

## 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

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### 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

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a component of the legal system of the Russian Federation. In the course of creation of norms of international law there is a coordination of wills of the sovereign states. Therefore the coordinated will is the most exact expression of the essence of the international law-making where rules of law are, as a rule, not unilaterally wills, but accepted in coordination. Coordination of wills as a process and as the result allows to find mutually acceptable decisions even then when interests of the states are opposed to each other. Hence, the international contracts and other agreements, being the legal instrument of coordination of will of subjects, are capable to pull together the parties in the conditions of an essential divergence of their nonidentical legally significant interests, but only in the presence of the general aspiration and will for establishment of the relations and achievement of general welfare. It shows that one general priority interest can be enough for the definition of the center of gravity among other in coincident positions. Therefore, the Constitution of the Russian Federation fixes that if the international treaty of Russia established other rules, than are provided by the domestic legislation, rules of the international treaty are applied.

To the fundamental international acts establishing international legal bases of the status of public associations and political parties, the following belongs: The United Nations charter, the Universal declaration of human rights of December 10, 1948, the European convention on protection of human rights and fundamental freedom, 1950, the International Covenants on Civil and Political rights, about the economic, social and cultural rights of December 19, 1966, the Document of the Copenhagen meeting of conference on human measurement of SBSE of June 29, 1990, the Parisian charter for new Europe of November 21, 1990, the Document of the Moscow Meeting of conference on human measurement of SBSE of October 3, 1991, the Vienna Declaration and the action Program of June 25, 1993.

The role and the value of international law in definition of the status of the Russian political parties are ambiguous. In April, 2011, The European court on human rights passed the decision on the claim of Republican Party of Russia. Having satisfied the claim, the court noted imperfection of the Russian legislation regulating the status of political parties. Thus, according to the court, the demands made to the parties at registration are overestimated and, in fact, are prohibitive. Besides, the decision on refusal in registration of Republican Party of

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 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 Federation» [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 not less 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 at registration of new party are lowered. The minimum number of party members in regional offices is given to the discretion of parties. At violation detection in the course of a party registration the Ministry of Justice of the Russian Federation doesn't refuse registration and points to defects which the party can correct within three months. Besides, it agrees edition of Federal Law «About Political Parties» operating now, political parties are obliged to deliver reports about their activity once in three years. The previous edition of the Law obliged parties to provide such reports in the Ministry of Justice of the Russian Federation annually and to contain the big staff of skilled accountants. In our opinion, the legal innovations noted above are justified. In the Russian society demand for updating of the Russian party system ripened. Thus, the new edition of Federal Law «About Political Parties» corresponds to realities of time.

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 «elite-based party» and Kirchheimer [13] «catch-all party». 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 the introduction and leaving of their members, structure of parties, term and powers of the governing bodies. All points of order of activity of political parties are defined by local norms. Corporate norms have double value: on the one hand, they order internal life of the organizations, with another – they, accepted without intervention from the outside, influence the association which has accepted them. The matter is, that the government and other bodies are based on the specified norms, for definition of right subjectivity of this organization in concrete legal relationship.

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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