

THE MECHANISM OF FORMATION AND RESIGNATION OF THE GOVERNMENT OF THE RUSSIAN FEDERATION IN VIEW OF CONSTITUTIONAL CHANGES IN THE RUSSIAN FEDERATION

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Abstract: The article deals with the improvement of the mechanism of the formation and resignation of the Government of the Russian Federation in view of the ongoing constitutional reforms in the Russian Federation. The authors consider Russian and foreign regulatory legal acts that establish the procedure for the formation and resignation of the highest executive body of power. Analyzed are legislative innovations in the Constitution of the Russian Federation in terms of the relationship between the Government of the Russian Federation and other government bodies, developing the established format of their interaction. Some contradictions related to their responsibility are identified and the need to amend a number of provisions of regulatory legal acts and clarify their content is substantiated.

Keywords: public authorities, President of the Russian Federation, State Duma, Government of the Russian Federation, formation, resignation.

1 Introduction

The mechanism of the formation and resignation of the Government of the Russian Federation is one of the key in the system of relations between government bodies. The Government of the Russian Federation, as the highest collegial body of executive power, consists of the Chairman of the Government of the Russian Federation, Deputy Prime Ministers of the Russian Federation, and federal ministers. The formation of the composition of the Government of the Russian Federation depends on the structure of the federal executive authorities and is determined by part 2 of Article 110 of the Constitution of the Russian Federation and Article 6 of the Federal Constitutional Law of December 17, 1997 No. 2 "On the Government of the Russian Federation".

Its actualization is also obvious in connection with the ongoing constitutional reforms in the Russian Federation, which were initiated by the President of the Russian Federation in the annual message to the Federal Assembly of the Russian Federation in January 2020; it gave a new impetus to the development of constitutional legislation. These innovations undoubtedly affect the existing relationships in the system of the highest bodies of state power, including the formation and resignation of the Government of the Russian Federation. Thus, it becomes relevant to conduct a constitutional and legal analysis of amendments to the Constitution of the Russian Federation, which in one way or another will change the current balance of relations between government bodies and the management system.

2 Methods

The methodological basis of the research is represented by a system of general and private scientific methods of cognition, which ensured the most objective examination of the subject of research from the standpoint of its internal logic. The use of dialectical, historical, sociological, system-structural method allowed us to analyze and generalize the mechanism of formation and resignation of the Government of the Russian Federation.

The theoretical-prognostic and legal modeling and the comparative legal plan were used as private legal methods. They helped compare different points of view regarding the mechanism of formation and resignation of the government and

allowed us to analyze the legislative norms of both the Russian Federation and foreign states in this area. The study used general scientific methods of cognition, such as deduction and induction that contributed to the creation of an optimal research concept; analysis and synthesis, which made it possible to investigate the nature and structure of the mechanism of formation and resignation of the Government of the Russian Federation. At the same time the study complied with the requirements of the principle of unity in logical knowledge of the essence and system of state power.

3 Results and Discussion

The Law of the Russian Federation on amendments to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ significantly changes the system of public administration by redistributing powers between various government bodies. In particular, the changes concern the principle of forming the Government of the Russian Federation, which mechanism has not changed since the adoption of the Constitution of the Russian Federation in 1993. According to the current rules, a special role in the formation of the personnel of the Government of the Russian Federation is assigned to the President of the RF. The Constitution of the Russian Federation establishes the exclusive powers of the President of the Russian Federation to nominate to the State Duma the candidacy of the Chairman of the Government of the Russian Federation and the subsequent approval of the personal composition of the Government of the Russian Federation. The Prime Minister of the Russian Federation is appointed to office with the consent of the State Duma and plays an important role in the appointment of his deputies and federal ministers. The State Duma can agree to the appointment, or refuse consent, but it cannot discuss any other candidate, except for the one proposed by the President of the Russian Federation. We must agree with A.F. Small, that the approval takes place for one candidate, and there is no election as a preference to one of the applicants for the position by voting. There is only approval or not approval of the candidate, which means that there is no most important sign of choice – alternativeness (Maly, 2011).

In the case of any disagreement between the President of the Russian Federation and the State Duma on the appointment of the Chairman of the Government of the Russian Federation, the Constitution of the Russian Federation provides for the following procedure: after the State Duma has three times rejected the nominations for the Chairman of the Government of the Russian Federation by the State Duma, the President of the Russian Federation, at his own discretion, appoints the Chairman of the Government of the Russian Federation and dissolves the State Duma. In practice, a threefold refusal could not be implemented.

Once the Chairman of the Government of the Russian Federation is appointed, the subsequent formation of the Government of the Russian Federation is carried out in a simple way: the Chairman of the Government of the Russian Federation proposes to the President of the Russian Federation candidates for the positions of the Government of the Russian Federation. Thus, the structure and composition of the Government of the Russian Federation is determined by the President of the Russian Federation in consultation with the appointed Chairman of the Government of the Russian Federation. In the course of consultations, the final decision is made by the President of the Russian Federation. Individual personal changes to the composition of the Government of the Russian Federation can be made during the entire term of office of the Government of the Russian Federation. All members of the RF Government are appointed by decrees of the RF President. Formally - on the proposal of the Chairman of the RF Government. However, the President of the Russian Federation has every right not to appoint the candidate

nominated by the Chairman of the Government of the Russian Federation. The Prime Minister has no way to force the President of the Russian Federation to approve any of candidate. Since there are no formal requirements for the procedure for nominating candidates, and the president and the prime minister discuss candidates informally and behind the scenes, the president can appoint someone as a minister at his discretion: the prime minister cannot challenge this decision.

The general procedure of the formation of a government, where the appointment of the head of government plays a key role, is traditional for countries with a mixed (semi-presidential) form of government. The most prominent example is the French legal system. Article 8 of the 1958 Constitution of the French Republic stipulates that the President appoints the Prime Minister and, on his proposal, other members of the Government and terminates their powers. Article 49 stipulates that the Prime Minister, after discussion by the Council of Ministers, submits for the approval of the National Assembly the Government's program or its general political declaration, raising the issue of confidence. According to Article 50, if the National Assembly does not approve the program or the general political declaration of the Government, the Prime Minister must submit to the President a letter of resignation of the Government. Article 12, in turn, stipulates that the President has the right, after consultation with the Prime Minister and representatives of the chambers, to announce the dissolution of the National Assembly (<https://www.conseil-constitutionnel.fr>). In general, a similar procedure of the formation of a government is established by the constitutions of Portugal, Poland, Croatia and a number of other countries (Strashun, 2000).

The essence of this procedure is that the president independently appoints and dismisses the head of government and, on his recommendation, other members of the government, the lower house of parliament approves the already appointed government in the form of a vote of confidence in the program of its actions, and in case of refusal of confidence, the government resigns. The president must necessarily accept the resignation of the government, and he has the right, practically unconditional, except for consultations with the leadership of the government and parliament, to dissolve the lower house of parliament. At the same time, most states with a mixed form of government do not impose strict constitutional or legislative restrictions on the choice of the head of government by the president. Thus, Article 187 of the Portuguese Constitution establishes that the Prime Minister is appointed by the President after consultation with the political parties represented in the Assembly of the Republic and taking into account the election results (<https://www.constituteproject.org>). This constitutional provision does not impose any explicit mandatory restrictions on the appointment of the Prime Minister (Nisnevich, 2007).

In the Russian legal system, the Law of the Russian Federation on amendments to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ proposed to authorize the State Duma to participate in the formation of the Government of the Russian Federation, namely, to provide the State Duma with the right not only to agree, but also to approve candidates for the positions of the Chairman of the Government of the Russian Federation, and then on the proposal of the appointed Chairman of the Government of the Russian Federation - all deputy and federal ministers. At the same time, the President of the Russian Federation will be obliged to appoint them to office, that is, he will not have the right to reject candidates approved by the parliament of the relevant officials. And if the State Duma at least takes part in consultations when appointing members of the Government of the Russian Federation through the procedure of preliminary discussion of candidates in specialized committees, this will minimize personnel and other possible errors.

Therefore, the President of the Russian Federation does not have full control over the formation of the composition of the Government of the Russian Federation. The President of the Russian Federation (at least formally) is generally excluded from the selection and approval process of deputy prime ministers and

federal ministers: the prime minister himself proposes their candidates to the State Duma, without any consultations with the President of the Russian Federation. And if the deputies approved the choice of the Chairman of the Government of the Russian Federation, the President of the Russian Federation is obliged by his decree to appoint candidates for the corresponding positions. The new order does not apply only to the heads of law enforcement agencies; the President of the Russian Federation will be able to appoint them based on the results of consultations with the Federation Council. It seems that these changes increase both control and responsibility of the Federal Assembly of the Russian Federation for the activities of the Government of the Russian Federation.

As for the resignation of the Government of the Russian Federation, Article 117 of the Constitution of the Russian Federation defines cases of early termination of the powers of the Government of the Russian Federation. This article also allows for resolution of disagreements between the State Duma and the Government of the Russian Federation by expressing trust/distrust by the latter, where the President of the Russian Federation remains the key figure. The vote of no confidence in the government (in other countries, for example, in France - the censure resolution) is one of the most effective mechanisms of parliamentary influence on the government, which establishes the direct responsibility of the government to parliament. For example, Article 50 of the Constitution of the French Republic stipulates that if the National Assembly passes a resolution of censure, then the Prime Minister must submit to the President a letter of resignation from the Government.

Regarding the legislative novelties of the mechanism for the resignation of the Government of the Russian Federation, the Law of the Russian Federation on amendments to the Constitution of the Russian Federation No. 1-FKZ does not provide for any significant changes. It is proposed to establish the following procedure that the President of the Russian Federation relieves the Chairman of the Government of the Russian Federation from office, and the newly appointed Chairman of the Government of the Russian Federation does not submit to the President of the Russian Federation proposals on the structure of federal executive bodies. Thus, a new procedure for the resignation of the Chairman of the Government of the Russian Federation is established, which does not entail the resignation of the entire composition of the Government of the Russian Federation. It seems that the introduction of this procedure will allow:

- firstly, to eliminate the distortion in the constitutional legislation in favor of the executive branch. The possibility of the legislative branch to submit to the President of the Russian Federation its proposals on the composition of the Government of the Russian Federation would correspond to the proper balance of the branches of government and would ensure a higher level of responsibility for the Government of the Russian Federation as a whole. And this, in turn, would contribute to the implementation of the constitutional powers of the President of the Russian Federation to ensure the coordinated functioning and interaction of government bodies and the effectiveness of government institutions. Thus, the introduction of amendments to the Constitution of the Russian Federation will also require appropriate amendments to the articles of the Federal Constitutional Law "On the Government of the Russian Federation" concerning interaction with the State Duma.
- secondly, to strengthen the responsibility of the State Duma for the formation, for the activities and the pursued policy of the Government of the Russian Federation and thereby minimize politically motivated forms of resignation of the Government of the Russian Federation that are not associated with a negative assessment of its activities.

The President of the Russian Federation will retain the right to remove the Chairman of the Government of the Russian

Federation, his deputies and other federal ministers in the event of loss of confidence or improper performance of official duties. The President will also retain the right of leadership and power structures. The amendments introduced should be reflected in Article 117 of the Constitution of the Russian Federation, which provides for cases of early termination of the powers of the Government of the Russian Federation. Therefore, we consider it necessary to amend this article in order to more clearly establish the responsibility of the Government of the Russian Federation for violating constitutional legislation, regulating the application of sanctions and removing the resignation of the Government of the Russian Federation from the political channel to the legal one.

It is true that law helps achieve social well-being, which is an indicator of the interaction between the individual and the authorities, the person and the state (Baglai, 2017).

4 Summary

1. Amendments to the Constitution of the Russian Federation in terms of the relationship of government bodies are aimed at a greater balance between the branches of government. However, it is logical to emphasize that the Government of the Russian Federation in its activities remains inextricably linked with the President of the Russian Federation, because the President of the Russian Federation essentially exercises leadership of the Government of the Russian Federation and, accordingly, the executive branch and plays a key role in matters of resignation. All this, in our opinion, makes the Government of the Russian Federation one way or another "presidential" body. However, the RF Law on amendments to the Constitution of the Russian Federation No. 1-FKZ, having consolidated new elements of the mechanism for forming the Government of the Russian Federation, is intended to increase its independence and responsibility in the exercise of executive power.
2. We should continue a course aimed at a more accurate balance of the branches of government, the vector of which was set by the President of the Russian Federation in his annual message to the Federal Assembly in January 2020. The State Duma should receive the right to participate in the formation of the Government of the Russian Federation. The lower house of parliament should, at a minimum, participate in consultations when appointing members of the RF Government through the procedure of preliminary discussion of candidates in specialized committees. Thus, the legislative branch has the opportunity to submit to the President of the Russian Federation its proposals on the composition of the Government of the Russian Federation, which would

correspond to the proper balance of the branches of power and would ensure a higher level of responsibility for the Government of the Russian Federation as a whole.

5 Conclusions

The role of the executive branch of government in maintaining the proper level of governance in society is undoubtedly significant and responsible. Hence the high requirements for its legal establishment, regulation, systemic organization, for the technologies of functioning, professional training of officials, etc. The rates of socio-economic transformations, well-being depend on the effectiveness of the activities of the entire executive power in general and of persons holding public positions. and the development of society. As a result, they bear great responsibility for their activities and policies. The mechanism for the formation and resignation of the Government as the supreme executive body needs further development and improvement.

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