

**PRESIDENTIAL POWERS IN THE SYSTEM OF STATE
SUPERVISION IN THE MANAGEMENT SPHERE OF THE
RUSSIAN FEDERATION.**

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Abstract:

1. Rationale is determined by increase of convergence processes in constitutional and administrative and legal regulation of public administration sphere in democratic states, which is one of legal indications of trends to “rationalized parliamentarism” practice development. The practice of perception and reorganization of classic “triad” principle of branches of government and “checks and balances” system in state administration is featured with significant country-specific peculiarities and, at times, high dynamism in states with a mixed government, and is observed, firstly, via studies of modifications of arrangement and status of individual responsibility, politico-legal institution of the chief executive.

2. Aim of the article is to reveal, based

on the study of development of president status regulation by constitution and administrative and legal mechanisms, modifications of “separation of powers” system under conditions of mixed government, i.e. semi-presidential republic in the Russian Federation, related to confirmation of constitutional and legal fundamentals of presidential power as an independent branch, its identification with executive (partially) and control (mainly) branches.

3. The leading approach to the study of this issue is as follows. Mechanism of interaction, competition (but not confrontation) and “mutual circumscription” of authorities is ensured by corresponding organizational and legal forms of their activities. In order to ensure the effective functioning of the “separation of powers” system, it

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is necessary to consider that each of the branch of government are realized through the same organizational and legal forms, that is, also, by means of rule-making and on the basis of positive law enforcement, and both law enforcement and control activities. At that, functions conforming with lawmaking, law enforcement and administration, or control forms of each branch activities are implemented only within the ranges and framework of the corresponding branch purposive appointment. [3. p. 24].

4. Results.

A). Due to convergence of constitutional and administrative and legal regulation, in the scientific community, there sometimes sound diametrically opposed judgments on future of structure of state based on division of powers: from complete negation of “separation of powers” principle to overuse of powers “division” into branches, significant extension of classic “triad” is proposed. It seems, that overuse of the power division, acceptance of multiple centers of power in state practice may inspire trends towards weakening of state, which is unwelcome for enforcement of rights and freedoms. However, some extension

of classic system is feasible. Thus, regarding mixed forms of government, it is worthwhile to agree with necessity for reinterpretation of classic “separation of powers” concept, in particular, of extraction of control branch of government.

B). State control as an organizational and legal form of activity is inherent to each branch of power. Among the variety of constitutional control, there should be distinguished: Presidential control, parliamentary control, judicial control and control in the system of executive branch. However, as the branch of government in a presidential-parliamentary Republic, the constitutional control is identical to presidential status. In control powers, there is the great (exceeding) force of presidential powers concealed in semi-presidential republic as compared to presidential powers in classic presidential republic.

C). In the course of operational (practical) activities, heads of states (chief executives), in most countries, exercise their constitutional powers, relying on apparatuses, not constitutionally established structures which status is rather based on

administrative regulations, or administrative discretion rights. In Russia, the Executive Office of the President (similar to the corresponding organization in some other countries) relies on constitutional provisions, which is more corresponding to the requirements of constitutional system with regard to remarkable factual significance of the specified institutions for mechanism of individual responsibility powers exercising.

D). Presidential control in the Russian Federation, by its nature, is a form of constitutional control. The peculiarity of presidential branch of power in Russia (as a semi-presidential one) is that it is a synthesis of three foreparts: The status of head of state (highest representative of the Russian state and arbitrator of constitutionally established authorities); status of president as the chief executive; constitutional control powers of the President.

E). In composite (federate) states, the powers of the president in area of constitutional control of federate relations “vertical structure” are highly important to ensure unity and territorial integrity of state, prevent and preclude conflicts in legal system. In Russia, in

this framework, the activity of the RF President is rather important, including the one based on interaction with courts and Russian procuratorial bodies. The Constitution of the Russian Federation (1993) envisages a wide range of restrictions of presidential control regarding the subjects of the Russian Federation, which are ensuring effect of constitutional state and federalism principles announced in the Constitution. F). Maintenance of balance between constitutional and administrative regulation of public administration sphere in a democratic state is the condition of moderate balance of powers in constitutional “separation of powers” system.

5. Materials of the article may be useful when improving legislation and practice of states with a mixed form of government (semi-presidential republic) for development of constitutional control academical doctrine, for improvement of heads of states statuses under conditions of mixed forms of government.

Keywords: “correlation between constitutional and administrative laws”; “State administration and administrative law”; “state control”; state supervision

“administrative control and constitutional control”; presidential control in the Russian Federation; entities under presidential control in the Russian Federation; forms and mechanisms of presidential control in the Russian Federation; presidential control and federalism in the Russian Federation; presidential control, government form and “separation of powers” system in the Russian Federation.

1. Introduction (problem statement, relevance, perspective of demand among readers, etc.).

Expansion of interdisciplinary research is a trend in modern law that reflects not only the processes of the convergence of two global sectors: public and private law sector, but also the processes of interpenetration of “small branches” within each identified global one. In particular, it is obvious that due to the general for all the modern states trend towards the reinforcement of the executive branch in the constitutional system of “separation of powers”, there is an expanding interpenetration of constitutional and administrative laws in the system of public law branches. Thus, there are published the united textbooks

concerning constitutional and administrative laws (in the UK, for example) [1]. In Russia, constitutional and administrative branches of law retain their autonomy in the educational process: specialized constitutional and administrative law textbooks are published separately. In the Russian universities the corresponding disciplines are also taught separately. However, the Russian Education and Science recognize that there are constitutional and administrative laws norms interpenetration [2] and this gives rise to a daunting question: what modifications, in this regard, the nature of the most important constitutional, administrative and legal institutions is subject to, in particular, such a key government institution as the head of state.

The relevance of the article is associated with the statement of not only scientific, but also practically important problems; it is determined by the high level of interest in the Presidency Institution of Russia, and in the constitutional definition of the content and limits of presidential power in Russia. The issue gets more and more relevant in view of upcoming 2018

regular elections of the President of the Russian Federation.

The aim of the article consists in the following. Firstly, to accomplish a study of constitutional and legal fundamentals of “state administration” and “state supervision” notions in the Russian federation. Secondly, to demarcate and qualify the “state administration” notion in terms of constitution and administration; to define constitutional control as an organizational and legal form of activity performed by each branch authorities in a democratic state: due to the fact that such traditional kinds of constitutional control are distinguished therein: parliamentary control, executive branch control, judicial review of constitutionality. Thirdly, to define political and legal nature of presidential control in Russia as a variant of constitutional control, that is the control implemented within the “separation of powers” system. The aim is also consists in an attempt to express author’s views regarding peculiarities of “separation of powers” systems modifications in states with “mixed” form of government, including those in Russia in terms of modern academical discussion on rethinking of classical

“separation of powers” conception, on extraction of control branch of government, in particular. In this regard, the article sets tasks to reveal objects, forms and content of control (supervisory) powers of head of state within the state control (supervising) system, as a branch of government in terms of qualification of constitutional system features in the Russian Federation. Also, there set such tasks to define the content of presidential control in Russia in area of the executive branch functioning; controlling powers of the President of the Russian Federation in area of federal relations associated with enforcement of adjudications on cases of federal judicial constitutional control regulation (judicial review) of legislation of the RF subjects; presidential powers in area of cooperation with the legislative branch on issues of legislative regulation of state control (supervision). The relevant quality for the RF practice is the one of legislation development and practice of constitutional powers of the President in area of national safety, state sovereignty, counterterrorism measures assurance, and actions against terrorism ideology.

The novelty of the article is resulted from the raised issue, since the study of the control powers of the President of the Russian Federation are relatively rare and poorly elaborated in Russian and foreign science. The study of the topic is associated with: new tendency in scientific researches within the constitutional legal studies and political science in the field of the mixed government models in the modern world, such as, in particular, the variant presented by presidential-parliamentary government; and with the issues of presidential government branch division and its identification with the control activities; as well as changes in understanding of the possible models of relationships between presidential power branch with traditional authorities.

2. Methodological Framework (Methods and approaches (the novelty of the research methods)).

The methodology is based on the author's comprehension of the necessity for functional (based on combination with functional analysis method) understanding of the "separation of powers" concept created by its founders J. Locke and Ch. L. Montesquieu. In

order to ensure the effective functioning of the "separation of powers" system, each branch of government is required to be realized through the same organizational legal forms, that is by means of rule-making as well, and on the basis of administration of positive law, and both law enforcement and control activities" [3. p. 24]. For example, the entities, constituting each of the branches of government, have the right to exercise the rule-making (i.e., to issue generally binding rules of conduct); or there are such kinds of the constitutional control as presidential control, parliamentary control, control in the system of the executive branch, judicial control as a variant of constitutional control. At the same time, the rational structure of "separation of powers" mechanism implies that corresponding organizational and legal forms of activity (i. e. lawmaking, law enforcement and control) are performed by each branch of government (in mutual circumscription order) within the limits and from the perspective of the strategic purpose of the relevant government branch. Only under this approach

"one can understand, how competition interaction (not

confrontation) and “mutual containment of authorities” mechanisms functions, namely: by means of corresponding organizational and legal forms of their implementation. Such constitutional and legal understanding is important not only theoretically, but also it facilitates perfection of the practice of democratic constitutional state organization in the modern world.

3. Results, conclusions.

The features of the constitutional regulation of the scope and quality (legal force) of the powers of government branches authorities, which (powers) are related to corresponding organizational and legal forms of activity [3. p. 24],

consist the of interaction, competition, “checks and balances” national features (the ones of nation-states) in “separation of powers” systems, cross-cultural features of “separation of powers” system model and the forms of government. According to the current Constitution of the Russian Federation (adopted in 1993) state supervision in the area of management, which is carried out by the President of the Russian Federation, is the highest form of control in the system of public

authority in Russia, not administrative but constitutional by nature.

4. Discussion.

1. Constitutional and legal fundamentals of “state administration” and “state supervision” concepts definitions in the Russian Federation. Narrow and broad view of state administration and state supervision mechanism.

Before 1990s, state supervision in the Russian scientific theories, laws, educational process in universities and public practice was mainly identified with the function of government. In the context of administrative law, control is characterized in the system of the main state administration functions. In accordance with this approach, control is defined as “the establishment of compliance or noncompliance of the actual condition of state administration system and its structure with the required standard and level, study and evaluation of the overall functioning of state structures, as well as specific actions of the agents of management; the establishment of relations between the planned and the performed in the state administration system” [4, p. 41].

Otherwise, control is understood as a “supervision over the quality of management, identification of errors in management and the extent to which management actions and administrative acts conform with the principles of legality and feasibility”. “The supervision implemented, as a rule, only to ascertain compliance with the legality of the activities (actions, decisions)” is a type of control [ibidem].

In the new period, there has formed another understanding of state supervision. It is characterized as a system of discipline and the rule of law and the system of state control: the last usage better reflects a new understandings of the status of state in economy, which are related to the proposals “to replace the system of direct state administration with a state control system, transforming necessary elements of direct management into it” [5, p. 457]. Thus, according to A.P. Alyokhin, A.A. Karmolitsky and Yu.M. Kozlov, “state supervision is a function closely related not only to the ensuring of discipline and rule of law, but also to state control. The control carried out by its characteristic methods and in its inherent forms ensures the regime of management

relations subjects, public and private proprietary organizations”. According to the criterion of implementation subject, the authors distinguish such types of departmental control as “control of representative bodies, authorized representatives of the Russian Federation President’s executive office, executive authorities of general competence, state supervision carried out by deputies in the authorities of joint stock companies, established on the basis of state ownership or in the presence of its share”. State supervision “is arranged and implemented taking into account the peculiarities of the legal status of companies, institutions and organizations of the public and private sectors of the economy and other spheres” [ibidem].

The Russian theories of state and law suggest similar views, justly pointing at the fundamental differences between the official understanding of the concept of state administration before and after the adoption of the Constitution of the Russian Federation in 1993. Experts point out that, “the word group “state administration” used to be understood in the restricted sense – just as the activities of state executive authorities. Only those

executive authorities (governments, ministries, departments, executive committees) which were formed and controlled by state executive authorities (councils of workers' deputies of all the levels) were recognized by state administration bodies. The Constitution of the Russian Federation, abandoning the term "state administration bodies", actually deviated from a narrow understanding of management as an attribute of solely executive authorities.

However, the state administration methods have different shares in the legislative, executive, prosecutorial and banking activities. This is primarily due to the fact that management includes not only management decision making, but also direct managerial influence on a management object, that is, the execution of the decision. Legislative authorities are engaged mainly in management decisions in the form of issuing the laws and other legislative acts; to a certain extent their actions may be considered to be the control over their execution. The activities aimed at the implementation of the decisions taken constitute the insignificant scope of the legislative work. This also refers to judicial authority and public

prosecutor's office". [6 p. 527-528]

According to a broad view of state administration mechanism, we should distinguish state supervision carried out in the systems of legislative and executive authorities of different levels, courts, banking system, public prosecutor's office and others. The drafters of "On the basis of state supervision and municipal control in the Russian Federation" (para. 2 of Art. 1 of the draft Federal Law) [8, p. 1-2] also proceed from a broad approach to the definition of state supervision system that gives grounds for concluding that control legislation concept, in its basic version concerning the methodology for determining the range of state and municipal control subjects and content of control as a function of public authorities, was formulated. However, as regards more specific issues (the establishment of optimal methods, limits and monitoring procedures), they are in the process of the ongoing search for an optimal model of legislative regulation.

The improvement of the administrative and legal principles of the Russian state supervision and municipal control authorities' activity in the sphere of relations with legal entities and

individual entrepreneurs, including those associated with the optimization of the Federal Law No. 134-FZ of the Russian Federation, is linked in particular to the need for better integration of the requirements and standards set out in international instruments into the domestic Russian legislation. Thus, the requirements of “Safety of Products, Processes of their Production and Circulation” Federal Law, other legal norms concerning technical regulation in the countries of the Eurasian Economic Union, in the member states of the Commonwealth of Independent States [8, p. 189], the Customs Union, and others are to be taken into account while drafting the administrative legislation of Russia (as well as other sectoral laws). There need to be considered in the Russian domestic practice, first of all in the state and municipal service law, etc.: international requirements concerning the behavior of officials (implementation), provisions of the International Code of Conduct for Public Officials, adopted 12th December, 1996 by the UN General Assembly [8, p. 178]; further development of anti-corruption laws in the Russian Federation on the basis of international anti-corruption

conventions, which Russia acceded to – the UN Convention against Corruption of October 31, 2003; Criminal Law Convention on Corruption of Council of Europe of January 27, 1999; implementation of 26 recommendations of GRECO (the Group of States against Corruption) in relation to Russia, and others [8, p. 175-176].

In the context of harmonization with the approaches in international law, recognized by Russia, it is advisable, in particular, among other things, to assess paragraph 4 of Art. 1 of the “On protection of the rights of legal entities and individual entrepreneurs in the implementation of state supervision and municipal control” Federal Law No. 294-FZ as regards the very long “list” of exemptions from the application sphere of the Federal Law No. 294-FZ, which was confirmed and somewhat extended due to changes in the Act of February 22, 2011 (the provisions on inspections carried out by heat supply companies, etc).

The optimal design of state supervision constitutional and legal mechanism is significantly important in the system of public and legal control in any state.

State supervision is the system of the highest organizational and legal forms of control activity at national level, consisting a constitutional “separation of powers” system focused on the implementation of compliance assessment and enforcement of control associated with the implementation of the norms of constitutional law by constitutionally established authorities and officials. The following types of constitutional and incorporated in the “separation of powers” system of state supervision are represented at the federal level of Russia: control carried out by the President of the Russian Federation; parliamentary control carried out by the Federal Assembly of the Russian Federation; constitutional control carried out by the Government of the Russian Federation and compliance assessment carried out by the Constitutional Court of the Russian Federation. Objects and implementation mechanisms (forms, procedures) of each of these types of constitutional control have their particularities.

The study of the supervisory powers of the President of the Russian Federation attract particular interest.

There are relative few researches

dedicated to presidential control in the modern Russian jurisprudence are relatively few in number. In the most of them, it is qualified as a variant of state supervision [9]. It seems to be relevant to study presidential control as a kind of constitutional one: using the characteristic of the constitutional control powers of the President of the Russian Federation, it's possible to identify the specific features of the constitutional concept of "separation of powers" in Russia, i.e. a mixed form of government in Russian Federation. The following paragraphs are devoted to this problem.

2. Constitutional and legal nature of state supervision performed by the President of the Russian Federation. Presidential control as an element of Russian constitutional model of “checks and balances” system.

With regard to the study tasks, set in this article, there are quite few publications in Russian legal science. However, there are an amount of works on the RF President status, based on other methodological approaches: books and scientific articles related to

analytical consideration of the Russian Constitution provisions (1993) and other laws on the status of the RF President in terms of position ascertainment for the President in the “separation of powers” system as the triad of branches of government [10, 11, 12]; related to comparative analysis [13, 14], to history the President institution establishment in Russia [15, 16, 17] and to problematic issues of the RF President activity practice [11, 18, 19, 20], to interrelations between the RF President and other branches authorities [21, 22], etc. Studies of the President, related to the “state supervision” subject, are sporadic, considering monographs. Thus, the corresponding subject is covered in book by A.M. Tarasov [9]. Along with that, this work is based on methodological approach focused rather on administrative and legal context, the author relies on idea that: “the specificity of presidential control of subjects powers performing thereof is determined by the powers of the President as the head of state, who does not belong to any branch of government and takes strategic status in the system of all government authorities. Strategic powers of the President are also extended to control

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functions performing” [9, p. 77]. As a result, the author of the book is more concentrated on definition of presidential control as administrative control, and comes to the conclusion, that: “Presidential control serves not only as administrative control, but also as financial one. Therefore, it may be defined as universal and multi-plane instrument not only within the system of state supervision, but also within the system of public administration” [9, p. 80]. Such approach is important, but not the only one possible. This article represents the study of presidential control in the terms of modification of ideas on mechanism of “separation powers” system constitutional model in states with mixed form of government, in modern Russia, in particular.

In Russian legal science, various points of view on constitutional concept of the RF President in “separation of powers” system are suggested. The controversy is based on comparison of Article 10 and paragraph 1 of Article 11 of the RF Constitution, 1993, where certain uncertainty of legal understanding is discovered. Thus, in Article 11 of the Constitution, the President of the Russian Federation is

identified among the authorities executing state power along with the Federal Assembly (the Federal Council and the State Duma), the Government of the Russian Federation, courts of the Russian Federation; and Article 10 of the Constitution determines that state government is executed on the basis of division in legislative, executive and judicial branches” [9, p. 14-15]. Following the logical assertions, various conclusions are made.

Thus, many authors presume that the RF President is not involved into any constitutionally established branch of government. This position is the most close to the one formulated by B.N. Yeltsin when he presented project of the Constitution, according to which: the President is arbitrator of authorities. According to another approach: The RF President belongs to one of three branches of government determined in Article 10 of the Constitution, i.e. The President belongs to the executive branch of government [9, p. 448]. Thus, according to M.V. Baglay: “The analysis of the RF President and the Government powers gives reasons to consider the RF President in particular as the chief executive, not the Chairman of the

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Government or the RF Government in general. Therefore, when it is said that the RF Government is the highest body of executive power, it is necessary to take into account certain conventionality of such assertion. It may be considered as the highest body of executive power in the sense that it is the only collective entity having competencies in the area of executive branch and right to administer all executive branch bodies” p13, p. 62-63]. O.E. Kutafin expressed similar opinion: “although the RF Constitution do not give a straight and unambiguous answer to a question on what branch of state power does the President pertain to, presidential power by its legal nature is a part of the executive branch, and the President, in the first place, is constitutional authority of the executive powers exercised by the RF President in cooperation with the RF Government and other bodies of state administration” [10, p. 321]. With regard to the analysis of the history of institution of the President in Russia, L.A. Okun’kov displays quite different concern: even before the RF Constitution was adopted in 1993, in the preceding law “On the President of the RSFSR” No. 1098-1 of April 24, 1991 (expired now) [24], 14

powers of the president were enshrined (Article 15), which laid foundations of institution of the President in Russia combining two main components of his status: actual (valid) head of state and the constitutional chief executive” [11, p. 13]. According to data of study by L.A. Okun’kov, at the Constituent Assembly in the summer of 1993, with respect of presentation of presidential project of the Constitution, “one of its authors, S.S. Alekseev characterized the new content of presidential power as follows: “The Head of the State is the Head. His responsibility is integrity of the State. He takes measures to ensure operation of the state apparatus, to prevent various crisis situations, and directly curates the Government. The Federal Assembly is the laws. The Government is the administration. Courts are justice” [11, p. 17]. Generally, according to conclusions of L.A. Okun’kov, in the Constitution of 1993, there was implemented the idea to elaborate the model of strong presidential power “which was based on the classic doctrine of “separation of powers” with leading and coordinating role of the Head of the State” [11, p. 16]. Along with research of the RF President status within the framework of classic

“separation of powers” concept based on distinguishing the “triad” of branches of power, a number of Russian jurisprudence researchers define the Russian President status on the basis of modified concept of “separation of powers” system, i.e. more coarse division (fragmentation, differentiation) of branches of power: on the ground of distinguishing four (not three) or even more branches of power. Thus, the whole range of Russian authors suggest that reference should be made to presence of Presidential power as an independent branch [25, p. 219; 26, p.298-299; 27, p. 378]. As was reported by Ye.I. Kozlova: “One may not to overemphasize the concept of “division of powers” in three branches. There is the presidential one also. The term “presidential power” gained legal confirmation in Russia in decrees of the President on the Standard (flag) of the President and on the Sign of the President, where it defined as a symbol of presidential power” [10, p. 320]. It is of interest to note that although Article 10 of the RF Constitution of 1993 denominates only three branches of power, but one of the authors of the existing RF Constitution S.M. Shakhray defines wider range of

authorities which importance in the system of power gives reasons to associate them with independent branches of government [28]. Among those constitutional state authorities in Russia “not included in the system of executive, legislative and judicial branches of government”, S.M. Shakhray identifies such as: “The Prosecutor General - Prosecutor office, the Central Election Commission, the Accounts Chamber, the High Commissioner for Human Rights, the Central Bank” which, according to S.M. Shakhray, do not pertain to any (*of the three – italics by O.J.*) branch of power”[29]. The author suggests that: “At their formation, principle of “two-key” principle is applied, will of the President only is not sufficient, as well as will of the Parliament is not enough too: the President introduces, and the Parliament approves. Correspondingly, independence of these, as they are called, bodies with discretionary powers is guaranteed” [29]. It seems that excessive division of powers, acceptance of multiple branches of power in state administration practice may inspire trends towards weakening of state, therefore, in the statement above, the

focus should be rather on the “two-key” principle, than on branches of power multiplicity.

There are other judgments are suggested too. Thus, it follows the studies of well-known Hungarian lawyer and politologist A. Sajo that the question is not only about the number of branches of power. Optimal structure of “separation of powers” depends on various factors, including “party system, election system, gravitas of public administration”. Separation of powers has no effect if the parties not strong enough (in terms of multi-party system development). According to Sajo: the risk of abuse of power “consists in determining impact of any party or party group (*simultaneous - O.J.*) on every branch of power” [35, p.104-107]. In opinion of doctor of law Yu. Skuratov, which he formulated in the early 1990s: “The peculiar importance of the presidency institute for Russia laid in the fact that, at separation of powers, the President began to execute key functions for state mechanism coordination. Under conditions of lack of powerful political parties ensuring (via their representatives in different government institutions) pursuance of common

policy line), the President's activity on coordination of legislative, executive and supervision function efforts is highly necessary" [36, p.5].

The corresponding opinions are very important for their consideration, but do not except discussions on classic concept. With regard to the presented stipulation on inadmissibility of excessive centers of power, one should agree with the authors who suppose that search for legal understanding of "separation of powers" constitutional system in Russia is not closed with statement of Article 10 on the triad of branches of power. Subject to the provisions of the Russian Constitution, the conclusion "The doctrine and practice of the separation of powers are being modernized", to which professor V.E. Chirkin came in his comparative study of the state leaders institutions (of Russia, France and other states with a mixed form of government), seems to be fair [30, p. 69-70]. He points out that "It seems that in the context of presidential-parliamentary government a special branch of government – presidential power has been already allocated. The conception of the special branch of presidential power (in legal categories of

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the Institute), non-executive one, is acquired in the course of its study and its comparison with the general concept of legal institution of the head of state. It can be seen especially clear in the examples of "mixed" forms of government [30, p. 83].

This is a new concept of the head of state institution as a branch of government, different from the classical model, in particular, from the President of the United States Institution combining both status of the head of state and the status of chief executive (as the classic sign of a presidential form of government) [30, p. 83]. V.E. Chirkin remarks that "modern approaches and allocation of new branches change the concept of the relationship between the traditional authorities and the appearance of new connections and relationships. This process is not yet complete; it was not complete centuries ago with the statement of the steadfast triad either. The number and names of new branches are not the same in different basic laws. It means that the way to further researches is not closed, particularly in view of the appearance of new forms of government (for example, a presidential-parliamentary and

parliamentary- presidential republics), which did not use to be” [30, p. 79]. According to his research, “control power is mentioned or was mentioned in some constitutions and in drafts (Chinese Constitution, 1912). Control power (as the fifth along with the electoral power) was mentioned in one of the draft Constitution of 1986 of Nicaragua (not accepted). Control function of government was also mentioned along with the legislative, executive and other functions in the Algerian Constitution 1976 (was in force until 1989). The term “control power” can be found in the Swedish Constitution (Chapter 12 “Forms of government”, 1974). However, in Sweden, this power relates to the power of Parliament, and not constitutes a particular branch of government” [30, p. 78].

Accepting the conclusion of V.E. Chirkin about the special concept of the head of state power as a branch of government in states with a mixed government, we allow ourselves to supplement this conclusion with the thesis, once mentioned in the legal literature, that each branch of government, including the presidential one, has the features peculiar to each of

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the opposing powers, and it is realized in the same organizational-legal forms of activity, as the other branches of government, that is, by means of rule-making, enforcement activity, interpretation and law enforcement forms [3, p. 46]. Obviously, it is necessary such an organizational-legal form of state activity as state supervision (“compliance assessment”, “law enforcement control”, “activities results control”) to be put on this par, as the organizational-legal form undertaken by each of the branches of government (implemented by each of the branches of government), but in the specific variations reflecting the specialization of a branch in the “separation of powers” system.

This article is an effort to analyze the status of the RF President in the “separation of powers” system on the basis of distinguishing the fourth, i.e. controlling (supervising) branch (body) therein along with the classic triad of branches, which is the one of mixed government peculiarities in Russia. In the RF Constitution of 1993, federal constitutional control (considered in the RF as “compliance assessment”, i.e. control over concordance of laws and

other normative acts of the Constitution, control in the area of assurance of higher legal force of the RF Constitution) is credited to authorities and representatives of the every branch of power.

According to the RF Constitution, there are distinguished: judicial review of constitutionality (carried out by The Constitutional Court of the RF); parliamentary constitutional control (carried out by the Federal Assembly - the Parliament of the RF, broadened due to adoption of law on amendment to the Constitution of The Russian Federation “On supervisory powers of the State Duma with regard to the RF Government dated December 30, 2008, No. 7-FKZ”) Government constitutional control (first of all, it is of nature of intradepartmental compliance assessment). A special place in the system of constitutional control in the Russian Federation is taken by presidential control. Constitutional provisions on the RF President status, formulated in Article 80 where it is said that the President of the RF is guarantor of the Constitution, rights and freedoms, state integrity, as well as other articles of Chapter 4, in other chapters of the

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Constitution of Russia of 1993, enable to assert that constitutional control government in the RF, in the current Constitution, is coordinated, firstly, with the area of the constitutional powers and discretions of the RF President relying in this activity on the corresponding courts and other constitutional state and legal institutions.

3.Features of presidential control as a variant of constitutional control in the Russian Federation.

Constitutional conception of the place of the Russian President in the “separation of powers” system is characterized by three basic ideas. Firstly, the very broad formulation of the concept of the President of the Russian Federation is given in Art. 80 of the Constitution of the Russian Federation, which stipulates that “The President of the Russian Federation is the protector of the Constitution of the Russian Federation, human and civil rights and freedoms. He takes measures to protect the sovereignty of the Russian Federation, its independence and state integrity, ensures coordinated functioning and interaction of state

executive authorities according to the procedure established by the Constitution of the Russian Federation”.

Secondly, the constitution of the Russian Federation adopted in 1993 and the legislation developing its provisions guarantee the powers of the President as an “arbiter of authorities”: in accordance with Art. 85 of the Constitution: “the President of the Russian Federation may use conciliatory procedures to solve disputes between state executive authorities of the Russian Federation and state executive authorities of the subjects of the Russian Federation, as well as the disputes between the state executive authorities of the federal subjects of the Russian Federation. In case of failure to reach an agreement, he may submit the dispute to the appropriate court”.

Thirdly, the President has large powers in the executive branch, in particular, relating to personnel appointments in the course of formation of the Government, with the right to preside at the Government’s meetings etc. In addition, on the basis of the constitutional provisions of the Federal constitutional Law “On the government of the Russian Federation”, concerning the Executive bodies of the specialized

competencies, there is a separation of the of powers between the President and the Government of the Russian Federation; it was stipulated that “The President of the Russian Federation, in accordance with the Constitution of the Russian Federation and federal constitutional laws, direct the activities of federal executive authorities in charge of defense, security, justice, interior and foreign affairs, emergency prevention and disaster control, troops of the national Russian Guard, adopts the proposals of the Chairman of the Government of the Russian Federation on them and appoints the heads and deputies of these departments, and exercises other powers as the Commander-in-Chief of the Armed Forces of the Russian Federation and the Head of the Security Council of the Russian Federation”. The President of the Russian Federation supervises directly and via federal ministers the activities of the federal authorities of executive branch, which are under the jurisdiction of the relevant federal ministries (Art. 32 of the Federal Law “On the Government of the Russian Federation”).

Entities under presidential control in the Russian Federation.

The scopes of activity both of the executive and legislative branches, as well as federal branch (and the area of the RF Constitutional Court decisions execution [32, art 80-81], as well as decisions of the “corresponding court” on cases on contradictions between the Russian Federation subjects laws and the Federal Constitution [33, art. 7, 27, 29, 29.1]) are the objects of presidential control in the Russian Federation, which is subject to implementation in accordance with “constitutional state” principles.

The forms of presidential control over legislative branch and cooperation between the two branches of government regarding state supervision in Russia include the veto of the head of state (para. 3. of Art. 107 of the Constitution); the right to challenge the laws of the Russian Federation, constitutions (charters) and other laws of the subjects of the Russian Federation in the Constitutional Court; (p. 2 “a”, “b” of Art. 125 of the Constitution of the Russian Federation), the implementation of legislative initiatives related to the

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introduction of state and municipal control regulation bills, and others.

The forms of presidential control over the executive branch in the Russian Federation are:

1. Publication of Decrees of the President, related to state supervision, implementation of legislative initiatives concerning state and municipal control system improvement, definition of the main directions of state supervision improvement in Russia. Thus, the President of the Russian Federation in a number of his addresses to the Federal Assembly of the Russian Federation, including the address for 2017, pay a lot of attention to the improvement of regulatory and supervisory authorities. In the address of December 1, 2016 the Russian President Vladimir Putin once again drew the Government's attention to the fact that “supervisory authorities need to accelerate the introduction of an approach based on risk assessment, which will significantly reduce the number of checks and increase their productivity” [31]. The project “Concept of state executive authorities and local governments control and supervision activities efficiency increase in the years

2014-2018” and the concept of the draft Federal Law “On state supervision and municipal control in the Russian Federation” were developed on the basis of presidential addresses.

2. The forms of presidential control over executive branch are: the right of the President of the Russian Federation to cancel decrees and orders of the Government of the Russian Federation in the event of their contradiction with the Constitution, federal laws and decrees of the President of the Russian Federation (paragraph 3 of Article 115 of the Constitution of the Russian Federation); the right to challenge the normative acts of the Government of the Russian Federation in the Constitutional Court; normative acts of the subjects of the Russian Federation - political-territorial parts of federal structure of Russia (paras. 2, “a”, “b” of Art. 125 of the Constitution).

3. The forms of presidential control over executive branch in the Russian Federation are connected with the Presidential powers to hear oral statements (the ones of Chairman of the Government); receive written statements (reports) on his performance and the performance of constitutionally

established institutions: the Human Rights Ombudsman (para. 1 of Art. 33 of Federal Constitutional Law “On Constitutional Human Rights Ombudsman in the Russian Federation” (Federal Constitutional Law No. 1-FKZ, February 26, 1997); para. 1 of Art. 3 of the Federal Law “On the Businessmen Ombudsman”, 2015; Presidential Decree “On the Children’s Rights Ombudsman”); the Prosecutor General of the Russian Federation (p. 7 of Art. 12 of the Federal Law “On the Prosecutor’s Office of the Russian Federation” of January 17, 1992); the right of the President of the Russian Federation to invoke to the Audit Chamber for “control, expert and analytical activities” in relation to the relevant organizations (para. 4 of Art. 15 of Federal Law “On the Audit Chamber of the Russian Federation” No. 41-FZ of April 5, 2013), etc.

4. The sphere of security and law order is an important direction of the presidential control and the sphere of high Russian President’s activity. According to the Constitution, the President of the Russian Federation has the right to issue decrees on the imposition of martial law and state of

emergency (Art. 88-89 of the Constitution). Presidential function in security sphere, set in the Constitution of the Russian Federation Law “On the Federal Security” and other legislation, consists in the fact that the President “is the protector of the Constitution of the Russian Federation, human and civil rights and freedoms. According to the procedure established by the Constitution of the Russian Federation, he takes measures to protect the sovereignty of the Russian Federation, its independence and state integrity, ensure coordinated functioning and interaction of state executive authorities”; “In accordance with the Constitution of the Russian Federation and federal laws, he defines the main directions of domestic and foreign policy” (Art. 80 of the Constitution.); “he forms and heads the Security Council of the Russian Federation, which status is determined by federal law ... approves the military doctrine of the Russian Federation”; “he appoints and dismisses the Armed Forces High Command” (paras. “g”, “h”, “k” of Art. 83 of the Constitution); “he is the Commander-in-Chief of the Armed Forces of the Russian Federation... In the case of

aggression against the Russian Federation or an immediate threat of aggression the President of the Russian Federation imposes martial law in the territory of the Russian Federation or in the certain areas of it with the immediate notification of the Federation Council and the State Duma” (paras. 1- 2 of Art. 87 of the Constitution 1993), and others.

The President of the Russian Federation issued the relevant policy documents concerning the control of terrorism and extremism, “On Counter-Terrorism Measures” (Presidential Decree as amended of December 26, 2015); “The strategy of counteraction to extremism in the Russian Federation until 2025” (approved by the President of the Russian Federation on November 28, 2014, Pr.-2753); “Comprehensive Plan for counteraction to the ideology of terrorism in the Russian Federation for 2013-2018 years” (approved by the President of the Russian Federation on April 26, 2013, Pr.-1069); “The concept of counter-terrorism in the Russian Federation” (approved by the President of the Russian Federation on October 5, 2009), and others.

5. Significant powers of the President of the Russian Federation are

associated with the organization of state supervision authorities system, as the President of the Russian Federation accepts the Decrees of the President concerning the organization of the executive branch, in particular, the Presidential “On the System and Structure of Federal Executive Authorities” Decree (March 9, 2004), which defines the category of federal executive authorities responsible for the control and supervision, i.e. federal agencies; sets the basic functions of the federal executive authorities, which include function of control and supervision as independent one.

Control powers of the President of the Russian Federation in the sphere of federal relations.

The President of the Russian Federation possesses significant control powers in the sphere of federal relations – based on the Federal Law “About the general principles of the organization of legislative (representative) and executive bodies of the government of subjects of the Russian Federation” of October 6, 1999 (as amended). These powers include compliance assessment, law enforcement activities of the authority of

a subject of the Russian Federation and control over the activity results of Russian subject state executive authorities. Thus, in accordance with the Federal Law, “the President of the Russian Federation has the right to invoke to a legislative (representative) state executive authority of a subject of the Russian Federation with the idea of the bringing the law of a subject of <http://base.garant.ru/10103000/the> Russian Federation or other normative legal act of the legislative (representative) branch of state executive authority of the Russian Federation to conformity with the Constitution of the Russian Federation, federal constitutional laws and the federal laws of the Constitution (Charter)”. According to the current legislation, in the case of disagreement with the state executive authorities of subjects of the Russian Federation, implementing this power, the President of the Russian Federation uses conciliatory procedures to resolve them. In case of failure to reach an agreement, the President of Russian Federation may submit the dispute to the appropriate court (paras 3-4 Art. 27 of the Federal Law No. 184-FZ).

On the same basis, the President of the Russian Federation has the right to “suspend the act of the highest official of a subject of the Russian Federation (the head of the supreme executive branch of state executive authority of the Russian Federation), as well as the force of the act issued by the executive authority of a subject of the Russian Federation” before the resolution of the issue of constitutionality (legality) of the act by the relevant court. At the same time, “the highest official of a subject of the Russian Federation (head of the supreme executive office of state executive authority of the Russian Federation) have the right to appeal to the relevant court for decision about the conformity of the Act of the Constitution of the Russian Federation issued by them or by the executive authorities of a subject of the Russian Federation with Federal Laws and international obligations of the Russian Federation” [paras 1, 3 Article 29 of Federal Law No. 184-FZ].

The President of the Russian Federation, according to the Federal Law in question, has large powers to prosecute officials of the executive authorities of the Russian Federation. This law specifies and substantiates the

implementation of the relevant powers.

In accordance with the procedure of compliance assessment and control over law enforcement, the President of the Russian Federation cautions the highest official of a subject of the Russian Federation (the head of the supreme executive office of state executive authority of the Russian Federation) and has the power to impeach the highest official of the Russian Federation (the head of the supreme executive authority office of the Russian Federation), or has the right to suspend the official from the performance of duties of the Chief Executive of the Russian Federation subject [paras 2-6, Article 29.1 of Federal Law No. 184-FZ].

The President of the Russian Federation has the right to caution legislative (representative) body of state power of the Russian Federation subject where the last did not take measures within the limits of its powers for execution of court decision, as well as did not cancel normative legal act accepted by the corresponding court as contradicting to the Federal Law; if the government authority of the RF subject created obstacles for exercising of powers of state authorities, local

government bodies; if the rights and freedoms of man and citizen, rights and legally protected interests of legal entities are violated. If during three months from the date of issuance of warning to legislative (representative) body of state power of the Russian Federation subject by the President of the Russian Federation, the specified body do not execute the court decision again, the President of the Russian Federation is entitled to dismiss the legislative (representative) body of state power of the Russian Federation subject (para. 4, Article 9 of Federal Law No. 184-FZ).

Constitutional control activity of the President of the Russian Federation in the area of federal relations largely related to judicial review in the same area, which is performed under constitutional and administrative legal proceedings; as well as to of prosecutor's office activities on supervision over adherence to the Constitution of the Russian Federation and enforcement laws in effect in the territory of the Russian Federation. As was shown above, the RF President, according to Federal Law No. 184, acts as the guarantor of execution of judgments by state power authorities of the Russian Federation subjects; he is

entitled to impose sanctions on legislative and executive bodies of the RF subjects for non-compliance with federal court decisions.

As of balance of the presidential control and supervisory powers of prosecutor's office in the area of federal relations, it is built in other way. The Prosecutor's Office of the RF has wide range of independent powers in the area of supervision over observation of laws with regard to federal relations. Thus, according to Federal Law dated January 17, 1992, No. 2202-1 "On the Prosecutor's Office of the Russian Federation": prosecutors take part in meetings of federal bodies of the legislative and executive branches Legislative (Representative) and Executive Authorities of the Russian Federation subjects, local government bodies (para. 1, Article 7). According to federal Law No. 184: the Prosecutor's Office carries out supervision over observation of the Russian Federation Constitution and subjects of the RF by state power authorities and officials of the RF subjects, as well as over correspondence of legal acts to the laws issued by them (para. 1, Article 29.2). According to Federal Law: prosecutor or

the deputy, in the manner prescribed by law, are entitled to appeal against legal acts of legislative (representative) branch of state executive authority of the Russian Federation subject, the highest official of the Russian Federation if they are in conflict with the Constitution of the Russian Federation, federal laws, constitution (statute) and laws of a subject of the Russian Federation, etc. (para. 1 of Article 27, para. 4 of Article 29.1, Article 29.2). Moreover, the RF Prosecutor's Office acts as guarantor against excessive number of scheduled and unscheduled inspections of activities of bodies of state power of the Russian Federation subject, carried out by bodies of federal state control (supervisions) (paras 4-5, Article 29.2).

Along with that, in recent decades in the RF, significant innovations in constitutional and legal status of the Prosecutor's Office, which are related to reinforcement of external influence of the RF President on formation and activity of the Prosecutor's Office which are important optimization of presidential control in the area of federal relations. Legal foundation of that was formulated due to adoption of Federal constitutional Law "On amendment to

the Constitution of the Russian Federation "On the Supreme Court and the Prosecutor's Office of the Russian Federation" of February 5, 2014, No. 2-FKZ, according to which the title of the Constitution Article 7 "Judicial Power" was broadened, and amended by adding the words: "and the Prosecutor's Office of the Russian Federation". New personnel powers of the President in the area of Prosecutor's Office formation: carrying out appointments and dismissals of prosecutors of the RF subjects, etc. (Para. 3, Article 129 of the RF Constitution. The corresponding powers of the RF President, obviously, should be evaluated in relation to broadening of powers of the prosecutor's office in the area of legality assurance in activity of state power authorities of the RF subjects, which is envisaged by Federal Law No. 184-FZ "About the general principles of the organization of legislative (representative) and executive bodies of the government of subjects of the Russian Federation" (of October 6, 1999, as amended and supplemented). According to Federal Law "On the Prosecutor's Office of the Russian Federation": "The Prosecutor General of the Russian Federation yearly presents

the report on condition of law and order in the Russian Federation and on the works performed for its strengthening to the houses of the Federal Assembly of the Russian Federation” (para. 7, Article 12 of Federal Law).

Executive office of the Head of the State (the Chief Executive) and constitutional control.

With regard to execution of their constitutional powers, top public officials (presidents, heads of governments) rely on the office functioning under them, which is named differently in various countries: The Executive Office of the USA President (established in 1939); standing committees of the Prime Minister of the United Kingdom; Services and Councils of the Elysee Palace, the “President’s house” in France; the Chancellor's Office in the Federal Republic of Germany, etc. [34, p. 265-273]. During execution of the powers, including supervisory ones, heads of states (governments), to a large extent, rely on their offices. The corresponding practice in legal sphere is a reflection of the convergence processes of in constitutional and administrative

and legal principles in government regulation of state administration processes, presence of trend to interpenetration of the specified subject matter approaches.

In Russia, the President executes his constitutional powers directly and through the subdivisions of presidential power: the Executive Office of the President, the Security Council, the Institution of the plenipotentiaries of the President in the federal districts and federal authorities. The implementation of the President’s control powers, the enforcement of orders of the President of the Russian Federation are ensured by such specialized departments as Control directorate of the President of the Russian Federation, the Presidential Directorate for correspondence from citizens and organizations, and others.

It is important to note that, as opposed to similar bodies in Western countries, the Executive Office of the President in Russia is a constitutionally established government body, i.e. In the RF Constitution of 1993, there is record about the RF President’s Office. In para. “ j)” of the RF Constitution Article 83, there is asserted that: “The President of the Russian Federation... Forms the

Administration of the President of the Russian Federation”. Explanations, on the issue about the manner the relations between the President and the Administration (including those in the area of state control) are to be built, are given in the Ruling of the RF Constitutional Court of May 29, 1997 “About dismissal of the case on inspection of constitutionality of the decree of the RF President of October 2, 1996, No. 142 “On approval of Regulations for the RF President Administration”. In its Ruling, the RF Constitutional Court formulated the ratio decidendi, according to which: The Administration of the President is not a body of state power which has the competency independent from the RF President, but the functioning office established for the purpose of assurance of the RF activities and execution of his constitutional powers.

In conclusion, it should be pointed out that one of the features of the control powers of the President of the Russian Federation, in addition to the indicated above, consist in their inextricable connectedness with parliamentary and

governmental constitutional control in the sphere of public administration. Thus, according to the principles of the constitutional governments mechanisms, the limit of parliamentary control should be in compliance with the constitutional criteria for the government forms – mixed presidential-parliamentary form of government in Russia, involving a broad scope of discretion and the preponderance of the powers of the head of state – the President of the Russian Federation – along with a fairly broad scope of autonomous discretion (powers) of the Government of the Russian Federation in the “separation of powers” system and ponderable enough control powers of the Federal Assembly (the Russian Parliament), not exceeding, but competing in a certain scope (first of all, in the field of budgetary and financial control) with control powers of the president.

The peculiarity of the presidential-parliamentary government in the Russian Federation consists in the priority of the control powers of the President in the “separation of powers” system, in contrast to the parliamentary republics, where prime ministers (chairmen of governments) have more

extensive powers (including control powers). This feature makes it similar to presidential republic. According to the Constitution of the Russian Federation 1993, the preponderance of supervisory powers of the President of the Russian Federation (in the sense of the right to impose sanctions of the constitutional and legal responsibility) is particularly evident in the example of the provision of Art. 117 of the Constitution of the Russian Federation, according to which, if the State Duma of the Federal Assembly (parliament) of the Russian Federation issues a resolution of no confidence or refusal of confidence in the Government, the final decision on the question whether to dismiss the government which does not enjoy the confidence of the parliament, or dissolve the deputy corps, which declared of no confidence in the Government, can make only the President of the Russian Federation (paras. 2, 3 of Art. 117 of the Constitution 1993).

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