

## General Characteristic of the Concept of the Constitutional Regulation of the Public Relations in the Russian Federation

<sup>1</sup>Rashit Gabitovich Nurmagambetov and <sup>2</sup>Zyamzagul Bolatovna Bakirova

<sup>1</sup>Kostanaysky branch of Chelyabinsk State University, Kostanay, Kazakhstan

<sup>2</sup>Chelyabinsk State University, Chelyabinsk, Russia

**Abstract:** The modern development of Russian jurisprudence in whole and constitutional science in particular indicates the need of the researches devoted to legal regulation of social relations. The analysis of approaches that concern the regulation of social relations established in constitutional right shows the complication and many-sidedness of this phenomenon. This theme was highly developed in the jurisdiction during the Soviet period, but because of the USSR disintegration in the 90-s and the destruction of system of social relations existed during the long period which was connected with the acceptance the 1993 Constitution of Russian Federation, the problem of social relations regulation has become the center of attention of Russian jurisdiction and now it is one of the major problems that need the advanced scientific reconsideration. From the whole complex of existed problem the most attention is paid to the questions devoted to the conceptual problem identification, the identification of the conception of social relations regulation; the signs, functions and object of the constitutional regulation.

**Key words:** Conception • The Constitution of Russian Federation • Constitutional regulation • Forms • limits • Subject • Object of constitutional regulation

### INTRODUCTION

The fundamental scientific problem which the project is devoted to the research of the conceptual problems will allow to eliminate the contradictions and uncertainty connected with the understanding of this process in the jurisdiction, it will also allow to offer some optimum possible ways and forms of improvement of this process from the point of view of its condition and practice in the modern period of Russian Federation development [4, p.22, 5, p.19, 6, p.65, 7, p.18]. Unfortunately, the constitutional regulation doesn't fall in line with changing system of social relation, because with the adopting of new Constitution of Russian Federation in 1993 the system of social relations has had new meanings of limits, subjects, objects, methods of constitutional regulation of social relations and its practice in the Constitution of RF. This idea is also proved by the representatives of Constitutional Science who say that the necessity of enlarging the knowledge about constitutional regulation cause the appearance of scientific conceptions such as subject, method and limits of constitutional regulation, the

mechanism of action of Constitution that make the scientist reconsider its social value. In order to make this every notion enter the science it's necessary to explain their need in science, give the definition of these notions and fix their position in science.

These above-named problems and tendencies determined the choice of the theme of the research, its systematically structural aspects and the content of the concerned questions.

The specific targets of the problems the solution of which the project is devoted to

- The research of the conceptual theoretical questions that concern the defining of the constitutional regulation of the social relations, its criteria, forms, levels, subject and types of constitutional regulation of social relations.
- The improvement of the conception of the constitutional regulation of social relations and the solution of the problems that concern its interaction with the categories of the state and right. The solution of this problem allows to avoid

the semantic divergence of the main concepts, it can also stimulate the development of the unified approach to the comprehension of their essence, it allows to single out the main features of the constitutional regulation that are fixed in the rules of Constitution law of Russian Federation and in particular: the defining of types of modern social relations that have to be regulated according to the 1993 Constitution of Russian Federation; the analysis of its rules and their content; the characteristics of the modern conception 'the level of constitutional regulation'; the analysis of constitutional regulation features and its significance in the life of the society and state; the analysis of elements of constitutional regulation in the modern period and the analysis of modern ways of constitutional regulation influences the social relations; the defining of the criteria of the constitutional regulation of social relations in the modern period of constitutionalism development in Russian Federation and Constitution of RF; the modern defining of the sphere of the constitutional regulation of the social relations in the Constitution of Russian Federation.

**Suggested Methods and Approaches:** The nature of tasks assigned in the research of the conception of constitutional regulation, identified the necessity of the complex usage of scientific methods of knowledge the choice of which is caused by the specificity of subject and object and also by the purposes and tasks of the research [8, p.22, 9, p.19, 10, p.17, 11, p.113]. The basic method of the research is comparative-legal method which allows to reveal the features of constitutional regulation and the character of social relations regulated by these features. For studying these features and defining the legal prerequisite of constitutional regulation there used general scientific and special scientific methods of the research with the usage of logical ways and operations. The achievement of the purpose of objective and complex analysis of constitutional regulation depends on use of great number of approaches – legal, political, sociological, philosophic, historical that's why there used the thorough points of the state and law, constitutional right, political science, sociology, philosophy, history and other sciences.

The available scientific background of the project, the results got beforehand and the developed methods.

The interest to the problem of constitutional regulation of social relations doesn't fail in the modern period [12, p.34, 13, p.21, 14, p.61, 15, p.124]. Unfortunately

this problem wasn't paid much attention to in the history of constitutional law. The studying of the constitutional regulation was only aimed on the giving the definition the constitutional regulation and defining the need to analyze its content, signs and functions. So, in the jurisdiction there appeared two approaches that denote the topicality and the necessity of complex analysis of constitutional regulation of social relations. According to the first approach this necessity is determined by making up the scientific definition of the concept 'constitutional regulation of social relations' and its content. From D.A. Kovachev point of view: "the legal doctrine doesn't still have a common opinion of the constitutional regulation". It becomes topical to identify the content of 'constitutional regulation of social relations'. The jurisdiction doesn't have a distinct answer on this question. From our point of view the research of the problem devoted to the conception of constitutional regulation of social relations can't be realized without the research of the category 'legal regulation', that was examined in the transactions of scientists-lawyers. The other group of researches mention the modified character of influence of the Constitution on the social relations. From A.A. Aithozhin and E.T. Sexembaeva's points of view "the category 'constitutional regulation' and its research must occupy the noteworthy place in the theory of constitutionalism, because it characterizes the actions of Constitution as the Main Law of the state and it also highly influences all basic social processes" [5, p.19].

## RESULTS

The legal regulation is the work of subject of law carried-out with the help of legal means and ways for regulating the social relations and their progressive development. By regulating the behavior the right regulates those relations where there are the subjects that possess rights and duties. The Constitution of Russian Federation is the legal base that implements the constitutional regulation in Russia, because "foundations kept in the Constitution can fully be examined as the basis of the regulation of one or another sphere of social relations" [16, p.18, 17, p.65, 18, p.22].

The factors that influenced the altered character of constitutional regulation are the following: the constitutional secure of changes of this character, the broadening of spheres of Russian Federation Constitution influence on social relations that happened thanks to the acceptance of 1993 Russian Federation Constitution.

The constitutional regulation presents the basic form of Constitution and constitutional legislation influence on social relations that form by specific constitutionally legal means: principles, ideas and norms of the Constitution and the decisions of the bills, constitutional relations and also the bills of rights and duties realization that solve the specific constitutional legal situations.

The problem of defining the specific features of constitutional regulation is one of the main problems of modern jurisprudence which has tremendous theoretical and practical significance. The analysis of juridical literature shows that the difficulties in defining the special features of constitutional regulation the lawyers face with are determined by a huge number of external circumstances, by the diversity of agency forms, its universality and by lack of full detailed classification of features of constitutional regulation of social relations on the modern stage of RF Constitution's norms functioning.

The characteristics of constitutional regulation present their potential opportunities, their ability to control social relations which are determined by the society's demands and connected with their spontaneous purpose, they also reflect the main areas of constitutional right influence on social relations and people's behavior. Constitutional regulation is characterized by the following features:

The main feature of constitutional regulation is the fact that constitutional right regulates social relations in corpore in some spheres of society's life, but in other spheres it regulates only fundamental ones that predetermine the existence of other relations in these spheres.

At the same time in the constitutional right science there are a lot of opinions about essence and legal nature of constitutional regulation and social relations.

The characteristics of constitutional regulation as opposed to its legal characteristics – present qualitative characters that can show the correlation of this constitution with some other constitutions of this country and other countries. As the main features are set by the gap analysis so they are historically determined by the time when the process of constitutional regulation takes place.

The analysis of constitutional regulation conception and its features allows to find out that the features of constitutional regulation are multidimensional and multidisciplinary. That's it's necessary to single out general and specific features of constitutional regulation in the system.

The general features of constitutional regulation are the inherent characteristics the absence of which causes the regulation to stop functioning. They characterize the nature of constitutional regulation that followed by the norms of the constitutional right and legal characteristics of Russian Federation Constitution.

The examination of the problem that concerns the characteristics of constitutional regulation's influence is determined by the character of legal phenomena as the main factor of constitutional right, the sum of means, ways and approaches that regulate the majority of social relations in constitutional right. The main areas of constitutional regulation influence on social relations are the based on RF Constitution's rules legal influence of constitutional right on human behavior, their sense of justice, culture determined by the character of social relations which identify their essence, social purpose and they help to achieve the aims of constitutional influence. Constitutional regulation is the complex and systematic phenomenon, so it makes the definite system but not the set of non-interrelated, non-compelled areas of influence on their social nature and people's interests in constitutional legal relationship.

From our point of view the subject of constitutional right science is much deeper than the subject of constitutional regulation because the constitutional right science involves the sphere of outer reality that is characterized by the set of distinctive features which differ from other juridical science, it also describes them and examines. The subject of constitutional regulation as opposed to the subject of constitutional right science is a sum of rules and dogmata expressed on constitutional scientism and implemented in the norms of Russian Federation Constitution.

The social relations singled out by the authors and included in the subject of constitutional regulation shows the complex character of constitutional right which plays a leading role in normative regulation of social relations. The action of constitutional regulation is directed to complex regulating of bases of economic, social, political system, the society's spiritual life and other different spheres of country and society functioning.

The subject of constitutional regulation is the sum of different types of social relations that were exposed to constitutional regulation in the main spheres of RF Constitution that set up the order citizens and country interaction, cooperation of state structure across and down and the interaction of federation and its citizens that is put into practice due to usage of legal means, ways and methods.

The limits of constitutional regulation of social relations present the set in RF Constitution legal bounds of the state interference in different spheres of social relations which are based on the objective regularities of state and society development, the necessity of bringing the order into social relations by directing human behavior.

The limits of constitutional regulation in RF Constitution norms have different meanings. This is a borderline which doesn't allow the more limit of the legal opportunities set in the Constitution norms. The limits that set up the borders of definite rights have both objective and subjective character. The objective limits of constitutional regulation are defined by working legislation (objective right), the subjective ones – by the subject of law.

The types of constitutional regulation are the following: the establishment of limits in the articles of RF Constitution, their fixation in general meaning, their usage in different declarations and documents under international law. The limits of constitutional regulation are fixed there mostly as word symbols, i.e. as oral and written signs of natural language (words and sentences).

The constitutional ban is the way of constitutional regulation that is set up in the norms of RF Constitution and directed to preventing of delinquency commitment by the humans who break the norms of RF Constitution.

The constitutional restriction is the set-up in RF Constitution way of legal regulation of social relations which is directed to establishing definite behavior limits by the participants of constitutional legal relationship which take place due to realization of their constitutional competence.

The constitutional permission is the way of constitutional regulation that has the dispositive character directed on granting people the right to commit acts or refrain from active or passive acts in realization of their rights and freedoms set-up in Constitution. Constitutional legal relations reflect the subjective rights of the personality for their own choice of behavior meaning that a personality can apply the norms of behavior given in the Constitution or they refrain from these norms.

The constitutional direction is the way of constitutional regulation that has a binding character of RF Constitution influence on social relations and a purpose to save them from their breaking. The normative character of permission is based on the fact that legal norm gives its addressees the opportunity to choose the variant of their further behavior that can be conveyed in

commitment of legally important actions or refraining from this commitment. The legal permission may not only give the opportunity to choose the model of behavior but it can also give a choice of forms, ways and other conditions of human behavior regulation. The legal norm can let the subject of law: choose from the offered by the state their own variant of action or inaction, self-regulate their future behavior (by regulation, agreement, etc.), achieve the realization of their legal interest by any way that is not forbidden legally, it means that the subject of law may do everything he wants.

To define the character of ways of constitutional regulation we should take into account all criteria inherent to the norm of law in whole as well as constitutional bans, limits and permissions. The main common features are formal distinctness, protection of rights and freedoms, obligation of implementation, imperiousness, mutually beneficiary, self-descriptiveness, consideration, interaction with social relations.

The main conclusion indicates the significance of theoretical basis of constitutional regulation as one of the most important constitutional phenomenon of legal validity.

## REFERENCES

1. Avakjan, S.A., 2010. The tendencies of constitutional regulation of social relations development in modern Russia. Constitution of Russian Federation: politic-economical priorities: Materials of All-Russian Scientific Conference, pp: 12-24.
2. Postnikov, A.E. L.V. Andrichenko, N.M. Kolosova, A.V. Pavlushkin, E.E. Nikitina, A.N. Chertkov, L.V. Vassyleva and N.E. Egorova, 2010. Conception of constitutional legislation development – Conception of Russian legislation development edited by Chabrieva T.Ya., Tichomirov Yu. A. Moskow, pp: 123-124.
3. Law, legal change and entrenchment by Schwartzberg, Melissa Ann, Ph.D., New York University, 2002, pp: 22-27.
4. Anichkin, E.S., 2010 Constitution of Russian Federation in the conditions of modern development. The modern problems of constitutional and state building: the experience of Russia and foreign countries: Materials of international scientific conference. Law faculty of Moscow State University named after M. Lomonosov. Moscow, March 10-13. The editor - doctor of law, professor, Meritorious Scientist of Russia S.A. Avakjan. Moscow State University, pp: 22-23.

5. Aitkozhin, K.K., 2008. The theoretical questions Kazakhstan Constitution: thesis of doctor of law. Almaty, pp: 19.
6. Constitutional change in local governance: An exploration of institutional entrepreneurs, procedural safeguards and selective incentives by Johnson, Linda S., Ph.D., The Florida State University, 2005, pp: 65.
7. Corwin on the constitution: the content and context of modern american constitutional theory by Garvey, Gerald Joseph, Ph.D., Princeton University, 1962, pp: 18.
8. Law, legal change and entrenchment by Schwartzberg, Melissa Ann, Ph.D., New York University, 2002, pp: 22.
9. Budko, L.V., 1998. Constitutional reform: theoretical-legal analysis: thesis of doctor of law. St. Petersburg, pp: 170-171.
10. Nekrasov, S.I., 2012. Constitutional right of Russian Federation: tutorial for bachelors. Moscow, pp: 17-18.
11. Umnova, I.A., 2012. Constitutional right of Russian Federation: tutorial for bachelors / I.A. Umnova, I.A. Aleshkova, Moscow, pp: 113.
12. Constitutions and politics: constitutional revision in the south atlantic states, 1864-1902 by Bell, John Luther, jr., Ph.D., The University of North Carolina at Chapel Hill, 1970, pp: 34.
13. The right to privacy: Constitutional and theoretical foundations by Gray-Lukkarila, Pamela Jean, Ph.D., The Claremont Graduate University, 1997, pp: 21.
14. Constitutional limits of government control and regulation of church schools by Brock, John Richard, Educat.D., Pepperdine University, 1984, pp: 61.
15. Constitution making in deeply divided societies: The incrementalist option by Lerner, Hanna, Ph.D., Columbia University, 2006, pp: 124.
16. Corwin on the constitution: the content and context of modern american constitutional theory by Garvey, Gerald Joseph, Ph.D., Princeton University, 1962, pp: 18.
17. Constitutional change in local governance: An exploration of institutional entrepreneurs, procedural safeguards and selective incentives by Johnson, Linda S., Ph.D., The Florida State University, 2005, pp: 65.
18. Law, legal change and entrenchment by Schwartzberg, Melissa Ann, Ph.D., New York University, 2002, pp: 22.