

Rule-making of the president of the Russian federation in the sphere of executive power

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Abstract: The article analyzes the legislative activity of the Russian head of state in order to implement his constitutional powers. It reveals the legal force of a decree of the President of the Russian Federation that compensate for the gaps in the law and published on issues of legal regulation, examines the status of the individual (non-normative) decrees and orders of the President of the Russian Federation. The authors draw special attention to the acts of the President of the Russian Federation issued in the sphere of executive power, emphasizing the fact that in this sphere of state activity the President of the Russian Federation has greatest prerogatives. Through the publication of decrees and orders the head of state coordinates and monitors the activities of the Russian Government as the highest executive authority of the country without being a leader of it by the Constitution. The article investigates the mechanism of implementation of such a management signal of the Russian President, as orders and instructions, as well as their legal nature and the importance to the effective functioning of the state mechanism.

Key words: Russian federation; Government; Executive power; Decrees; Orders

1. Introduction

The evolution of the institute of the Russian President is characterized by the progressive but steady growth of its importance in the system of state power and today a personal regime is the basis of the actual constitutional system of Russia. The President of the Russian Federation plays a special role in the mechanism of state power; therefore, he has a special competence specified in the Constitution of the Russian Federation of 1993 including all aspects of public activities. He controls the executive branch, acts as an arbitrator in disputes between the public authorities and, ultimately, determines the effectiveness of all government institutions of the Russian Federation. He controls the executive branch acts as an arbitrator in disputes between the public authorities and, ultimately, determines the effectiveness of all government institutions of the Russian Federation. Of course, most of the functions of the President including interaction with other public authorities are implemented through his enactments.

2. The main part

According to the article 90 of the Constitution of the Russian Federation the Russian President issues decrees and orders which should not contradict main and federal laws. These acts had been the subject of scientist-lawyers' research (Arzamasov

and Pevtsova, 2010; Kichalyuk, 2007; Kolesnikov, 1998). In the scientific literature decrees are divided into normative and non-normative (individual). Normative decree as a source of Russian law is the subject of research of many scientists, constitutional lawyers, and almost all of them emphasize its subordinacy (according to part 3 of the article 90 of the Constitution of the Russian Federation acts of the President should not contradict the Constitution and federal laws). However, it is possible that such wording allowed the Constitutional Court of the Russian Federation in the Resolution of April 30, 1996 № 11-P to state that the President being the guarantor of the Constitution of the Russian Federation and ensuring the coordinated functioning and interaction of bodies of state authority can issue decrees that fills gaps in the legal regulation on the issues that require legislative solution, provided that such decrees do not contradict the Constitution of the Russian Federation and federal laws and their operation in time is limited to the time prior to the adoption of the relevant laws (The decision of the constitutional Court of the Russian Federation of 30 April, 1996 № 11-P, 1994). In our opinion, if the Constitution defined the wording: "the acts of the President of the Russian Federation are issued on the basis of the Constitution of the Russian Federation and federal laws", it is possible that the supreme body of the constitutional control would have made a different decision. However, the so-called "a substitute law" decrees of the head of state may be accepted, in our opinion, only with the introduction of martial law or state of emergency on

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the territory of the Russian Federation because of the special legal regimes, the reaction of the head of state in changing the existing social relations can be more quickly in comparison with the parliamentary one. In this case we should not forget that the legislative process is more laborious and time-consuming in contrast to the process of the adoption of a decree of the President of the Russian Federation.

The activation of the lawmaking activity of the Russian President as "guarantor of the Constitution" was in the 90s of the last century. The absence of necessary legislative base was due to the social and political situation of the period under review, contributed to the fact that the gaps in legal regulation were complemented by presidential decrees. Previously, we expressed a judgment about the advisability of introducing in the Constitution the provisions concerning the Institute of delegated lawmaking, but today this need has disappeared, since there is no sharp confrontation between the authorities and, respectively, and the reasons for the competition of law and decree. The President using his constitutional right of legislative initiative actually performs the legal regulation of the most important public relations.

Non-normative decrees are issued on a strictly defined range of issues that are in the relevant order of the head of state (The decree of the President of the Russian Federation of February 5, 1993 № 85-DP). In addition, the heads of Federal executive bodies or structural divisions of the Presidential Administration take responsibility for the quality of draft decrees and orders of the President of the Russian Federation, their coordination with interested parties who are making these documents. Draft decrees and orders of the President should be made by a letter with an explanatory note including the substance of the project, necessary foundations, reference and analytical materials. A letter with an explanatory note is signed by the head of the Federal government, the head of the Presidential Administration of the Russian Federation or other officer responsible for the preparation of the draft decree or order.

The orders are the second most important legal act of the President of the Russian Federation. It is no coincidence that the article 90 of the Constitution enumerating the acts of the President first calls the decrees and then orders. This underscores the higher legal force of the decree against the order, regardless of its nature (normative or non-normative). Orders are issued on decisions of operational, personnel and organizational issues, as well as on work of the Executive bodies and the Presidential Administration of the Russian Federation. At the same time there are decrees of the President that are issued on the same issues with orders. For example, the Decree of 25 August 1998 № 988 contained two instructions to the Government and a recommendation to the Federal Assembly (The decree of the President of the Russian Federation of August 25, 1998 № 988), whereas, for

example, the Order of the President of the Russian Federation of 17 September 1998 № 343-OP is now null and void, orders to the Government had already contained six and five recommendations for the authorities of subjects of the Federation.

Hence, the question arises about criteria by which a presidential decree as one form of the instrument can be separated from his orders as a different form of the act. In our view, if all presidential decrees will be of a normative nature the need to establish normative and non-normative decrees will disappear: the draft documents that do not contain regulations will be handled only by the orders of the President. Law-making activity of the President of the Russian Federation, regardless of the alignment of political forces at a particular stage of Russian statehood, should contribute to strengthening the rule of law, to ensure the concerted functioning and interaction of not only state authorities, but all social structures of our society. Constitutional and legal culture is the foundation on which the state and law-making activities of the President of the Russian Federation should be built and stood.

Messages, requests, opinions, letters, treatment and program of the Russian President reasonably referred to as "other formal acts", of the head of state (Gabrichidze and Chernyavsky, 2003). However, they neither are constitutional, nor legally regulated with the exception of the message (the article 84, paragraph "e" of the Russian Constitution provides for the President's address annual messages to the Federal Assembly of the Russian Federation). The legal nature of this administration in relation to Executive bodies as the instructions of the President of the Russian Federation until is also uncertain. However, they are playing not the last but decisive role in the life of the state.

A study of the presidential addresses, the reflection of problems of legal and political importance, the implementation of them by the legislative and executive powers still remains relevant and significant although since the date of adoption of the current Constitution of the Russian Federation has been passed more than twenty years. This institution is contained in the basic laws of foreign countries. So, the President of the United States of America appeals to the Parliament with the annual message "About the state of the Union", which is actually considered as the President's proposed program of legislative activities of Congress. The President of the French Republic is authorized to apply to Parliament and the nation on significant threats to the statehood and of the measures taken. The presidents of the Latin American and other countries with strong presidential institution have traditionally this right. The similarity of the Russian President's messages to messages of foreign heads of state is that they don't need someone's approval, we think; the difference is in a greater political coloration.

The legal nature of such management signals as the instructions of the President of the Russian Federation in relation to executive bodies recently

also has remained uncertain. However, they play a significant and at times a decisive role in the life of the state.

The stability and quality of functioning of system of executive power largely depends on how effectively Government interacts with the President (The government of the Russian Federation, 2005). The mechanism of relations of the Government and head of state is based on a combination of regulatory and coordination principles as these bodies operate in a single legal space, ensuring the implementation of state policy in the sphere of executive power. Considering all the realities of Russian life and possibilities of the President of Russia to influence significantly the Russian Government by the Main law of the country we can state that the Government is generally pro-presidential. This is confirmed by the fact that the President of the Russian Federation can be a chairman at the meeting of the Supreme body of Executive power in accordance with the Constitution. In addition, the President and the Government ensures the implementation of powers of Federal state authority throughout the territory of Russia. The system of executive power at the federal level is regulated on the basis of the Decree of the President of the Russian Federation of 9 March 2004 № 314 "On the system and structure of federal executive bodies" (The decree of the President of the Russian Federation of March 9, 2004 № 314). In this regard, the system of executive power in the Russian Federation is a structured set of bodies of state authority with powers of executive, administrative, regulatory, supervisory and coordinating nature, presented by two levels (federal and regional).

According to the article 115 parts 1 of the Constitution of the Russian Federation normative decrees of the President are the basis for issuing acts of the Government of the Russian Federation. Many presidential decrees have a complex nature and contain both legal norms and operational requirements of a specific task (Gabrichidze and Chernyavsky, 2003). Therefore, we believe that subordinate relations of the President and Government are most visible on the compulsory implementation by the supreme executive authority of the President's instructions. We agree with the position of the constitutional lawyers who believe that this rule could not be considered as limiting of the status of the Government and is a result of the implementation of the principle of division of powers and separation of powers between the state authorities (A commentary on the Constitution of the Russian Federation, 2009).

During his presidential term Dmitry Medvedev has addressed the problem of state discipline and legality in the sphere of executive activities but the question arose on March 16, 2010 at a special meeting with members of the Government and the heads of several regions devoted to control execution of orders of the head of state in 2009. According to the chief of Control administration of the President "analysis of the state of discipline demonstrates a lack of coherence, incompleteness

issues, which leads to unconditional delay of decisions of issues set by the President". It was the period when Dmitry Medvedev demanded to dismiss the officials responsible for the failure of his instructions (Kommersant [Electronic resource]. URL: <http://www.kommersant.ru> (30.04.2016)).

On March, 2011 the President of the Russian Federation issued a Decree № 352 "About measures on improvement of organization and execution of the instructions and directives of the President of the Russian Federation" (On measures to improve the organization and execution of the instructions and directives of the President of the Russian Federation, 2011), which came into force in July 2011. The decree differentiated signals to orders and instructions identifying the mechanism of their execution. However, only on 16 of August 2011 the Russian Government approved amendments to the "Standard regulations of interaction of Federal bodies of Executive power" (On amendments to certain acts of the Government of the Russian Federation, 2011) describing all the features of execution of the instructions and directives of the President of the Russian Federation.

Instructions are contained in the decrees, edicts and directives of the President of the Russian Federation or issued on forms with the word "Order in the prescribed manner". In addition, they can take the form of lists of instructions of the President. They personified responsible for the execution of orders. Preparation of draft orders (lists of instructions) of the President of the Russian Federation is made by the Administration of the President and approved by the Chief. The Administration of the President of the Russian Federation is a state body formed by the President according to the Constitution of the Russian Federation (c. "I", article 83). According to "Regulations on the Administration of the President of the Russian Federation" approved by the decree of 6 April, 2004 the Administration provides activity of the President of the Russian Federation and controls over execution of its decisions (On approval of the Regulations on the administration of the President of the Russian Federation, 2004).

The instructions of the President of the Russian Federation are issued in the form of resolutions. Thus, any written resolution of the head of state on any document is an instruction with an obligatory response. Unlike order, where the presidential Administration has to set deadlines of instructions and other details, the wording of instructions is a will of the President. The right to set the deadlines of instructions is given to the head of the Presidential Administration or the head of the main control Department. An instruction containing the statement "urgent" shall be executed in 3 days. The statement "promptly" involves a 10-day period of execution of the order. If the deadline in the order is not specified it is enforceable within the period of one month from the date of it's signing. If the execution of the order within the prescribed period is not possible for objective reasons the head of the Federal body of Executive power which is the head executor presents

to the Government proposals for the extension of time stating the reasons of delay and the planned date of execution not later than 10 days prior to the expiration of the period set for execution of the order. If the period of execution of the order exceeds two months, proposals for updates should be submitted to the Government no later than 30 days from the date of signing of the order. The decision to adjust the period of execution of the order shall be notified to the head contractor within 3 days from the date of adoption of this decision. The term of implementation of urgent and operative instructions will not be extended.

The executor has to submit a report to the President of the Russian Federation no later than the deadline which should include concrete results of execution of the order or instructions of the President.

For example, following the meeting of the RF Government on the issues of implementing orders of President of Russia, Prime Minister Dmitry Medvedev ordered Deputy Prime Minister Sergey Ivanov, Minister of transport I. Levitin and the President of JSC "Russian Railways" Vladimir Yakunin to investigate the situation in Kemerovo region with the removal of coal and to submit proposals to solve this problem in three days.

For implementing an order of the President of the Russian Federation on the situation the Government submitted a report stating that JSC "Russian Railways" and the administration of Kemerovo region has taken the necessary measures to ensure timely removal of goods of coal industry of the region (The President of Russia [Electronic resource]. URL: <http://kremlin.ru> (accessed 30.04.2016)).

If as a result of execution of the order or instructions of the President of the Russian Federation a draft federal law was introduced to the State Duma of the Federal Assembly of the Russian Federation or the act of the RF President or the RF Government was issued that instead of the report to the head of state in Control administration of the President of the Russian Federation an information about the execution should be given.

In order to implement his annual addresses to the Federal Assembly of the Russian Federation the President regularly made lists of instructions for the Government assigning people responsible for their timely execution. Thus, anyone with an access to Internet resources on the official website of the President of the Russian Federation in the "President's instructions" can see the process of "movement" of such instructions from beginning to end (The President of Russia [Electronic resource]. URL: <http://kremlin.ru> (accessed 30.04.2016)).

In the presidential address to the Federal Assembly of the Russian Federation of 2010 in the Government of the Russian Federation words "instruction", "instruct" often used. For example, "I instruct the Government and regions to develop a procedure for granting free land plots for construction of houses or cottages or for the third

and subsequent child", or "I instruct the Government to modify the legislation of the involvement of noncommercial organizations in providing public social services" after that the President asserted the corresponding list of instructions (The President of Russia [Electronic resource]. URL: <http://kremlin.ru> (accessed 30.04.2016)). The message of 2011 did not have administrative commands for Federal executive authorities and executive authorities of subjects of the Russian Federation. All "innovations" sounded like initiative suggestions without any imperative. Nevertheless, on December 28, 2011 a list of instructions on implementing the presidential address to the Federal Assembly of 2011 was approved including twelve positions (The President of Russia [Electronic resource]. URL: <http://kremlin.ru> (accessed 30.04.2016)). By this document the head of state has clarified its will against the supreme executive body of state power determining, in our opinion, that the true essence of the annual message is addressed to Parliament and not the Government according to paragraph "e" of the article 84 of the Constitution. Since 2012 in the President's address to the Federal Assembly of the Russian Federation we do not see a command tone in relation to the executive power. In the message of 2013 the head of state focused attention on the primary tasks of public authorities, using such words as "ask", "offer", "turn". And only once was: "I instruct the Government together with the Russian Academy of Sciences to carry out the adjustment of the perspective areas of science and technology" (The message of the President of the Russian Federation to the Federal Assembly of December 12, 2013).

It is said that the Russian President in the message doesn't point to the supreme body of executive power what it should make; it is enough to sound the priority directions of the next perspective. Nevertheless, summing up the speech the head of state has noted: "The message is the strategic agenda of development of the country and everything that is declared has to be executed without any reservations, references and departmental interpretation" (The message of the President of the Russian Federation to the Federal Assembly of December 12, 2013).

In the Constitutions of some foreign countries there is the right of presidents to address messages not only to the parliaments but to the people of their countries. However the Russian fundamental law of the head of state does not consist this prerogative, as practice shows, the President of the Russian Federation addresses unscheduled official message both to Parliament and to the population of the country. A vivid example is the extraordinary speech of the President of Russian Federation Vladimir Putin on joining of Crimea to the Russian Federation to the chambers of the Federal Parliament, representatives of regional authorities and civil society (Message of the President of the Russian Federation of March 18, 2014, [Electronic resource]. URL: <http://www.kremlin.ru/news/20603> (24.06

2016)). Therefore, we think the above messages, on the one hand, are program and political acts, which can be attributed to acts of "soft law". This term is used in international relations; "soft law" is a new set of rules which are very diverse in its content, structure, sources and means of enforcement. In our view, there is a need for special legal regulation of the legal nature of the Institute of the message of the President of the Russian Federation and not only annual, addressed to the Federal Assembly. It is advisable to adopt the Federal law "On the messages (appeals) of the President of the Russian Federation", which will conclude the types of messages (requests) of the head of state, procedure of their preparation, implementation and forms of control over their execution.

The most important documents of programmatic and political nature are concepts, strategies, programs and doctrine. Most of these acts are approved by decrees of the President of the Russian Federation. The head of state because of its constitutional status defines the basic directions of internal and foreign policy, along with the messages, his position is in these documents. Strategy is the art of planning the guidance based on correct and far-reaching projections (Ozhegov, S.I. [Electronic resource]. URL: <http://www.ozhegov.ru> (accessed 30.04.2012)). The strategy of state national policy of the Russian Federation for the period until 2025, the President of the Russian Federation approved by decree of the nineteenth of December, 2012, in which the Government of the Russian Federation gave a number of instructions on the implementation of the Strategy and the bodies of state power of subjects of Federation and local governments is recommended to use the provisions of the Strategy in their activities (The decree of the President of the Russian Federation of December 19, 2012, № 1666). The national security strategy of the Russian Federation until 2020 was approved by decree № 683 from the thirty-first of December, 2015 (The decree of the President of the Russian Federation of December 31, 2015 № 683). The national government policy and national security earlier was a concept, not a strategy. Said suggests that the strategy of importance is higher in the hierarchy of presidential program-political acts in comparison with the concept. The concept is a system of views on something, the basic idea. For example, the concept of a national system of identifying and developing young talents, approved by the President of the Russian Federation of the third of April 2012, was not officially published and also there was not a decree approving it. Similar is the situation with the foreign policy concept of the Russian Federation approved by the President of the Russian Federation on the twelfth of February 2013 and other concepts. Whereas prior to 2011, all concepts were approved by decrees, giving them additional importance; now the same concepts are not published in official sources because they do not have the characteristics of the normative document. We can read them either in reference and legal

systems, or on the website of the President. It turns out that the decree approving the strategy of the regulatory legal act is obligatory for publication and execution and if the concept is not approved by the decree, is not it? In our opinion, for such documents that have important social and political significance, the necessity of authorization of the regulatory decree of the President of the Russian Federation exists. Perhaps these decrees ought to be given a special status "orders issued by software".

The doctrine in its etymological meaning is very close to the notion of "concept". However, unlike the latter, the doctrine perpetuating the official views of the Russian President in a particular sphere of public life, establishes a set of rules for their implementation. The military doctrine of the Russian state has a special role approved by the decree of the President of the Russian Federation of December 25, 2014 (The military doctrine of the Russian Federation, 2014).

In the lawmaking activity of the President of the Russian Federation different kinds of programs have a large proportion (The decree of the President of the Russian Federation of December 24, 1993 № 2284). And, despite the fact that finalization and implementation of national programs entrusted to the highest executive authority - the Government of the Russian Federation, it seems, the programs authorized by the head of state are enforceable as a matter of priority from the point of view of financial security.

The President of the Russian Federation, the Chief of his Administration or the Chief of Control administration of the President decide to remove control of orders or instructions of the President of the Russian Federation. Only the President decides to remove control of the order if its deadline was extended by him.

In the dictionary of S.I. Ozhegov "resolution" is an oral or written order approved as a result of discussion of any issue (Ozhegov S.I. [Electronic resource]. URL: <http://www.ozhegov.ru> (accessed 30.04.2012)). In some important resolution in 2010 the Kremlin gave a separate written instruction but other written one mostly was considered technical and in any case not legally significant (Kommersant [Electronic resource]. URL: <http://www.kommersant.ru> (30.04.2016)).

3. Conclusions

As practice shows even today the statements of the President of the Russian Federation containing imperative instructions are perceived as a guide to action by officials although oral instructions of the President and responsibility for non-execution they are not regulated by law.

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