The Legal Sources Regulating the Status of Political Parties in Modern Russia

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Abstract: This article examines the regulatory and the other legal acts regulating the activities of political parties in Russia. Political parties are the most important institute of political system of society. International treaties governing the status of political parties, as well as relevant research topics provisions of the Constitution are considered. Federal, local acts of public associations and private contract, as a way of self-regulation of political parties, are also examined. The system of the normative legal acts defining the status of political parties in Russia, isn't obsolete. There were no two electoral companies in the State Duma of the Russian Federation which would pass by identical rules. Russia is interested in development of the democratic rules of law regulating activity and the status of political parties.

Key words: Political parties • The legal status of political parties • The Constitution of the Russian Federation • Federal constitutional laws • Federal laws • Local acts

INTRODUCTION

Political parties are the most important institute of political system of society. In modern Russia the question of legal regulation of activity of political parties acts as the central question for many political forces. In 2012 some important amendments were adopted to Federal Law «About Political Parties». These amendments simplify the process of creating new and functioning old parties. However the above mentioned federal law is only a link in aggregating the normative legal acts regulating the status of political parties. It is necessary to consider the legal sources of formation and functioning of political parties for fundamental understanding of legal status of these parties in relation to conditions of modern Russian legal reality.

The term «source of the right in legal sense» in the constitutional law is conventional and one understands under this notion the statutory act containing constitutional rules of law. Thus, A.I. Lepeshkin under the notion «the source of the Soviet state law in legal sense» understands «legal forms, ways of expression the rules of law relating on the maintenance of the public relations regulated by them to a subject of the Soviet state law» [1]; Y.N. Umansky notes that «legal sources of the Soviet state law represent legal forms in which the state will receive the expression in state rules of law or acts» [2]; A.E. Kozlov, taking into consideration the understanding of notion «source of the right» as external form of expression of rules of law. Under the «sources of a constitutional law» he understands various forms of expression of constitutional rules of law. E.I. Kozlov, O. E. Kutafin and some other scientists have the same points of view [3].

The general requirement of meaningful character for all sources of a constitutional law is their direct connection with the organization and functioning of the government from which all regulations are proceeded. This correlation of the power and legal norms in a constitutional law makes special demands to its legal sources: «they haven't to regulate simply activity of government bodies, provide the right to the power for and on behalf of... the people but to serve as guarantees... democracy» [4]. In this quality «... sources of a constitutional law actually establish law-making activity of those government bodies which are competent to create rules of law. First of all, they form the main beginnings for all other branches of the right and define system of rule-making acts » [5].

According to part 4 Art.15 of the Constitution of the Russian Federation [6], the international contracts, the conventional principles and norms of international law are...
Russia is illegal and contradicts to Art. 11 of the European convention on protection of human rights. It is wise to mention here, that Russia as the member of council of Europe, is obliged to carry out decisions of the European court on human rights. In January, 2012, the Supreme Court of the Russian Federation [7] cancelled the decision on cancellation of registration of Republican Party of Russia. The president of Russia Dmitry Medvedev initiated carrying out the political reform softening requirements to registered political parties. Thus, the decision of the European court was considered in this question. It is difficult to tell, whether the decision of the European Court was decisive at making decision on current legislation change on parties, however, that fact itself is obvious that the decision of the European Court drew attention of society to the problem of legislative regulation of the status of parties.

In the national legislation the leading role of a source in determination of legal status of associations of citizens belongs to the Constitution of the Russian Federation possessing the highest validity which norms have a priority over other norms and direct action in the territory of Russia; laws and bylaws are created only on its basis and shouldn't contradict it. In standards of the Constitution it is possible to write down that all political life in the country is based on the principles of people's sovereignty (accessory to the people of all completeness of the power in society and in the state), democracies, respect for the personality, political pluralism (that is ideological variety and possibility of creation of various political associations). If it is necessary to proclaim the general ban of encroachments in a violent way on an existing social system, discord kindling between people, all this will be made by means of norms, first of all, the Constitution and some other acts of constitutional and legal regulation.

The principle of multi-party system is enshrined in item 3 of Art. 13 of the Constitution of the Russian Federation. Besides, the Constitution of the Russian Federation enshrines the right recognized by the international community to freedom of associations in Art. 30. Under public organizations political parties and labor unions are understood. Thereby, the status of public associations and among them political parties, receives the constitutional regulation. Existence of legal norms about public associations in the Constitution of the Russian Federation means their allocation as the constitutional institute. At the same time, in connection with specifics of the Constitution as the Basic Law, there isn't present specification of the status of public
association and political party in it, because the Constitution is urged to regulate only essential aspects of the life of society, all the other elements are in the sphere of regulation of the usual legislation.

The federal constitutional laws, regulating the most important sides of constitutional legal status of bodies of the state, citizens and the organizations (in France, Spain, Portugal and some other European countries this function is carried out by so-called "organic laws" which are intended for modification and additions directly in the basic law of the country), also affect the activity of political parties. Hence, according to Art. 56 of the Constitution of the Russian Federation, the federal constitutional law regulates a mode of state of emergency, which separates restrictions of the rights and freedoms of citizens (including the right to associations) and according to item 3 of Art. 87 – a mode of the martial law can be set. Item 2 of Art. 65 contains sending on the federal constitutional law «About an Acceptance Order to the Russian Federation and Educations in Its Structure of the New Subject of Federations» [8] and item 5 of the Art. 66 – on the federal constitutional law regulating changes of the status of the subject of the Russian Federation, the federal constitutional law, apparently from the item "v" of Art. 84, has to establish an order for the purpose of referendum; articles 118 and 128 provide that the federal constitutional law rates the judicial system of the Russian Federation, power, order of education and activity of the Constitutional Court, the Supreme Court and the Supreme Arbitration Court of the Russian Federation and the other federal courts; articles 135-137 send to the federal constitutional laws regulating procedure of amending the Constitution of Russia.

It is quite obvious that the standards of the specified federal constitutional laws influence these or those elements of legal status of public associations and political parties as their existence or functioning (for example, possibility of use of the state symbolic, activity in the conditions of the extraordinary or martial law, the appeal to bodies of the state) is based on the principles established in specified standard sources.

The traditional sources of the right in Russia are federal laws. Legislative strategy of interaction of the Russian state with political parties received the standard expression in the federal law: «About political parties» [9] accepted in June, 2001, this project was prepared under the auspices of Russian Central Election Commission with participation of the main parliamentary fractions and it is brought in the State Duma by the President of the Russian Federation. This law became the result of difficult process of coordination of interests of the political parties which have won the last parliamentary elections and the presidential structures expressing positions of executive power.

The federal law "About political parties" in edition of 2004 established the complicated mode of the organization of political associations, first of all, parties in comparison with other public organizations. If earlier the number of members of political party necessary for registration didn't make a reservation, nowadays, in the specified edition of the law was established, that not less than 40 000 members – the Russian citizens have to consist in political party. Therefore, the political party has to have regional representations more than in half of subjects Russian Federations numbering more than 400 members. This law also closed the future for possibility of existence of regional and local parties.

In its turn, in 2012 the amendments considerably simplifying legal requirements to their functioning were made by Federal Law «About Political Parties» [10]. Hence, by 80 times the requirements to number of the party members necessary for registration didn't make a reservation, nowadays, in the specified edition of the law was established, that not less than 40 000 members – the Russian citizens have to consist in political party. Therefore, the political party has to have regional representations more than in half of subjects Russian Federations numbering not less than 400 members. This law also closed the future for possibility of existence of regional and local parties.

And let us turn to the question of Political parties and democracy on the whole. One normative perspective regarding political parties that has remained relatively unchallenged over the last fifty years is the one presented by Schattschneider [11], according to which «modern democracy is unthinkable save in terms of political parties». It has become common academic practice to take this assumption as a premise and subsequently focus on the specific manifestations of political parties and the implications that these manifestations have for democracy. The focus on the relationship between parties
and civil society is a second perspective that long
determined the characterization of political parties within
party research. This relationship forms the base of
Duverger’s [12] distinction between the «mass party» and
The «mass party» model came to be seen as an ideal-
typical model for parties [14]. However, one problem with
this model is that it fails to take into account the
relationship between parties and the state. With
increasing state support comes increasing state
involvement in political parties, thereby transforming them
from private organizations into public utilities [15]. Hence,
most European countries have created specific party law
within public law to regulate party activities and party
behavior as opposed to other types of private
organizations. Because parties are valued guarantors of
democracy, the common norm has emerged that they
should both be supported and regulated to ensure that
they (continue to) effectively provide a democratic service
(van Biezen, [16]). The benefits of transparency, legality
and the provision of access to stakeholders are held up
against the limits and distortions induced by partisan
politics and are seen to lead to a process which can offer
«a fair and democratic substitute for electoral
accountability», Mair, [17]. Society thus experiences an
increasing stimulus to regulate political parties. This
stimulus is the result of the growing integration of parties
within the state and the weakening ties between parties
and civil society. National political parties are not only
subject to triggers of change at the domestic level but at
the European level as well. This is mirrored by the fact
that the influence of increasing European integration on
national politics has become a popular research theme
over the last decade. Authors have focused on aspects
such as the influence of Europe on domestic policies,
Featherstone, [18], national party systems Mair, [19] and
power distribution and organization within individual
political parties, Poguntke [20].

Therefore, the important source of formation of rules
of law in Russia is law-making of subjects of the Russian
Federation during which their legal system consisting of
constitutions, charters, laws and other regulations is
created. The basic political rights and freedoms of
citizens, their guarantees are also fixed in constitutions
and charters of subjects of Federation. At the same time
law-making activity of subjects of the Russian Federation
needs improvement and it is inadmissible both invasion
into spheres of maintaining Federation and ignoring the
questions which aren't entering into the competence of
the Federation. As a whole, borders and potential
opportunities of law-making activity of subjects of
Federation are defined by the Constitution of Russia. The
questions concerns validity and character of the relations
with federal laws are solved differently, depending on the
sphere of law-making activity of subjects of Federation.
The legislation of Russia allows possibility of legal
regulation of provision of the parties operating in the
territory of the subject. However, in constitutions and
charters of territorial subjects of the Russian Federation
it is impossible to meet mentions about the institute of
political parties. Legal regulation of the status of parties
remains a prerogative of normative legal acts of federal
level.

The special place in the system of sources of the
rules of law is occupied by corporate (local) norms,
regulating a legal status of political parties. They regulate
such important aspects, as the purposes and tasks of
political parties, the territory of their activity, an order of
provision of the parties operating in the
sphere of law-making activity of subjects of Federation.
The system of the normative legal acts defining the
status of political parties in Russia, isn't obsolete. It
should be noted, that there were no two electoral
companies in the State Duma of the Russian Federation
which would pass by identical rules. Nowadays, the
Russian society is interested in development of the
democratic rules of law regulating activity and the status
of political parties and in fair and equal for all participants
of political process to law-enforcement practice. For our
society and the legislator it is still necessary to estimate
impact of the last legislative changes on the Russian party
system. There is the evident fact that all political forces
are interested in preservation of the constitutional
principles of multi-party system and freedom of
associations, thus, further democratization of the
legislation on the status of political parties is represented
as quite possible.
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