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Alexander V. Larionov, Master's Student, Department of State and Legal Disciplines, Faculty of Training Specialists for the Judicial System, Russian State University of Justice, St Petersburg, Russia.
Scientific supervisor: Nina N. Gontar, Candidate of Sciences, Associate Professor of the Department, Department of State and Legal Disciplines, Russian State University of Justice, St Petersburg, Russia.

The concept, signs and place of executive power in the mechanism of the modern state

Abstract: The “executive power” concept is quite actively used in educational and scientific literature and regulatory documents. It requires a certain analysis of this category to understand its essence. The issues of theoretical and practical understanding of the problems of executive power law-making activity are constantly in the spotlight. It seems obvious that without defining the term “executive power” from the standpoint of legal science, it is impossible to judge its content in various fields of state activity. The foundations of scientific study were laid by such scientists as S.S. Alekseev, G.V. Atamanchuk, D.N. Bakhrah, I.L. Bachilo, R.F. Vasiliev, D.A. Kerimov, and others. The study purpose was to review the main issues of the formation of the concept of executive power. In the course of the study, logical, historical, comparative, and verification methods were applied. The author concludes that the executive branch is an independent and independent branch of state power within the framework of the principle of separation of powers. It is distinguished by its comprehensive, substantive and organizing nature, structuring into a single system of bodies that ensure the implementation of laws and regulations in established forms, procedures and methods within their powers.

Keywords: executive power, law-making activity, state activity, public administration.



Александр Васильевич Ларионов, студент магистратуры, кафедра государственно-правовых дисциплин, факультет подготовки специалистов для судебной системы, Российский Государственный университет правосудия, Санкт-Петербург, Россия.

Научный руководитель: Нина Николаевна Гонтарь, кандидат наук, доцент кафедры государственно-правовых дисциплин, Российский Государственный университет правосудия, Санкт-Петербург, Россия.

Понятие, признаки и место исполнительной власти в механизме современного государства

Аннотация: Понятие «исполнительная власть» достаточно активно употребляется в учебной и научной литературе и довольно часто используется в нормативных документах, что требует проведения определённого анализа данной категории для понимания ее сущности. Вопросы теоретического и практического осмысления проблем правотворческой деятельности исполнительной власти постоянно находятся в центре внимания. Представляется очевидным, что без определения термина «исполнительная власть» с позиций юридической науки невозможно судить о её содержании в различных областях государственной деятельности. Основы научного

исследования заложили такие ученые, как С.С. Алексеев, Г.В. Атаманчук, Д.Н. Бахрах, И.Л. Бачило, Р.Ф. Васильев, Д.А. Керимов, и другие. Целью исследования являлся обзор основных вопросов формирования понятия исполнительной власти. В ходе исследования были применены логический, исторический, сравнительный и верификационный методы. Автор приходит к выводу, что исполнительная власть является самостоятельной и независимой в рамках принципа разделения властей ветвью государственной власти, которую отличают всеобъемлющий, предметный и организующий характер, структурированность в единую систему органов, обеспечивающих исполнение законов и подзаконных актов в установленных формах, порядке и методами в пределах своих полномочий.

Ключевые слова: исполнительная власть, правотворческая деятельность, государственная деятельность, государственное управление.



Introduction

Executive power is one of the types of independent power in the state, which is a set of organizational and functional mechanisms of a state nature to implement the state policy goals and objectives enshrined in the law (*Osipov, 2004-2017*).

The “executive power” concept is quite actively used in educational and scientific literature and regulatory documents. It requires a certain analysis of this category to understand its essence. The issues of theoretical and practical understanding of the problems of executive power law-making activity are constantly in the spotlight. It seems obvious that without defining the term “executive power” from the standpoint of legal science, it is impossible to judge its content in various fields of state activity (*Kozhina, 2014*).

The foundations of scientific research were laid by such scientists as S.S. Alekseev, G.V. Atamanchuk, D.N. Bakhrakh, I.L. Bachilo, R. F. Vasiliev, D.A. Kerimov, Yu.M. Kozlov, B.M. Lazarev, A.F. Nozdrachev, A.S. Pigolkin, B.V. Rossinsky, N.G. Salishcheva, Yu.N. Starilov, M.S. Studenikina, Yu.A. Tikhomirov, N.Y. Khamaneva, Ts.A. Yampolskaya.

The study purpose was to review the main issues of the formation of the concept of executive power.

Based on the abandoned goal, the following tasks were developed:

- clarify the concept of executive power;
- investigate the basic signs of executive power,
- analyse the place of executive power in the system of public administration.

In the course of the study, logical, historical, comparative, and verification methods were applied.

The results of the study

In the legal literature, executive power is understood as an independent structural unit in the system of state public authority, which implements the powers granted in the form of certain functions of public administration. Of course, in addition to the concept of executive power, it is necessary to identify the signs of the executive authority itself, among which:

- implementation of public and state functions based on state authority, which includes executive, coordination, control, supervisory, and other forms of management activities in certain areas;
- the possibility of making managerial decisions in the course of executive and administrative activities in the form of acts, the procedure for the adoption of which is established by law, which must comply with the current legislation, as well as mandatory for execution in the sphere of competence of a particular body;
- complex internal structure;
- financing from the state budget (federal or subject of the Russian Federation);
- inclusion of the body in the subordination system in the system of executive power and reporting to the public authority that establishes it, etc.

It should be noted that an executive authority should be understood as a public authority, i.e., both legally and organizationally separate and endowed with state authority to realise specifically defined tasks and functions of the state in various social spheres.

Studying the legal literature, it is possible to identify specific positions concerning executive authorities:

- 1) based on the meaning laid down in the Constitution of the Russian Federation, it follows that executive authorities are understood to be an integral part of the state apparatus with a special functional load, the essence of which is the practical implementation of the tasks and functions of the executive power in the process of management in the spheres of economic, social, administrative and political life. According to their specific, i.e., executive, purpose, these bodies carry out daily activities of an executive and administrative nature;
- 2) any executive authority has a territorial scale of activity established for it by legislation, taking into account the peculiarities of the federal structure of the Russian Federation;
- 3) describing executive bodies as a whole, it is necessary to pay attention to the fact that officials act on their behalf and represent them in specific managerial relations, which, accordingly, are not executive bodies in themselves;
- 4) executive authorities have operational independence, the boundaries of which are established by the competence assigned to them, which determines the basis of the legal status of this body. Competence is established either in the norms of the Constitution of the Russian Federation, or in the norms of federal and regional legislation, or, finally, in the norms of individual provisions on them.

The competence of the executive body expresses its tasks, functions, duties, powers and responsibilities. Within the scope of their competence, executive bodies perform legally significant actions expressing their administrative legal and legal capacity.

In this sense, the most indicative are the various variants of rule-making (establishing rules of conduct), law enforcement (ensuring the implementation of legislative and subordinate rules of conduct) and law enforcement (monitoring the correctness of the implementation of legal norms) activities.

One of the fundamental features of executive authorities is that they have a special legal status, thanks to which it is possible to exercise jurisdictional powers, expressed in the application

of administrative coercion measures as the implementation of the functions assigned to them. It should be noted that these public authorities are the only ones that have such a legal status.

Among other things, the executive authorities have individual versatility, which finds expression both in the implementation of acts of judicial and legislative branches of government, i.e., their bodies, and in the final and mandatory nature of the execution of legal acts issued by them, including resolutions, orders, etc., for specifically addressed persons.

It follows from this that the activities of executive authorities, as subjects of public administration, cannot but be of a versatile nature, including also coordination and control of various public legal relations.

Based on the previously mentioned properties of the executive power and its bodies, it is necessary to give an intermediate conclusion. The executive authority is a structural subdivision of the mechanism of the state apparatus, the creation of which is aimed at effective interaction with other branches of government, as well as regular enforcement of laws in various spheres of public relations.

When describing the concepts of “executive power” and “public administration”, S.A. Semenov and D.S. Obukhov in their scientific article devoted to the rule-making activities of federal executive authorities, note that the similarity of the above-mentioned concepts is that they overlap in their activities, namely, execution (*Semenov & Obukhov, 2019*).

Based on the essence of the concept of “public administration”, it follows that this is a certain area that affects the entire system of state power and is aimed at various spheres of public life, while the executive branch must ensure the functioning of one specific type of state power.

Both the importance and the content of public administration consists in its specific elements of activity, influence on processes and relations arising in society, which are regulated and organized through the implementation of regulatory legal acts and other administrative functions.

Since many reforms directly related to the activities of the executive branch have not been completed in the Russian Federation, including, e.g., e-government, administrative reform and others, it would like to highlight here several existing, in my opinion, problems:

- inefficient allocation of budget funds to ensure the activities of state bodies;
- a fairly low level of professional qualification of civil servants;
- insufficient commitment to values, including efficiency, serving the public interest, accountability, respect for the dignity of the individual, etc.;
- excessive number of employees in executive bodies unable to make up for the lack of knowledge in labor productivity;
- imperfect distribution of state-governmental powers, as well as interaction between structural elements of state bodies.

The authors of the report “Digital Transformation of Public Administration: Myths and Reality” note that the number of federal powers, according to the expert estimates of the HSE, has been constantly increasing since the beginning of the administrative reform. By 2010 it has already increased by 35%, and by the end of 2016 – by almost 2 times: from 5.3 thousand to 10.4 thousand federal functions. The report states that “the problem of inefficient distribution of state powers and the lack of interconnection between the functions assigned and the material,

human and financial resources allocated to the authorities.” According to the authors, in this regard, special difficulties arise in the process of digital transformations in the field of public administration in the Russian Federation. In connection with the reforms that were not completed earlier, including the administrative reform of 2003, electronic and open government, etc., unfavorable factors that have persisted so far are highlighted, among which is the problem of the possibility of implementing modern technologies in management (*Dmitrieva et al., 2019*).

Analyzing recent actions to improve the organization and improve the functioning of executive authorities, the incompleteness of measures to improve activities, partial implementation of ongoing reforms. This led to the absence of significant changes in the efficiency of public administration in the Russian Federation.

The reason why state bodies lag behind the effective internal organization of many corporations is that their activities are accompanied by insufficient both technological and information security, and also have low motivation of employees of bodies, their imperfect training and the presence of signs of corruption.

For example, based on the data provided in the report on the implementation in 2020 of the Anti-Corruption Plan in the executive bodies of the Tyumen region for 2019-2021, it follows that the indicators of the presence of corruption factors in December 2020 were recorded less than in February of the same year. However, as the authors of this report note, this may be explained not so much by anti-corruption measures carried out at the appropriate level, as by the problem that has arisen related to the economic situation of citizens in the conditions of the COVID-19 pandemic (*Report on the implementation in 2020*).

It should be noted that in the Russian Federation over the past 5 years. The number of citizens' appeals has significantly increased, which contain issues related to the activities of executive authorities and violations by officials of legislation in the field of anti-corruption. This gives us confirmation that the modernization of the institution of citizen' appeal is being implemented in the Russian Federation, which finds its embodiment, e.g., in the informatization of society, social and state advertising, improvement of Internet resources, etc. This tool of communication between the population and the authorities is constantly progressing, which ultimately has a positive effect on the prevention and suppression of possible offenses.

Any illegal action (or inaction) entails, in addition to changes in legislation and increased responsibility, the active use of tools to improve legal literacy of the population. In the future, legal education will find its even greater realization in technologies that will create a stable atmosphere of universal awareness and responsiveness. It is necessary to identify the problem, which is expressed in the use of the concepts of “structure” and “system” of FOIV as synonymous words.

The system of federal executive authorities is a set of links divided among themselves by the characteristic features of powers and relationships. Under the structure, it is customary to understand the list of certain bodies, taking into account the specifics of their activities and jurisdiction.

One of the most important principles of the organization of power in Russia, as a federal state, is the principle of unity of state power. However, it is possible to observe a number of shortcomings that create some confusion when assessing the implementation of unification of executive authorities of the subjects of the Russian Federation.

Based on the provision of the Constitution of the Russian Federation, it follows that the federal executive authorities and the executive authorities of the subjects form a single system of Russian Federation executive power. However, as the researchers of this issue note, in building the organization of the executive power system at the regional level, it is possible to observe the formation of an excessive number of bodies, while not fixing the exact differentiation of the orientation of their activities.

In other words, ministries and departments can operate in the system of executive authorities of one subject, while in another – departments and their subdivisions. Also, the functions of control and supervisory bodies in different regions can be distributed both to inspections and to supervisory services.

As many experts note, a problem arises, expressed in the fact that at the level of many regions there is still an incomplete stage of administrative reform, which began back in 2004, which was focused on building an effective three-tier system of executive authorities. At the same time, at the same time, it is noticeable that the structure of executive authorities at the federal level is being brought under the general concept laid down by the aforementioned reform.

In a number of scientific articles devoted to the problems of executive authorities' development, the problem of modernization, which is realised in a short time, is noted. According to the Constitution of the Russian Federation, the executive power in Russia is an independent branch of government, including the executive authorities of the Russian Federation subjects, which are its structural elements.

This provision grants the Russian Federation executive authorities the right to realise their activities both independently and on behalf of the state. That is, the above-mentioned structural elements form a separate, own system, which is located at a level below the federal one.

Such a plurality of subjects' executive authorities of the meets the requirements established by federal legislation and the Constitution of the Russian Federation. It should note that when analysing the system of Russian Federation executive authorities at the subjects' level, conclusions appear about the insufficient development of its structure.

The optimal organization and effective activity of the Russian Federation subjects' executive authorities is directly related to how well the system of these authorities is optimized, in the work of which special attention should be paid to the peculiarities of socio-political, economic, territorial and other factors of a certain subject.

Below we list the shortcomings related to the system of executive authorities of the subjects of the Russian Federation:

- 1) duplication of authority. This problem often occurs when analyzing regulatory legal acts regulating the activities of certain executive authorities of the subject. Some authors note that this problem does not provide the necessary level of transparency of the activities of the executive authorities of the subjects, as a result of which a part of the population has a misunderstanding of the direction of the functions;
- 2) lack of stability in the structure of the executive authorities of the subjects. This disadvantage is due to the fact that there is no specific strategy in the field of reform, which results in frequent changes of managers and economic problems. In other words, there is a frequent turnover of civil servants in the management system;

- 3) In practice, it is possible to observe the absence of certain intra-system connections between the executive authorities of the subjects of the Russian Federation, which can be designated as the absence of subordination.

In order to improve the efficiency of the above-mentioned bodies, the author proposes:

- 1) improvement of the professional training and retraining program, methods, organizational, managerial and legal culture of civil servants;
- 2) appointment of qualified citizens to senior positions of executive authorities of the subjects of the Russian Federation;
- 3) creation of complex measures aimed at minimizing frequent turnover among management personnel;
- 4) ensuring a more thorough and objective assessment of the results of the activities of civil servants.

Conclusion

Thus, the executive branch is an independent and independent branch of state power within the framework of the principle of separation of powers. It is distinguished by its comprehensive, substantive and organizing nature, structuring into a single system of bodies that ensure the implementation of laws and regulations in established forms, procedures, and methods within its powers.



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