionality of which is sent to the Constitutional Court of the Russian Federation (DZMITRYIEVA, 2017).

The classification was carried out based on judicial acts of requests of the constitutional courts of the constituent subjects of the Russian Federation to the Constitutional Court of the Russian Federation (BERČAN & OVSENIK, 2019; BALTOS ET AL, 2018).

3. RESULTS AND DISCUSSION

A detailed analysis of the relevant practice of acts of constitutional courts makes it possible to single out a number of groups of normative control objects (Figure 1)

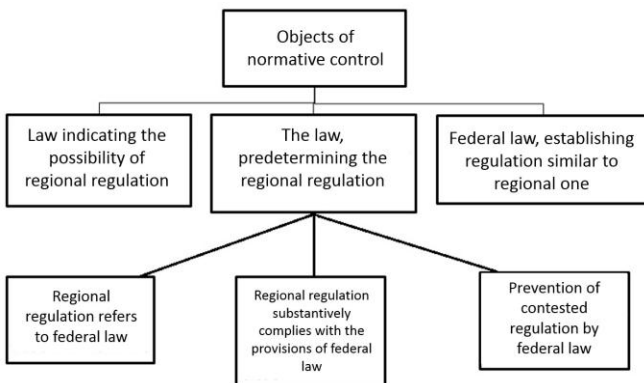


Figure 1: Categories of normative control objects

Such an object of inquiry may correspond to a situation where the admissible regional level regulation directly follows from the provisions of the federal law. In the regulatory act of the subject of the federation, it is only subject to discernment. From a legal point of view, Russia is a centralized federation. Many provisions of the legislation of the subject of the federation are defined in substance at the federal level and, in fact, the regions mainly reproduce their normative legal acts from the federal ones. In such circumstances, checking the latter for compliance with the constitution or the charter of the subject is actually a check of the constitutionality of the federal act (MÄLKSOO, 2016). The practice has demonstrated a number of fundamental situations in which requests were made to the Constitutional Court of the Russian Federation regarding the constitutionality of an act of the category in question (ANTONOV, 2017; LOKE ET AL, 2018).

a) Prevention of contested regulation by federal law.

A citizen appealed to the Constitutional Court of the Republic of Karelia to check for compliance with the Constitution of the Republic of a number of provisions of the regional law on administrative offenses. In accordance with the contested provisions, police officials are vested with the power to review cases and draw up protocols on the offenses provided for by this law. The constitutional justice body of the subject of the federation found that the contested provisions contradict the Code of Administrative Offenses of the Russian Federation and the Federal Law On Police and do not allow

the use of police forces and means in administrative cases prescribed by the laws of the subjects. Thus, in the event of a refusal to satisfy the applicant's appeal, a regional court could come into conflict with the federal court, determining regional regulation.

Having found out that these provisions of the law violate the human and civil rights guaranteed by the Constitution of the Russian Federation, the court, suspending the proceedings, appealed to the Federal Constitutional Court with a request to verify the constitutionality of federal laws. The Constitutional Court of the Russian Federation refused to accept the request for consideration and substantiated it as following. The applicant refers to article 5 of the Constitution of the Republic of Karelia, according to which the laws of the Republic of Karelia must not contradict the Constitution of the Russian Federation, federal laws and the Constitution of the Republic of Karelia.

In this manner, the applicant formally challenges the compliance of the regional law provisions with the Constitution of the Republic of Karelia. Thus, the applicant actually poses to the Constitutional Court of the Republic of Karelia the question of verifying the compliance of such provisions with the provisions of federal legislation. However, this issue does not belong to the powers of constitutional justice bodies at the regional level and should be exercised by courts of general jurisdiction. A general rule can be formulated from the presented position of the Federal Constitutional Court. According to which, if a particular regional regulation is

determined by specific provisions of the federal law, then the regional constitutional court cannot check whether this regulation complies with the constituent regional act.

- b) Regional regulation substantively complies with the provisions of federal law.

For example, a citizen filed a complaint to the Constitutional Court of the Komi Republic. The complainant states that the act of a regional executive body contains the inconsistent with the Constitution of the Republic amount of paid pensions. Based on the content of the act, the regional coefficients determine the payment of pensions (allowances for living in the regions of the Far North) for non-working pensioners. However, during some periods the complainant worked and received a pension without taking into account this coefficient.

The regional constitutional justice body has established that according to the provisions of the Law of the Russian Federation, regional coefficients are, in principle, taken into account only when determining the minimum and maximum sizes of labor and social pensions. The coefficient is not charged on a pension exceeding the minimum size. The court discovered that these provisions of the law violate the constitutional principle of equal rights and freedoms, suspended the proceedings and appealed to the Constitutional Court of the Russian Federation. The matter of the request was to verify the constitutionality of the federal act provisions. The federal constitutional control body refused to accept the request for

consideration, pointing to the discretion of the legislator and objective grounds for the approach proposed at the federal level. Along with that, the court of general jurisdiction chooses the applicable act. A similar context is also presented in a number of other cases of constitutional courts of the regional level.

c) Regional regulation refers to federal law.

A deputy of the regional parliament appealed to the Constitutional Court of the Republic of Karelia to verify the constitutionality of the provisions of the Republican Law. According to which, the judge of the named court can be a person who has higher legal education, has reached the age of 25 years and has at least five years of experience in the legal field. The applicant considered that these requirements were insufficient for a judge of such a high court.

The republican constitutional control body established that these provisions of the regional law directly follow from the provisions of federal legislation and appealed to the Constitutional Court of the Russian Federation. The request concerned the constitutionality of the relevant provisions of the Law of the Russian Federation On the status of judges.

The organization and the prosecutor appealed to the Constitutional Court of the Republic of Karelia with a request to verify the compliance of the regional tax law with the Constitution of the Republic. This law, in particular, established higher tax rates on

vehicle owners than reflected in the federal law on road funds. At the same time, federal law provided for the right of a subject of the federation to increase tax rates. Having found out that this right contradicts the Constitution of the Russian Federation, the republican body of constitutional control turned to the federal one with a request regarding the indicated provision of the federal law. The Constitutional Court of the Russian Federation stated that the contested provision of the law on road funds is losing its force and is not subject to the application as a provision analogous to the constitutionally recognized by it earlier (SÓLYOM & BRUNNER, 2000).

Following the decision, the regional body of constitutional justice recognized the regional law's provision (establishing higher tax rates) as such that does not comply with the Constitution of the Republic of Karelia. There are frequent and understandable cases when regional regulation uses obvious analogs of constructions provided for at the federal level. These constructions relate to similar public relations or that are subsidiary. Such a situation often does not substantially differ from the one directly given above.

Therefore, a citizen appealed to the Constitutional Court of the Republic of Karelia with a motion to check the regional law's provision on the election of deputies. Such law establishes that, if the votes are equal, then the candidate, who registered earlier, is considered as elected in the local council. When considering this appeal, the regional constitutional control body found that the

contested provision is similar to the provision contained in the federal law's annex, which is subsidiary applied.

When requesting the constitutionality of the federal act's provision, the constitutional court of the subject indicated the following. If it recognizes the impugned provision as inappropriate to the Constitution of the Republic of Karelia, then law enforcers will be required to follow specific federal law rules when resolving specific cases. The Federal Constitutional Court refused to accept the request for consideration. It indicated that in fact, the regional court was applying for verification of the federal law in the manner of abstract constitutional control. While the regional court was granted the right to request the implementation of control over the law applied or subject to a specific case. The Constitutional Court of the Republic of Karelia, having resumed the proceedings, recognized the controversial provision of the regional election law as inconsistent with the Constitution of the Republic.

Despite the seemingly small number of such requests, their study allows drawing a number of significant conclusions, that is, the conclusions regarding the interaction of the Federal Constitutional Court and regional bodies of constitutional justice. The presented review of the situation demonstrates the prevalence in the activities of such bodies of veiled blanket verification of regional and federal regulatory legal acts for compliance with federal acts of a higher legal force, while, at the same time, verifying regulatory legal acts for compliance with regional constitutions. This correlates with the fact

that as MALYUTIN (2015) notes, regional bodies of constitutional justice, ... often actually check whether regional legal acts comply with the Constitution of the Russian Federation.

Regional bodies use the rules of the Federal Constitution reproduced in the texts of the constitutions of the Russian regions, mainly with regard to the rights and freedoms of citizens. In this situation, one can argue at best about duplication of the functionality of the Russian Federation's Constitutional Court. When, in fact, there is the implementation of parallel constitutional normative control (MALYUTIN, 2015). Such circumstances are caused, *inter alia*, by the existing non-locally Russian peculiarity. The latter is the possibility of regional judicial bodies to interpret independently the provisions of the regional constitutions that are consistent with the federal ones (BIERMAN, 1995; LIU, 2019). Thus, there are specific requests to constitutional courts on the issues of constitutionality of the law.

Given these circumstances, within the framework of a possible reform of the regional constitutional justice, the following is considered reasonable. Namely, there should be the more formalized obligation of regional constitutional bodies to apply to the Constitutional Court with a request for constitutionality of a related federal act. Given the connection of federal and regional regulation on many issues, this formalization can increase the degree of uniformity in the interpretation and application of the rule of law while maintaining the significant role of regional courts in the implementation of normative control.

4. CONCLUSION

Recently, the Constitutional Court of the Russian Federation, although it was subordinate to the policy of the authorities in many matters, nevertheless developed its own version of centralized constitutionalism, which can serve as a model for constitutional judicial bodies in other states. Based on judicial acts of requests of the regional constitutional courts to the Constitutional Court of the Russian Federation, identification and classification of objects of normative control were carried out.

During the analysis, three categories of objects of normative control were identified: a law that predetermines regional regulation; a law indicating the possibility of regional regulation; federal law, establishing a similar regulation to a regional one. In addition, in the context of the law that predetermines regional regulation, the authors identified three more situations, as the federal law does not allow the impugned regulation, regional regulation substantively complies with the provisions of the federal law, and regional regulation refers to the federal law.

This study may be useful for comparing and evaluating the activities of both domestic judicial bodies and foreign ones. In addition, the obtained results and classification will serve as a good basis for legal students.

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