

opción

Revista de Antropología, Ciencias de la Comunicación y de la Información, Filosofía,
Lingüística y Semiótica, Problemas del Desarrollo, la Ciencia y la Tecnología

Año 34, 2018, Especial N°

14

Revista de Ciencias Humanas y Sociales
ISSN 1012-1587/ ISSNe: 2477-9385
Depósito Legal pp 198402ZU45



Universidad del Zulia
Facultad Experimental de Ciencias
Departamento de Ciencias Humanas
Maracaibo - Venezuela

Constitutional Regulation and Practical Realization of powers' separation in the Russian Federation

Yuri Ivanovich Leibo

Moscow State Institute of International Relations (University) of the Ministry of Foreign
Affairs Russian Federation, MGIMO-University, Moscow, Russian Federation
elena-kaf@mail.ru

Evgeniu Yakovlevich Pavlov

Moscow State Institute of International Relations (University) of the Ministry of Foreign
Affairs Russian Federation, MGIMO-University, Moscow, Russian Federation
7434645@inno.mgimo.ru

Inna Alexandrovna Rakitskaya

Moscow State Institute of International Relations (University) of the Ministry of Foreign
Affairs Russian Federation, MGIMO-University, Moscow, Russian Federation
inna_rakitskaya@inno.mgimo.ru

Elena Aleksandrovna Kremyanskaya

Moscow State Institute of International Relations (University) of the Ministry of Foreign
Affairs Russian Federation, MGIMO-University, Moscow, Russian Federation
elena.kremyanskaya@inno.mgimo.ru

Tamara Olegovna Kuznetsova

Moscow State Institute of International Relations (University) of the Ministry of
Foreign Affairs Russian Federation, MGIMO-University, Moscow, Russian
Federation
tku22@mail.ru

Abstract

This article is devoted to the system of separation of powers, which was first created and analyzed by 18 century philosophers and implemented in modern democratic countries. The methodological basis of the article is formed by general scientific and special methods of investigation into legal phenomena. As a result, review of constitutional status of three branches is not possible without deep analysis of the forms of mutual control. The authors concluded, the system of separation of powers is constitutionally regulated and established in practice permitting to prevent power from usurpation and assisting state developing in a democratic way.

Keywords: separation, president, parliament, legislative, executive.

Regulación constitucional y realización práctica de la separación de poderes en la Federación Rusa

Resumen

Este artículo está dedicado al sistema de separación de poderes, que fue creado y analizado por primera vez por los filósofos del siglo 18 y aplicado en los países democráticos modernos. Los autores revisan el estado legal de cada rama de poder, describiendo sus deberes y destacando preguntas agudas sobre su estado e interacción. La revisión del estatus constitucional de tres ramas no es posible sin un análisis profundo de las formas de control mutuo, que es el llamado sistema de "controles y equilibrios". Este artículo se basa en la legislación rusa actual y se basa en la revisión de obras de reconocidos abogados y científicos rusos.

Palabras clave: separación, presidente, parlamento, legislativo, ejecutivo.

1. INTRODUCTION

The term "Separation of powers" was proposed by Charles-Louis de Montesquieu, an 18th century French philosopher in his work "Spirit of the Laws" (<http://oll.libertyfund.org/titles/montesquieu-complete-works-vol-1-the-spirit-of-laws>). In accordance with this approach the authority of a state is divided into legislative, executive

and judicial power. This system is treated as the most effective in promotion liberty, when these three powers must be separate and act independently. Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another and finally from prevention of the concentration of power.

The Constitution of the Russian Federation establishes the separation of powers' system by regulating in Article 11 that: State power in the Russian Federation shall be exercised by the President of the Russian Federation, the Federal Assembly (the Federation Council and the State Duma), the Government of the Russian Federation, and the courts of the Russian Federation. The separation of powers is one of the main warranties from usurpation and is part of the democratic State system of the development of State Bodies. The Russian Constitution declared the separation of powers and moreover clearly fixed the volume of powers of each body. At the same time separation of powers system will not work without "checks and balances system", permitting each branch of power to control another one. Practical performance of the system of separation of powers is based on the Constitution and a system of legal protection of the Constitution. The Constitution defines overriding principles of the society and the state. It applies to the whole system of social relations. All the activities of the state bodies, public associations, each citizen must clearly meet the letter of the constitution. The way of protection is an act or system used by public authorities in the exercise of the legal protection of the

Constitution. State protection is defined as one of the functions of public authorities. This function is not exclusive jurisdiction of only one government agency. Its implementation involves all state agencies that the performance of their immediate tasks in any way exercise state protection. As the scope of a separate activity, state protection is a set of activities, functions and tasks of state bodies in the security of state protection. According to the text definition, state protection is based on the totality of legal, organizational, security, technical and other measures (Degtev, 2005).

2. METHODOLOGY

The methodological basis of the article is formed by general scientific and special methods of investigation into legal phenomena such as systematic and structural analysis, the synthesis of social and legal studies, formal logical and comparative legal methods. The principles of organization and operation of state bodies are the fundamental principles and ideas that define the character of the functioning and development of the apparatus of the state in general. The modern state and the state apparatus built on the following principles: established by the law; consistent, completeness. The state as the official representative of the people expresses the will of people. To be sure that the democratic principle of organization of state bodies is in place and performed - the state should have sovereignty. Under

the sovereignty we understand independence of the state in internal and external relations. It is also reflected in the fact that in the state, there is no other, competing authorities issued laws and regulations and freedoms. Constitutional principles apply throughout the state mechanism and divided by political and organizational. The political principles include:

- Separation of powers. There are three branches of government: legislative, executive and judicial;
 - Democracy. According to the guidelines, all citizens have the same opportunity to influence policy and exercise control over the actions of government agencies;
 - Transparency. The contents of this include the need of sufficient awareness, which provides consistent and systematic coverage of the bodies of state power of the media, and the right of everyone to receive information that is directly related to his legitimate rights and interests;
 - Legality - stern and strict observance by all state organs of legal regulations and laws;
 - Professionalism and competence. This principle provides for the mandatory availability of knowledge and skills, the scientific approach to management, a very complex and specific;
-

- Humanism - a principle which is designed to ensure the priority of the rights and interests of the individual person and the citizen in the implementation of the state apparatus;

- Federalism - a principle which establishes the relationship overnment entities in the subjects with a federal government agency;

- Equal access to public service in accordance with which any person, regardless of nationality, race, religion, etc. the opportunity to replace their public office, with the same conditions;

3. THE PRESIDENT OF THE RUSSIAN FEDERATION – THE HEAD OF STATE

As we have said before the system of separation of powers is regulated by the Constitution and is divided into three branches: legislative, executive and judiciary. However, the President of the Russian Federation does not enter into any branch of power. Some scientists think that there is a special presidential branch of power, however from the Constitutional stand point the President is the Head of State and concentrates powers from each branch, regulates relations between different branches. In accordance with the Russian Constitution the President of Russia is the solitary Head of the State, who is elected by the citizens with active voters' rights. The President

issues legal regulations, discharges leadership duties, settles disputes and ensures that the Constitution is observed. The President is responsible for ensuring that the constitutions and legislation of Russia's constituent territories do not contravene the Constitution of the country or federal laws. If they do, the President is empowered to demand from any governmental body of the Russian Federation or one of its constituent territories that it respects civil and human rights and liberties and, if they are violated, that they are restored in full. The President of the Russian Federation is elected for a term of six years by the citizens of the Russian Federation as it is established by Article 81 of the Constitution of Russia. The term of the Presidency is limited by the Constitution as follows: "One and the same person will not be elected the President of the Russian Federation for more than two terms running each after each". The President's powers are expired by the newly-elected President of Russia taking of the oath of loyalty (Kremyanskaya et al., 2014).

The competence of the President of the Russian Federation is based on the constitutional provision, which clearly describes his status as the Head of State. Clear and full description of the President's status is given by Article 80 of the Constitution. The President is the Head of State, the guarantor of the Constitution and the rights and freedoms of man and citizen. The competence of the President assists him to realize his status. The scope of his competence is quite wide, assisting the President to act in almost any sphere of the political life in the country.

The President of Russia is empowered with a wide range of authorities in the sphere of the formation of state bodies. We may separate them by the three branches of powers: interaction with Legislative power, interaction with Executive power and interaction with Judiciary power. The President announces elections of the State Duma. The President has the right to dissolve the State Duma in some cases and according to the rules established by the *Constitution* of the Russian Federation. It is possible when there is non-acceptance by the State Duma of the candidacy of the Chairman of the Government of the Russian Federation. The President has the right to dissolve the State Duma when a motion of no-confidence is expressed by the State Duma to the Government of the Russian Federation. In accordance with the Article 117 of the Constitution, the State Duma may express non-confidence in the Government of the Russian Federation. A no-confidence resolution shall be adopted by a majority of votes of the total number of the deputies of the State Duma. After the State Duma expresses no-confidence in the Government of the Russian Federation, the President of the Russian Federation is free to announce the resignation of the Government or to reject the decision of the State Duma. If the State Duma again expresses no-confidence in the Government of the Russian Federation, then within three months the President of the Russian Federation shall announce the resignation of the Government or dissolve the State Duma.

The President promulgates federal laws adopted by the State Duma and the Federation Council. Promulgation includes the signature

of the Law and following official publication. In accordance with the Constitution, the President may also use his suspensive veto right, when he is not in full agreement with the law which was adopted by the State Duma and the Federation Council, and does not want to sign such law. In this case, in accordance with Article 107 of the Constitution, the Parliament may overcome the suspensive veto by the qualified majority of votes or amend the law using the conciliation procedure. The President has the right of legislative initiative. This right is not limited by the competence and the President may initiate the law in any area, moreover, e.g. the President has the monopoly right to initiate Federal Constitutional Laws about the creation of the new subject of the federation. The President appoints his official representatives in the State Duma and in the Federation Council. These official representatives facilitate interaction between the President and the deputies of the State Duma and members of the Federation Council, and they have the right to participate in plenary hearings, committee's discussions, etc. The President addresses the Federal Assembly annually with a message on the situation in the country, and on the guidelines for the internal and foreign policies of the State.

The President has a vast scope of responsibilities in relation with the Executive power: appointment of the Head of the Government, based on the agreement with the State Duma; at the proposal of the Chairman of the Government of the Russian Federation, to appoint and dismiss the deputy Chairmen of the Government of the Russian Federation and federal ministers. The

President of Russia approves the system of the federal executive power. It is done by means of the President's Decree. The President manages several federal executive bodies. Among them there are the following ministries: the Ministry for Internal Affairs, the Ministry for Civil Defense, Emergencies and Elimination of Consequences of Natural Disasters; the Ministry for Foreign Affairs, the Ministry of Defense, the Ministry of Justice, about 10 Services and Agencies. The President of Russia may chair meetings of the Government, especially when the most important issues of the State are being discussed. The President has the right to suspend acts of the bodies of executive power of the subjects of the Russian Federation if these acts contradict the *Constitution* of the Russian Federation and the federal laws or international commitments of the Russian Federation or violate the rights and freedoms of man and citizen until the issue is settled using the court procedure.

The President has rather wide responsibilities in the area of interaction with the Judiciary power. Most of these powers are connected with the formation of the judicial community, in particular, the President: presents to the Federation Council candidates for appointment as judges of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation; appoints judges of other federal courts. The President of Russia in accordance with the provisions of Article 78 of the Constitution is entitled to ensure the concerted functioning and interaction of all bodies of state power on the whole territory of the Russian Federation. The President

performs this function in coordination with the Government of the Russian Federation. The President of the Russian Federation may use conciliatory procedures to solve disputes between the State bodies of the Russian Federation and bodies of State bodies of the subjects of the Russian Federation, as well as between bodies of state of the subjects of the Russian Federation. If no agreed decision is reached, he has the right to submit the dispute to the consideration of a corresponding court. These procedures may be realized in the different forms, such as a joint discussion of the arguable issues, the creation of the conciliation commissions, public discussions, etc. It is important to mention that an initiative may come from different sides: the President, State Duma, state bodies of subjects of the Federation, or other bodies. In accordance with the provisions of the Constitution and State legislation, the President participates in the formation of the State Bodies of the subject. For instance, in accordance with internal regulations adopted by the concrete subject of the Federation the President has the right to nominate the candidacy for the post of the Head of the Subject (head of the Executive Power) and introduce this candidate to the local legislative body for approval. Moreover, the President has the right to terminate the authority of the Head of the Subject in two cases: loss of trust from the President to the Head of the Subject; or In the case of the legislative body of the Subject expressing a motion of no-confidence in the Head of the Subject. After the authority of the Head of Subject is terminated by the President, he appoints a temporary Head until the new one takes up this position in accordance with the procedure, prescribed by law. If the Head of the

Subject issues an act which is contradictory to the provisions of the Constitution of the Russian Federation, the President is entitled to suspend this act until it is adjusted in line with current legislation and following this suspension to take out a warning on the Head of the Subject. In the case that the Head of the Subject proceeds with this unlawful activity the President has the right to release the Head of the Subject from his duties. In accordance with the Constitution the President is the Supreme Commander-in-Chief; approves the Military Doctrine. The President appoints and dismisses the High officers of the Armed Forces and forms and heads the Security Council of the Russian Federation.

In accordance with the Constitution of the Russian Federation the President is monopoly empowered to impose martial law. In accordance with adopted Federal Constitutional Law "On Martial Law" the President issues the Decree, which should be approved by the Federation Council. The President governs the foreign policy of the Russian Federation and appoints and recalls diplomatic representatives, however, after consultations with corresponding committees and commissions of the chambers of the Federal Assembly. During foreign visits the President represents the Russian Federation; he conducts negotiations and signs international treaties and agreements without any prior approval from another State Body. He also represents the Russian Federation during the visits of foreign official bodies to Russia and signs relevant documents. These foreign policy guidelines become a directive to the Minister for Foreign Affairs, who is a direct

subordinate to the President (Pavlov,2005). These guidelines influence Parliament members when drafting and adopting laws, and the Government in general during the execution of the laws in force and international treaties in force on the territory of the Russian Federation. The President decides the issues of citizenship and grants citizenship for those who have applied in accordance with federal laws. Citizenship in Russia is qualified as a stable legal connection between the State and the citizen, expressed in the combination of rights and duties. The President makes decisions on the admittance to citizenship, the exit from citizenship and the restoration of citizenship, when a person applies within the common procedure. The Commission for citizenship issues, organized within the structure of Presidential commissions, assists the President to solve issues with citizenship. The President is empowered in the area of granting the State Asylum. The President has the power to award State Decorations and honorary titles. Awarding Decorations and honorary titles are supported by a Decree issued by the President. The Commission for State Decorations is an advisory body established to assist the President in his constitutional duty. The President has the right to pardon in accordance with Article 89 of the Constitution of the Russian Federation. Applications for a pardon are analyzed on the level of the subjects of the Federation and subsequent proposals are provided by the President of Russia. It is necessary to mention that this right is not very often used by the Head of State. Summarizing status of the President we may say that the President of the Russian Federation has vast powers in the different spheres, covering legislative, executive and in some part judiciary

responsibilities as well, that may be treated as a separation of the fourth branch of power – Presidential(Pavlov, 2003).

4. LEGISLATIVE BRANCH OF POWER AND THE PARLIAMENT

The legislative branch of power on the federal level is represented by the Federal Assembly—the Parliament of the Russian Federation. The Parliament is bicameral. There are three main functions of the Parliament such as legislative, control and financial. Legislative function means the absolute exclusive right of Parliament to adopt laws, through usage of the formalized legislative procedure. Only the Federal Assembly is empowered to adopt acts with the status of laws by consecutive review by both chambers in accordance with procedure regulated by the Constitution and federal laws. Elimination of the Parliament from the legislative procedure will never give the act status of federal law in Russia. Delegated legislation is not present in the Russian Federation. The control function results from the separation of powers and the performance of the “checks and balances” system in Russia. The legislative branch of power plays an important role in this system and acts in several aspects: control over the Government, for example, expressing non-confidence, it has control of the appointment of different state officers, like the State Duma it provides approval to the President of the appointment of the Head of Governments, and the

Federation Council approves the candidacies of the High courts' judges, etc.

The State Duma plays an important role in the adoption of the state budget and control over budgetary performance. The Government develops and initiates the draft of the state budget, which should be reviewed and approved by the State Duma and subsequently by the Federation Council and the President. The Government provides the State Duma with the detailed yearly report of the State Budget performance. The Federal Assembly as the Parliament of the Russian Federation participates in the formation of the Accounts Chamber and the appointment of the Head of the Central Bank of Russia. The Federation Council is the permanently acting body—the chamber of the Russian Parliament. It consists of the 170 members, however, may include up to 187 members and represents the interests of the subjects of the Russian Federation in the Russian Parliament. It is formed by two representatives from each subject: one representative from the executive power and one representative from the legislative power, also the President has got the right to empower 17 more representatives of the Russian Federation as a Federation Council member. Competence of the Federation Council is defined by the Constitution of the Russian Federation (Art.102) and clarified in the Regalement of the Federation Council, dated January 30, 2002(<https://www.consultant.ru/law/review/lawmaking/reglsovet/>). It goes from the status of the Federation Council as the body representing interests of the subjects of the Russian Federation, thus concentrating

responsibilities interrelated with the area of federalism. One of the core functions is participation in the legislative procedure. The Federation Council participates in the development of legislative acts and adopts laws and amendments. The Federation Council possesses the legislative initiative right, which may be used by the Federation Council as a state body and by its members personally. The Federation Council participates in the legislative procedure and reviews laws, after adoption by the State Duma. The Federation Council has the right not to express its opinion regarding several types of laws; however, there is a constitutional list of laws which is mandatory for review and approval by the Federation Council. This mandatory list includes federal laws, concerning the State budget; federal taxes; finance, currency, credit and customs' regulations, monetary emission; ratification and denunciation of the international agreements; status and defense of the state border; issues of war and peace. Martial law is introduced by the President of the Russian Federation in a case of aggression against the State or the threat of aggression. The Federation Council assesses the basis for the decree and approves it or declines. Such a mechanism is treated as an additional warranty in the sphere of the defense of human rights.

Armed Forces of the Russian Federation may participate in peacekeeping and other types of operations abroad only when they comply with constitutional provisions and are approved by the Federation Council. The President of Russia proposes to the Federation Council candidates for the position of the high court's judges. The

Federation Council appoints the judges. The appointment of the Procurator-General of the Russian Federation is done on the basis of the Presidential proposal. When the Federation Council does not approve a candidate, the President proposes another candidate within thirty days. The Accounts Chamber is established in accordance with Article 101 of the Constitution of Russia, which says that “*For the purpose of exercising control over the fulfillment of the federal budget the Federation Council and the State Duma of the Federal Assembly of the Russian Federation establish the Accounts Chamber of the Russian Federation*”. *The Federation Council appoints the Deputy Chairman and half of the auditors of the Accounts Chamber. The legal status of the Accounts Chamber is regulated by the Federal Law #41-FZ “On the Accounts Chamber of the Russian Federation”, dated by April 5, 2013* (http://www.consultant.ru/document/cons_doc_LAW_144621/). The Federation Council may have other authorities regulated by federal laws. For example the Federation Council analyses the proposals of the President for the appointment of the diplomatic representatives in different countries. The scope of competence of the State Duma is regulated by the Constitution in Article 103 and clarified in the Regalement of the State Duma, dated by January 22, 1998 (<https://www.consultant.ru/law/review/lawmaking/reglduma/>). In particular, the State Duma provides an agreement to the President of the Russian Federation for the appointment of the Chairman of the Government. The proposal of the candidate is submitted by the President to the State Duma. The State Duma shall consider the candidate nominated by the President of the Russian Federation for the

post of the Chairman of the Government of the Russian Federation during the week after the submission of the nomination. If the State Duma rejects the candidates three times for the post of Chairman of the Government of the Russian Federation, the President shall dissolve the State Duma and appoint new elections. In accordance with Article 117 of the Constitution, the State Duma may express no-confidence to the Government of the Russian Federation by a majority of votes of the total number of the deputies of the State Duma. The President of the Russian Federation is free to announce the resignation of the Government or to reject the decision of the State Duma.

Appoints and terminates the responsibilities of the Head of the Central Bank. The Candidacy is proposed by the President of the Russian Federation to the State Duma during the session of the Duma, which is the last before the expiration of the current Head of the Central Bank. The candidate is discussed within the Committee of the State Duma on budget, taxes, banks and finance prior hearings in the Chamber. The candidate is elected when more than 50 per cent of the State Duma deputies agree with the candidature. If the State Duma does not agree, the President provides the candidate within the next two weeks. It is important, that one candidate cannot be proposed more than twice. *The State Duma establishes the Accounts Chamber of the Russian Federation for the purpose of exercising control over the fulfillment of the federal budget, the composition and the order of the activities of which are determined by federal law. The Chairman of the Accounts Chamber is appointed and released from duty by the State*

Duma on the proposal of the President of the Russian Federation. One half of the auditors of the Accounts Chamber are appointed and released from their duties by the State Duma as advised by the President of the Russian Federation. The term of office of the Chairman of the Accounts Chamber, the Deputy Chairman of the Accounts Chamber and Auditors is 6 years. The Commissioner for Human Rights of the Russian Federation is the official State Body, which was established in the year 1997 to ensure the performance of the State guarantees in the sphere of the State defense of rights and freedoms. The overall activity of the Commissioner for Human Rights is regulated by the Federal Constitutional Law "On the Commissioner for Human Rights of the Russian Federation" (http://www.consultant.ru/document/cons_doc_LAW_13440). The candidate for the position of the Commissioner for Human Rights may be proposed by the President, the Federation Council, the deputies of the State Duma and their communities not later than one month prior to the expiration of the authorities of the previous Commissioner. The State Duma gives approval by a majority of member voices. The term of authority of the Commissioner is five years. The State Duma is also empowered to resign the Commissioner. The State Duma announces an amnesty, which is a collective act, which adopts the State Duma and means official forgiveness of past offences. The Amnesty Act is adopted by the State Duma in the form of the Resolution on Amnesty. Commonly the Amnesty Act is associated with special events or holidays. The State Duma accuses the President within the procedure of the official dismissal of the President from his official position. There

are two main reasons for the dismissal of the President established by the Constitution: high treason and grave crime. The State Duma accepts the position of the initiator of the procedure. The State Duma has rather vast powers in the sphere of international relations. The State Duma ratifies and denounces international agreements, adopts decisions on different aspects of international relations, explaining the State Duma position. An international agreement is introduced to the State Duma by the President with the request for ratification thereof. The State Duma reviews and adopts the ratification in the form of federal law, which then, passes to the Federation Council and the President for promulgation. The State Duma actively participates in inter-parliamentary relations, signing the agreements with foreign parliaments and parliamentary organizations. The Chairman of the State Duma represents its interests in relations with other organizations. Parliamentary control is a widely used mechanism of control by the legislative power of the executive power. The Federal Law "On Parliamentary Control", adopted in 2013 (http://www.consultant.ru/document/cons_doc_LAW_145996) systematized all the forms of control in Russia and clarified the principles and forms of application. Parliamentary control pursues several purposes. It is a valuable mechanism in the revealing of key problems in government activity; it assists in the support of the constitutional rights of a person, helps to strengthen legality and acts as an instrument in corruption mitigation. Parliamentary control in Russia can be applied in the following forms: Review by the State Duma of the note of confidence in the Government of the Russian Federation;

hearings by the State Duma of the yearly reports by the Government on the performed activity, including answers to the questions from the members of Parliament; Parliamentary inquiries, done by the Chambers; deputies' inquiries, appointment and dismissal of the Chairman of the Accounts Chamber, his deputy and its auditors; hearings by the Federation Council of the annual reports of the Procurator-General of the Russian Federation on legality and law and order maintenance in the Russian Federation; invitation of Government officials and other state officials to the Parliamentary committees and commissions; conducting Parliamentary hearings; conducting Parliamentary investigations and other forms. As a result of the measures taken for parliamentary control the Chambers of the Russian Parliament are empowered to entrust the committee or commission of the Chamber to develop a relevant draft of federal law; propose the relevant state body or state officials to take measures for the mitigation of the violations of law and elimination of the reasons for such violations; review an issue of confidence in the Government; apply to the Procurator's office or the Investigative Committee of the Russian Federation; dismiss officials, whose dismissal is with the participation of the legislative body. Summarizing the above said it is inevitable that the role of the Parliament of the Russian Federation is very high, including legislative, control and budget processes which in their substantial part are the monopoly of the legislative body.

5. EXECUTIVE POWER AND GOVERNMENT IN THE RUSSIAN FEDERATION

The executive power in the Russian Federation is exercised by the Government of the Russian Federation. The composition, nomination and rules of activities of the Government of the Russian Federation are regulated by the Constitution (chapter 6) and the Federal Constitutional Law “On the Government of the Russian Federation” 1997. It is noteworthy, that the executive power in Russia is often characterized as dualistic, which means that the President of the Russian Federation has extensive powers in executive sphere. Formation of the federal bodies of the executive power, their reorganization and liquidation are to be proceeded by the President at the suggestion of the Prime Minister. The statutes regulating the activity of the federal bodies of the executive power being under the direct authority of the President are to be approved by the President. The statutes regulating the activity of the federal bodies of the executive power being under subordination of the Government, are to be approved by the Government, correspondingly. The structure of the federal bodies of the executive power includes federal ministries (federal bodies of the executive power with the functions of development of state policy and legal regulation in a specific sphere), federal services (federal bodies of the executive power with the functions of control and supervision in a specific sphere of activity, and also with the special functions in ensuring defense, public and state security, protection of the state boundaries, combating crimes) and

federal agencies (federal bodies of the executive power which function is to render state services). This structure is stipulated in the decree of the President of the Russian Federation # 636 dated May 21, 2012 “On the structure of federal bodies of the executive power” (http://www.consultant.ru/document/cons_doc_LAW_129954).

Federal ministries are headed by the federal ministers, while federal services and federal agencies are headed by directors. Contrary to federal ministries, federal services and federal agencies federal services are not entitled to ensure normative regulation in a specific sphere if otherwise is not stipulated in the decrees of the President or in the decisions of the Government. The Government of the Russian Federation as one of the constitutional bodies consists of the chairman (Prime Minister), deputy chairmen and federal ministers. The Prime Minister is appointed by the President of the Russian Federation with the consent of the State Duma. Not later than within one week after his appointment the Prime Minister shall submit to the President proposals on the structure of the federal executive bodies. A newly-appointed Prime Minister shall propose to the President candidates to the offices of deputies of the Prime Minister and federal ministers who shall be appointed to their offices and dismissed from them by the President on the proposal of the Prime Minister. The Chairman of the Government shall be released from the office in the following cases:

- In case of the personal decision on resignation from the office;
-

— In case of acceptance of the resignation of the Government by the President;

In Russia only once, in September 2007 the Government headed by Prime Minister Mikhail Fradkov applied for resignation. This resignation took place in anticipation of the presidential elections obviously with the purpose to provide then President Vladimir Putin with the full freedom in choosing important decisions including decisions on personnel. The resignation of the Prime Minister, however, leads to the resignation of the Government at whole.

The Government in Russia is politically responsible before the President and the State Duma. In accordance with the Constitution (art. 116) the Government shall resign before a newly elected President of the Russian Federation. In such case the later starts the process of nomination of the new Government. Moreover, the President may take a decision on the resignation of the Government or any of its members at any time. In this case some experts believe that the President has “unlimited powers related to the Government” (Mamitova and Chepus, 2015). Since 1993 the Government in Russia has been resigned by the decision of the President five times. The responsibility of the Government before the State Duma may take place in one of two forms stipulated by the Constitution: 1) in the form of expression by the deputies of non-confidence, and 2) in the form of rejection in confidence to the Government by the deputies. These two forms of responsibility differ from each other by two criteria. First of all, the

subject initiating the procedure is different. Secondly, each form of responsibility entails its own legal consequences.

When we are talking about the expression by the members of the State Duma of non-confidence to the Government the initiators of this procedure are the deputies of the State Duma, and the legal consequences of it will be as following: after the State Duma adopts a non-confidence resolution by a majority of votes of the total number of its deputies, the President shall be free to announce the resignation of the Government or to reject the decision of the State Duma. In the case in which the State Duma again expresses no-confidence to the Government during three months, the President shall take a decision either on the resignation of the Government or on dissolving of the State Duma and at the same time the appointment of early parliamentary elections. So far, the President may ignore the decision of the State Duma for the first time and is obliged to take the decision in the case of the second time non-confidence resolution adopted by a majority of the deputies within three months from the first non-confidence resolution adoption. When we are talking about the second form of responsibility of the Government before the State Duma the initiator of it will be the Prime Minister who may raise before the State Duma the issue of refusal in confidence to the Government. If a majority of the deputies vote for such refusal, the President within seven days shall take a decision on the resignation of the Government or on dissolving of the State Duma and announcement of early parliamentary elections. It should be noticed that in this case the

President does not have any right to ignore the decision of the State Duma and is obliged to solve the conflict within seven days. In both cases the constitutional power of the State Duma to censure the Government is strictly limited by the threat of dissolution of the chamber (Petukhova, 2016). This is one of the explanations of quite a few cases of execution of this form of parliamentary control.

6. THE JUDICIAL BRANCH IN THE RUSSIAN FEDERATION AND ITS FEATURES

Judicial power is one of the branches of state power, and the courts in this incarnation are undoubtedly state authorities (Lazarev, 2014). The Constitution of the Russian Federation does not contain the detailed provisions related to the system of courts in the state. It has only provisions related to the highest courts existing in Russia, which are the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation. These high courts may be set up and abolished only upon amendments of the Constitution. The Constitution, however, stipulates that other federal courts may be established in Russia. So far, the Russian Constitution does not have any provisions concerning particular types of judicial instances. However, it regulates that the judicial system of the Russian Federation shall be instituted by the Constitution and the federal constitutional law. This provision means that any type of federal court in the Russian Federation may be

established only if it is provided clearly by the federal constitutional law. Opposed to other federation (the USA, Switzerland, Germany), in Russia exists a single judicial system. The regions being territorial parts (subjects) of the Russian Federation are not entitled to have their own judicial systems. However, currently, there are two types of courts which may be set up by the regions in accordance with the regional laws: first of all, Constitutional courts of the republics within the Russian Federation and charter courts of other subjects of the Russian Federation; secondly, justices of the peace. All other courts forming in the country are considered to be federal courts. There are three types of courts in the Russian Federation: the Constitutional Court of the Russian Federation; courts of general jurisdiction, included military courts; arbitration courts. The Constitutional Court of the Russian Federation, which is considered to be the organ of constitutional control is a specific court. It is a single court in the Russian Federation, which is not at the head of the system of constitutional courts. Such kind of courts' system does not exist in Russia at all. It should be emphasized that constitutional courts of the republics and charter courts of other subjects of the Russian Federation do not form a single system of constitutional courts under the supervision of the Constitutional Court of the Russian Federation. Among other federations the same rule applies, for example, in Germany. Courts of general jurisdiction form a particular system of courts which is headed by the Supreme Court of the Russian Federation. Military courts are considered to be the part of the system of courts of general jurisdiction with the Supreme Court at a top. Arbitration courts also form a separate

system of courts, which had been headed by the High Arbitration Court of the Russian Federation until 2014 when it was abolished by the constitutional amendment. As a result, the Supreme Court of the Russian Federation, heading the system of courts of general jurisdiction, was merged with the High Arbitration Court of the Russian Federation, heading the system of commercial courts, to form a new Supreme Court of the Russian Federation, which is now the highest court for civil, administrative, criminal cases, cases on the resolution of economic disputes and other cases. The cases which were trialed in the High Arbitration Court before are being considered in the Judicial Chamber of the Supreme Court of the Russian Federation on Economic Disputes, currently. There is a specialized court – the Intellectual Property Rights Court – within the system of commercial courts. The Constitution of the Russian Federation is providing that the judicial power is one of the branches of state power which shall perform justice in the Russian Federation. In other words, the judicial power is implemented through the function of justice (Kochetova, 2015). The Basic Law provides constitutional principles of justice such as performing of justice in the state only by courts; realization of the judicial power by one of four types of legal proceedings (constitutional, civil, administrative, and criminal); equality of all persons before the law and the courts; principle of an open trial; examination of a case in absentia is not to be allowed if otherwise is not stipulated by the federal law; presumption of innocence in criminal court proceedings; participation in the justice of jury trials in cases provided by the federal law; financing of courts in the Russian

Federation only from the federal budget which ensures financial independence of all courts in the country and the possibility of complete and independent administration of justice. Pursuant to article 118 § 1 of the Constitution justice in the Russian Federation shall be administered by courts alone. Pursuant to article 1 of the Federal Constitutional Law# 1-FKZ, "On the judicial system of the Russian Federation" 31 of December, 1996 the judicial power in the Russian Federation is autonomous and acts independently from the legislative and the executive powers. It is exercised only by the courts as represented by judges and jurors and commercial court assessors, drawn to the administration of justice in the manner stipulated in law. No other bodies or persons have the right to administer justice. The establishment of extraordinary courts is not allowed. Chapter 7 of the Russian Constitution is dedicated to the judicial power and includes the provisions which stipulate the structure, competence of different courts in Russia, system of courts, legal status of the judges, principles of their activity. In general, the judicial system of the Russian Federation has been instituted not only by the Constitution, but also by numerous federal constitutional and federal laws.

7. CONCLUSIONS

Having analyzed the provisions of the Russian Constitution, adopted in the year of 1993, when for the first time in the Russian history system of separation of powers was introduced, which was an

innovation from the legal perspective as well, we may realize that this system is still developing, when legal characteristics are being crystalized on the basis of legal practice. There are still issues, which are debated by scientists – whether it is the correct approach to define the forth branch of power – Presidential, considering vast powers of the head of state in the different spheres, including legislative, executive and judiciary. Some mechanisms are still in the process of development, for example, parliamentary control, which was introduced in the form of law several years ago and provides the parliament with extensive authority in the sphere of control over the governmental activity. Special role play s judicial system, which was also gone through recent reformation, when the High Arbitration Court and Supreme Court were united, thus making judicial practice developing as unified practice. Summarizing above said it is proven that the system of separation of powers is constitutionally regulated and established in practice permitting to prevent power from usurpation and assisting state developing in a democratic way.

REFERENCES

- DECREE OF THE PRESIDENT OF THE RUSSIAN FEDERATION # 636, dated 21 May 2012 “On the structure of federal bodies of the executive power” (http://www.consultant.ru/document/cons_doc_LAW_129954). [Electronic resource] (Date of access: 3.11.2017).
- DEGTEV, G. 2005. **Institutpresidenta RF v konstitutsionno-pravovommechanizmeosushestvleniavneshepolitikiRossii.** MZHMP. Vol. 2. Pp. 161-173. Russia.
-

- KOCHETOVA, A. 2015. **On the term judicial power.** The Bulletin of the South Ural State University. A Series of "Law", Vol. 15. N° 4. Pp. 27-32. DOI: 10.14529/law150404. Russia.
- KREMYANSKAYA, E., KUZNETZOVA, T., and RAKITSKAYA, I. 2014. **Russian Constitutional Law.** Cambridge Scholars Publishing. Russia.
- LAZAREV, V. 2014. **The Place and Role of Court in Legal System.** The Journal of Russian Law. Vol. 10. Pp. 17-30. DOI: 10.12737/5771. Russia.
- MAMITOVA, N., CHEPUS, A. 2015. **Prospects of the Russian Legislation Improvement in the Sphere of Responsibility of the Government of the Russian Federation.** The Journal of Russian Law. Vol.7. Pp. 13-20. DOI: 10.12737/11739. Russia.
- PAVLOV, E. 2003. Ministerstvoinostrannih del RF v konstitutionno-pravovom mekhanizme osuchestvleniya vneshnepolitiki Rossii. MZHMP. Vol. 1. Pp. 113–141. Russia.
- PAVLOV, E. 2005. **Konstitutionno-pravovye osnovy pravovogo regulirovaniya vneshnepoliticheskoi deyatel'nosti sudarstvennykh organov RF (in Russ).** MZHMP. Vol. 1. Pp. 163–183. Russia.
- PETUKHOVA, N. 2016. **The Legal Nature of purposes and Principles of Federal Parliamentary control.** The Journal of Russian Law. Vol. 7. Pp. 28-34. DOI: 10.12737/20144. Russia.
- REGALEMENT OF THE FEDERATION COUNCIL, dated 30 January 2002:
<https://www.consultant.ru/law/review/lawmaking/reglsovet/>
[Electronic resource] (Date of access: 3.11.2017).
- REGALEMENT OF THE STATE DUMA, dated 22 January 1998
[Electronic resource]
<https://www.consultant.ru/law/review/lawmaking/reglduma/>
(Date of access 3.11.2017)
-



**UNIVERSIDAD
DEL ZULIA**

opción

Revista de Ciencias Humanas y Sociales

Año 34, Especial N° 14, 2018

Esta revista fue editada en formato digital por el personal de la Oficina de Publicaciones Científicas de la Facultad Experimental de Ciencias, Universidad del Zulia.
Maracaibo - Venezuela

www.luz.edu.ve

www.serbi.luz.edu.ve

produccioncientifica.luz.edu.ve
