

Constitutional and Legal Aspects of State Control and Supervision Activities (Legal Positions of the Constitutional Court of the Russian Federation)

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Received: June 9, 2019

Accepted: August 25, 2019

Online Published: September 3, 2019

doi:10.5539/jpl.v12n5p161

URL: <https://doi.org/10.5539/jpl.v12n5p161>

Abstract

The presented article is devoted to the analysis of the legal positions of the Russian Federation Constitutional Court regarding the constitutionality of Russian legislation norms in the field of control and supervision activities. The generalization of the Constitutional Court practice of the Russian Federation allows you to group the decisions of the highest constitutional control body on several key issues: the limits of discretion by the legislator and law enforcer, the legal nature of state control and supervision measures, the balance of public and private interests in the sphere of relations under consideration and the guarantees of this balance. The team of authors concludes that the resolution of these problems is impossible without the Constitutional Court determining the content of a number of key concepts, developing the methodology for various constitutional principles and value balancing and, in general, focused efforts to constitutionalize Russian legislation.

Keywords: state control (supervision), constitutional principles, discretion, balance of interests

1. Introduction

The system of state control (supervision) is an essential factor that directly determines the condition of many segments of society life and the state as a whole. Speaking as a specific manifestation of state sovereignty, state control (supervision) has constitutional and legal significance a priori.

In 1997, the Constitutional Court of the Russian Federation noted that the control function is inherent in all government bodies within the competence assigned to them by the Constitution of the Russian Federation, the constitutions and charters of the constituent entities of the Russian Federation, federal laws, which implies their independence in the implementation of this function and specific forms of its implementation for each of them (The Decision of the Constitutional Court of the Russian Federation No. 18-P (01.12.1997)). Since then, the indicated legal position has been consistently supported and developed by the Constitutional Court in its subsequent resolutions and determinations.

At that, to this day, a number of key theoretical problems (the nature of control and supervision activities, theoretical criteria for distinguishing control and supervision) and many practical issues remain unresolved. Constantly changing legislation regulating control and supervisory activity indicates the absence of a conceptual perspective understanding of legislation development trends and practice in the field under consideration among the aggregate federal legislator. Obviously, this understanding should be formed on the basis of the Constitution of the Russian Federation norms, its value, principle and program-targeted provisions.

The foregoing allows us to formulate the purpose of the study: on the basis of the Constitutional Court of the Russian Federation practice generalization to determine the contours of sectoral legal regulation constitutionalization in the field of state control and supervision that can be considered established.

The presented work can be characterized as a review and analytical study, the results of which may be of interest both to the legislator and to all entities interested in constitutional and legal tool attraction to relations in the field of

regulation and implementation of state control (supervision). By the time of the study, its relevance has acquired special significance due to the constant reform of the state control (supervision) system of the Russian Federation.

2. Materials and methods

The presented study is based on the data formulated in doctrinal sources and legislation, the synthesis of decisions (resolutions and definitions) of the Constitutional Court of the Russian Federation in 1996-2018 (June). The methodological base of the research consists of analysis, synthesis, system-functional, comparative legal, and formal legal methods.

3. Results

The phenomenon of the modern state (the term “modern” in this context has the value of development, and maturity of state legal institutions), its essence and functions are actively studied by foreign and domestic science. At the same time, the functional approach is becoming more and more demanded and opens up new facets due to the specifics of the modern stage of state development as a social, political and legal institution.

The state is an extremely complex object of study. E.V. Talapina rightly notes, even now it is not so easy to find a clear definition of a modern state.

The thesis that a model of public administration based on the classic tenets of power separation and representative government (parliamentary representative democracy) undergoes significant qualitative transformations in the 21st century, especially obvious in the countries of the Westminster system, is now recognized by many experts. The relevance of this issue is also noted by the researchers from continental Europe. Professor Andreas Lienhard emphasizes that even one of the cornerstones of the modern public administration system - judicial control - requires rethinking of the foundations and this issue takes on constitutional significance.

In the absence of a recognized interdisciplinary research methodology among domestic scholars studying state (at least, the authors of this article do not have evidence of convincing testing of such a methodology), the science of constitutional law took over the function of legal knowledge consolidation in many areas of scientific research. Such significance of constitutional provisions is determined by their legal nature, and this approach is developed by the Constitutional Court of the Russian Federation in its decisions, emphasizing that constitutional principles have the highest degree of normative generalization, predetermine the content of constitutional human rights and sectoral rights of citizens, are universal in nature and in connection with this they have a regulatory effect on all spheres of public relations (The Decree of the Constitutional Court of the Russian Federation No. 5-P (10.04.2003)); act as a constitutional criterion to assess the legislative regulation of the rights and freedoms enshrined directly in the Constitution of the Russian Federation, and also the rights acquired by citizens on the basis of the law (The Decree of the Constitutional Court of the Russian Federation No. 18-P (November 27, 2009)).

In the Russian science of constitutional law, the field of public relations related to the exercise of control and supervision is understood quite widely and includes the control function of the legislative bodies of state power in the Russian Federation (referring to the federal and regional levels of public power), the control and check function of executive bodies of the Russian Federation, judicial control (mainly normative control, in which many experts conditionally include judicial contestation of the actions and decisions of public authorities and management), the control and supervision of state bodies with special competence (the Central Bank of the Russian Federation, the Accounts Chamber of the Russian Federation).

These four groups of relations are unevenly represented in the practice of the Constitutional Court of the Russian Federation. If, according to our calculations, we can talk about 80 decisions on the issues of control and supervision of the executive bodies of state power of the Russian Federation and judicial normative control (despite the fact that accurate calculation is complicated by the complex nature of the decisions of the Constitutional Court. the Constitutional Court of the Russian Federation issued 21 decisions and about 60 definitions containing legal positions, which, in our opinion, can be directly attributed to the sphere of relations under consideration), the issues of parliamentary control became a special subject of decision a few times (we counted only 4 decisions).

The legal positions of the Constitutional Court of the Russian Federation reveal the letter and meaning of constitutional provisions on such key aspects as: a) the limits of the legislator and law enforcement discretion; b) the legal nature of state control and supervision measures; c) the balance of constitutional principles and, thus, the balance of public and private interests in the sphere of considered relations (as well as the guarantees of this balance arising from the Constitution of the Russian Federation).

Due to the limited scope of this article, we are unable to consider all of these aspects. Therefore, let us dwell on the generalization of the legal positions of the Constitutional Court concerning certain key issues.

As E.V. Taribo notes, since one of the main tasks of the Russian Federation Constitution is to restrict public authority to the rules contained in it, the main function of the constitutional judicial normative control is also to restrain the legislator when it is necessary from the point of view of constitutional norms. Thus, the legislative positions of the Constitutional Court of the Russian Federation, which outline the constitutional limits of the legislator discretion when he makes legislative decisions, are an important guideline for legislative activity.

As was pointed out by the Constitutional Court of the Russian Federation, the federal legislator is bound by the constitutional principles of equality, justice and proportionality during public relation regulation. From these principles, the Constitutional Court derives those requirements that apply to legal regulation and which serve as the criterion of its constitutionality evaluation: formal certainty, clarity, preciseness, consistency of legal regulation, mutual agreement of substantively related norms of different sector affiliations, as well as adequacy, reasonable sufficiency and proportionality of the applied legal means; the procedure introduced by the legislator for the law implementation, especially in the public law sphere, should create the conditions for the effective achievement of social goals and interests expressed in this law (Resolution of the Constitutional Court of the Russian Federation No. 14-P (May 13, 2014)). In the same resolution, the Court stated the position that the uncertainty, inconsistency, incompleteness, uncertain legal regulation lead to a conflict of legal norms and the clash of constitutional rights exercised on their basis, to the violation of the principles of equality and the rule of law, and also state guarantees, including judicial ones, the protection of rights, freedoms and legitimate interests of citizens. In this case, the Court emphasizes, that the issue of such a contradiction elimination acquires a constitutional aspect.

For a long time, the idea of constitutional principles and value balance has been at the center of the Constitutional Court methodology. The typical approach developed by the Court can be illustrated by the legal position that the exercise of the right to carry out entrepreneurial activities in the field of transport services for the population, related to the use of vehicles (including taxis), which are a source of increased danger, necessitates the adoption of special measures to ensure the safety of passengers and other road users and the introduction of reasonable requirements, including restrictive ones. Therefore, the normative legal basis for a balance achievement between the freedom of entrepreneurial activity guaranteed by the Constitution of the Russian Federation and the interests of security provision in the field of public transport services is precisely the federal legislative regulation that is carried out both for the controlled objects of the Russian Federation and in the subjects of joint jurisdiction of the Russian Federation and the constituent entities of the Russian Federation (Resolution of the Constitutional Court of the Russian Federation No. 16-P (July 13, 2010)).

Analyzing the essence of control and supervision activities, the Constitutional Court of the Russian Federation noted that the control function of the state is derived from its organizing and regulatory impact on public relations in its constitutional and legal nature, including the sphere of civil circulation. Accordingly, from the totality of the Constitution of the Russian Federation provisions (the Article 71, paragraphs «B», «E», «Ж», «O», «P»; article 72, paragraphs «B», «В», «Д», «К» of the part 1) it follows that the state has the right and obligation to exercise the control function in the field of economic relations. A systematic analysis of the Constitutional Court decisions suggests that the content of the state control function in the sphere of economic activity is considered quite broadly, including the determination of the procedure and the conditions for its implementation, the establishment of additional requirements, as well as restrictions (based on the specifics of production and circulation of certain types products as the objects of civil rights), which, however, must meet the criteria enshrined in the Constitution of the Russian Federation (Definition of the Russian Federation Constitution Court number 1493-O 19/7/2016).

The federal legislator with sufficient discretion in specific types of state control (supervision) determination, the grounds, forms, methods, procedures, and periods of its implementation, the composition of state coercive measures applied as a result of control measures, as well as a specific procedure for financial support, is also associated with the general constitutional principles of the system of public authority organization, and the regulation carried out by him must comply with the legal nature and nature of public relation course taking shape in the field of state control (supervision), the restrictions introduced on the rights and freedoms of citizens engaged in entrepreneurial activity — be proportionate to constitutionally significant goals and in any case without creation of the obstacles to their economic independence and initiative (The Decision of the Constitutional Court of the Russian Federation No. 10-P (July 18, 2008)).

4. Summary

Thus, when the Constitutional Court says that "... the legislative regulation of control and supervisory procedures, as well as the activities of state bodies authorized to conduct inspections, should meet the constitutional criteria of

possible restrictions on human and civil rights and freedoms, which are enshrined in article 55 (part 3) of the Constitution of the Russian Federation, and the requirements for the inspected subject assessed in terms of their necessity and proportionality during verification activity conduct are unacceptable and the intervention of the inspection body in the operational activities of the inspected ..." (The Decision of the Constitutional Court of the Russian Federation number 2-P (02.17.2015)), then, unfortunately, the Court does not formulate evaluation criteria of necessity and proportionality; where it comes to the balance of constitutional principles, the balance of public and private interests, the Court does not offer a meaningful definition of such a balance (separate indications of what should be understood as a constitutional balance are contained only in the special opinions of some judges of the Russian Federation Constitutional Court - K.V. Aranovsky, N.S. Bondar, G.A. Hajiyev), or the constitutional methodology of working out a balance, which both the legislator and the law enforcer could use objectively.

5. Conclusions

Even the most general review of the legal positions of the Russian Federation Constitutional Court clearly shows a key problem that impedes the real constitutionalization of sectoral regulation of relations in the field of state control and supervision. Such a problem should be the excessive abstractness of legal logic, those specific legal decisions that the Court puts in the basis of its decisions and definitions. Not by chance E.V. Taribo (who, let's recall, is directly immersed in the problems being the head of the Office of the Constitutional Foundations of Public Law of the Constitutional Court of the Russian Federation) notes in his monograph that often the reason for the legislator's immunity to the Constitutional Court settings is his (legislator's) disorientation in what he needs to do.

Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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