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LAW AS A RATIONAL FORM OF RESTRICTIONS ON GOVERNMENT POWER

The author analyses the phenomenon of public power in society in the context of modern democratic transit. A study conducted on the grounds and forms of expression of the legal nature of power and the means of limiting it. Compliance with the requirements of the legitimacy of the State and its functions recognized as a condition of the rule of law. The institutions of power function in the context of specific political regimes, where their interaction with the institutions of civil society is included in the mechanism of legal restrictive imperatives.

***Keywords**: State power; legal nature of power; legal limitations of power.*

The ontological constant, which reflects the transformation of power into social power, focuses on its orientation, programs, and resources to create and maintain the public order that is necessary for national security, stability and sustainable development of social relations.

The search for models of public order and algorithms for its reproduction includes the optimal methods of organization of power. The forms of its exercise and the means of determining the limits of power and the powers of its institutions and the forms of control over it, depending on the characteristics of the state-legal regime (authoritarian or democratic), which allows such control to be exercised, excludes such a possibility, leaving the problem in the realm of a philosophical and legal discourse.

The motivation of knowledge of the nature of public power is focused on its aspects – decision-making (real domination), functional (realization of power and management resources), communicative (understanding the meaning of power prescriptions as the activity of power through formal legal means.

Perceptions of the characteristics of power that can legally influence the behavior of individuals and social groups provide that the measure of freedom legitimately imposed by coercion recognized and protected by authority. Such position is noted in «resistance theories» (D. Cartwright, J. French, B. Raven), «Sharing of resources» (P. Blau, D. Dixon, K. Heinites), «Sharing of zones of influence» (D. Rong). Neither interpretation is universal. However, the generalization of philosophical orientations and sociological research makes it possible to identify those basic features and properties of power that reflect its nature and purpose. Any public authority must have public-law expression, the legal form of its institutions and its legal resources as a legal organization.

These characteristics dominate modern public power. They legally confer power with attributes that consist in the legal establishment of the limits of State intervention in the public sphere, the use of power resources and the legitimate measure of their use.

Power, as a product of society, generated by the social interaction of people as normative entities. It manifests itself in (normative and institutional) pre-political, asymmetrical (state), social and other forms that reflect the specificities of its legal and regulatory framework, organization and functioning. Power objectified in socially significant, relatively stable, typical social relationships, not one-off, random, situationally.

The institutions of power regulate political, economic, ethno cultural and other social systems and subordinate them to legal means in order to create and maintain a model of legal order capable of achieving sustainable development. The state uses legal instruments to ensure the rule of law. However, the range of such means varies according to the type of state-legal (political) regime, from autarky to democracy, where society is able or unable to control public power. At the same time, the authorities rely on legal (legitimate) coercive measures and use legal sanctions against subjects in order to provide an algorithm of positive legal behavior. At the same time, the authorities shall use the resources of the forced correction of conduct by means of legitimate coercion to the extent and to the extent supported and provided by public power and suitable for it under various political regimes, whether clerical or secular, authoritarian or democratic. Means of peremptory or recommendatory influence become appropriate to the extent and by the means that are justifiable and permissible in relations of a public or private nature, depending on the interest, which the authority protects, provides and restores.

The problem of restriction of public power has previously been considered by the author in terms of: the natural legal determinism of public power and its legal nature [1, pp. 15-22; 2, pp. 88-91], legal restrictive imperatives for power [3, pp. 60-67] as a criterion of public authority legal regime [4, pp. 129-135].

The democratic model of public power functions in the format of the legal regime, the meaning and content parameters of which constitute «positive» and «negative» duties of the state. They delegated to the state by international legal standards for the promotion, protection and defense of human rights. The yardstick of a political regime is the legal boundaries and legally defined areas in which public authorities may exercise power. At the same time, the highest legal expression of the restriction of power at the national level takes the form of constitutional and legal responsibility [5, pp. 63-66].

In democratic transit, the processes of transformation of the State and political power capture attention and encourage scientific research, especially in the area of legal forms and methods of organization of the institutions of power and rational the legal, constitutional definition of its legal boundaries (limits). The focus remains on the legal forms of the exercise of public authority, the procedure and the manner of the exercise of the functions of public authorities and the political and legal status of state bodies, the entire hierarchy of the civil service and subjects of civil control and oversight (public control, auditing, monitoring, public scrutiny of power decisions and other forms of public power activity of the state). Beyond their activities, any activity of public power institutions falls into the zone of uncontrolled and risk of going beyond the legal framework. This

distinguishes the legal parameters of the organization and exercise of power in a democratic regime from the other non-legal state of power.

The legal science constantly maintains the legal and legitimate constitutional bases of state power and the typical manifestations of shadow illegitimate power in state institutions, the problem of their abuse of power as a way of going beyond legal imperatives or abusing public rights by public authorities.

The legal nature of power considered in the modern management trend of «ethicization» of public service, public administration for which appropriate «ethical infrastructure» [6, pp. 21–23]. Ethical requirements are a multiplier of meaning that determines the content of the moral dimension and the criterion of the legal limitations of the organization and functioning of power, directs the formation of a system of ethics-legal principles and standards of conduct and legal responsibility of subjects of authority [7; 8; 9, pp. 194–199].

The understanding of modern State power and the hierarchy of its attributes, institutions, functions and forms must begin with the analysis and identification of its legal nature, since it derived from human existence. Power is anthropologically a consequence of the social nature of man himself, a logical extension of his natural rights. The latter define a priori the legal boundaries of the exercise of power and the responsibilities of its subjects, including State and local authorities, which do not have natural rights but whose activities determined by them.

The recognition of the legal nature of public power stems from the priori and predominance of the idea of natural law over positive law, the phenomenology of which is the concentrated expression of the idea of legal limitation of state power. Let us recall, according to Cicero, first there arises a natural right corresponding to justice, social order, ancestral customs, and then the state and written law [10, p. 158].

The denial of the legal nature of public power, and in particular of its natural legal prerequisites in modern society, has the potential to lead power into disorganization and dysfunction, and society – to the loss of the decisive criterion of meaning, its perception and evaluation as power legitimate. To deny this proposition would mean the unsubstantiated dominance of a positivist judgment about the nature, boundaries, destination of power, its subjects, who exercise authority and perform public functions solely based on any arbitrarily proclaimed law, outside the legal principles and natural legal requirements for its adoption and content.

Power is a form of expression and a genetic extension of natural law by means of understandable arguments.

1. The source of primary power impulses is the individual.

2. Anthropological power in society arises independently of political structures (state, parties, etc.).

3. People's social activities include the characteristics of public power relations and it formed long before the State was established.

4. Natural law is essentially a system of natural existence and human development, so the right to public power must be recognize as a sine qua non of civilized forms of social life.

5. The normal development of the modern human being, society and the State is impossible outside the realization of this right.

6. Recognition of the natural legal basis for the exercise of public power is enshrined in the international legal standards of civilization. Art. 1-3. 21 The Universal Declaration of Human Rights affirms the right of everyone to participate in the administration of the State "directly or through freely chosen representatives», indicates the right of everyone to have equal access to public service, affirms the will of the people as the basis of representative power. Attests to the natural character of the primary source of public power).

7. The positive expression of public power in the constitutions in force in modern States does not invalidate or negate its natural legal basis, but legally provide for it. The Constitutions enshrine the principle of popular sovereignty, according to which the people are the only natural source and holder of power in a democratic society and provide for the exercise of power by the people.

Public power and the interests of society in the sphere of legal communication find themselves in two typological models of their interaction: power (despotism and modern totalitarianism) and legal (legal statehood). The legal basis of power, its legislative and constitutional procedures adjust the system of internal and external factors of political and legal globalization, which transform and legally restrict the sovereign rights of States [11, pp. 373–379; 12, pp. 123–130].

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