

## THE SUBJECT OF CONSTITUTIONAL LAW: THE VIEW OF THEORISTS

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### **Abstract**

*The article analyzes general laws of the evolution of the content of the regulation of legal relations on the example of constitutional law from the standpoint of the general theory of law, emphasizes the fundamental nature of the constitutional law subject matter as the leading branch of Russian law. Special attention is paid to the analysis of various approaches to the definition of the constitutional law subject matter. The authors come to the reasonable conclusion that the constitutional law subject matter is characterized by dynamism, is distinguished due to the basic nature of fundamental legal institutions, the logical transition of content from the general to the specific, and then to the individual, and, ultimately, to the unique. This determines the value of the constitutional law subject matter in the Russian legal system in general and the system of law in particular.*

### **Keywords**

*Constitutional (state) law, constitutional law subject matter, branch of law, legal regulation, legal standings of constitutional law scholars.*

Each science in general and legal sciences in particular has its own subject of research – a certain range of studied patterns of any sphere of human activity, in other words - the subject of science. Hence, the subject of any science, including legal science, represents a special sphere of being in the form of objective reality as an object of scientific research. In our case, the subject of constitutional law is the most essential laws of the existence of constitutional (state) law [1].

It is generally accepted that special features characterizing the subject and method (system of methods) of legal regulation are recognized as criteria for distinguishing individual branches of law. At the same time, public relations that are in the sphere of legal regulation of constitutional law form its subject. It should be noted that the content of the subject of constitutional law in foreign legislation has its own specifics. Thus, in the United Kingdom of Great Britain, the following are attributed to the sphere of constitutional law: relations in the field of relations between the subjects of the country with various state bodies (both individually

and in their entirety); the order of internal interaction between state bodies and public authorities in the process of carrying out the activities of the mechanism of the state; the content and specifics of the prerogatives, functions and powers of each element of the mechanism states. In the USA, it is customary to refer to the subject of constitutional law the order and system of mutual rights and obligations of citizens of the state with the system of executive authorities. A similar approach to determining the content (subject) of constitutional law can be found in the countries that are part of the Commonwealth of Nations, as well as in Japan and some other States.

In the countries of the Romano-German legal system (the so-called continental), we can see a slightly different approach to the problem of determining the subject of constitutional law. Thus, in the Romanesque family, to which France primarily belongs, the fundamental relations for the content of the subject of constitutional law are considered to define the characteristics of the political (state) regime as a system of ways and methods of exercising public power by state bodies. In the German legal family, it is customary in the scientific community to distinguish between constitutional and state law in a substantive respect. Therefore, the content of state law recognizes only those social relations that can certainly be attributed to the system of state bodies, the order of interaction between them, the definition of the form of the state, etc. While the subject of constitutional law is defined much more broadly due to the fact that its regulation includes not only the content of state law, but also various spheres of life of German society [2].

In Russian legal science, the issues of the specifics of the subject of constitutional law are of scientific interest to most specialists in the field of state (constitutional) law – both the pre-revolutionary period of the development of legal science [3] and the Soviet [4] and post-Soviet periods [5]. At the same time, we must take into account the fact that state historians (constitutionalists) have expressed various, sometimes contradictory points of view on this problem [6].

Thus, most Russian lawyers of the late XIX – early XX centuries considered the relations of state power and the legal status of citizens in the country to be the subject of state law. This scientific position was also developed by the Soviet scientific law school, believing that state-legal relations develop exclusively in connection with the exercise of the powers of state power. However, in addition to the subject of state (constitutional) law, the foundations of the economic, socio-political and state system that developed in certain periods of state and legal development began to be attributed.

After the collapse of the Soviet Union, especially after the adoption of the 1993 Constitution, the discussion on the subject of now constitutional law flared up with renewed vigor, which can partly be explained by the complexity of the study of this object [7]. However, despite the controversial nature of this problem, it should be recognized that most authors agree in assessing the subject of constitutional law from the perspective of its high political potential [8].

The scientific position of E. I. Kozlova in terms of determining the specifics of the subject of legal regulation of constitutional law as a leading branch of the Russian legal system is that constitutional law is designed to regulate the basic groups of relations in various spheres of society. S. V. Narutto grouped them as follows:

"1) social relations defining the principles on which the structure of the state and society is based, and expressing the qualitative characteristics of the state: sovereignty, form of government, form of government, subjects of state power and ways of its implementation, i.e. the general foundations of the functioning of the entire political system of society;

public relations related to the establishment of forms of ownership permitted and protected by the state, guarantees for the protection of the rights of owners, methods of economic activity, labor protection, proclamation of a certain system for ensuring the social needs of members of society in the field of education, culture, science, nature protection, health, etc.;

social relations that define the foundations of human relations with the state, i.e. the main principles characterizing the position of a person in society and the state, citizenship, as well as the basic inalienable rights, freedoms and duties of a person and a citizen;

public relations between the Federation and its subjects, relations related to the basic principles of the system of state authorities and the system of local self-government, as well as relations related to legislative (representative) bodies of state power and local self-government" [9].

A similar point of view was close to O. E. Kutafin, who, analyzing various approaches to determining the content of the subject of constitutional law, argued that "the subject of constitutional law consists of two groups of public relations, which manifests the peculiarity of constitutional and legal regulation of public relations": one group includes only those public relations that are subject to direct legal regulation by constitutional law in full, and to the second – the dominant social relations, the content of which not only influenced the development of other relations in these areas of legal regulation, but determined their content.

We agree with the point of view of O. E. Kutafin and E. I. Kozlova that, due to the recognition of constitutional law as the leading branch of law of the Russian Federation, which determines the basic principles and content of the entire system of state law, its subject is a set of public relations characterizing the "organizational and functional unity of society", primarily the foundations of the constitutional system Of the Russian Federation [10].

V. V. Komarova develops this idea and defines the subject of constitutional law more specifically, considering that its content includes "constitutional relations arising in connection with the consolidation and regulation of:

- the foundations of the constitutional system, the sovereignty of the people and the forms of its implementation, the principles of state structure and separation of powers, the social and secular nature of the state, ideological diversity, the supremacy of the Constitution in the state;

- the relationship between the state and the individual, the legal basis of the status of Russian citizens, stateless persons, foreign citizens located on the territory of Russia, human and civil rights and freedoms and guarantees of their implementation;

- the federal structure of Russia, the composition and competence of its subjects, the exclusive competence of the Federation and the subject of joint jurisdiction of the Federation and subjects, the supremacy of federal laws over the legal acts of subjects, etc.;

- organization and functioning of the system of government bodies of the Russian Federation (the President, the Federal Assembly, the government, judicial authorities, authorities of the subjects of the Federation, as well as local self-government)" [11].

Defining the central role of constitutional law in the system of all branches of law in Russia, most modern researchers [12], sharing the opinion of E. I. Kozlova, substantiate this thesis with the following features of constitutional law, thereby emphasizing the specifics of its subject.

Firstly, all other branches of the Russian state's legal system regulate public relations, as a rule, in one area

while constitutional law determines the content of all relations, regardless of the spheres of society, when "the state is interested in this, which is expressed in the relevant norms of law contained in such fundamental acts as the constitution or other acts of a constituent nature" [13]. Therefore, at various historical stages of state-building, the content of the subject of constitutional law changes, which is

confirmed, according to A.m. Osavelyuk, is "a change in the subject of constitutional law in Russia during the XX century" [14].

In the pre-revolutionary science of state law, its subject was "relations of state power" [15], in Soviet jurisprudence, the subject of state law included the political, economic, and socio-cultural foundations of the socio-state system, features of federalism, and personality status [16]. The modern interpretation of the content of the subject of the branch "constitutional law", in comparison with its Soviet version, has changed due to the inclusion in its content of a natural legal type of legal understanding, in which the rights and freedoms of the individual (citizen) acquire priority, the priority of which becomes not only the basic principle of building statehood in a separate country, but also internationally- a legal principle that determines the level and order of interaction between an individual, society and the state. As a result of this fact, the system of human and civil rights and freedoms, as well as institutions of state power designed to guarantee their implementation on the territory of the country, should be put in the first place in the system of public relations that constitute the subject of Russian constitutional law. Therefore, modern constitutional law, as G. A. Hajiyev notes, "is based on a natural law concept that contains hidden potencies, important impulses for the development of the reality of law" [17].

Secondly, the system-forming element of the subject of constitutional law should be considered power relations, "formalizing the integrity of society, its unity as an organized and functioning structure based on common principles of political, economic and social structure" [18]. It is important to emphasize that these power relations are manifested in all spheres of state and public life: economic, political, social and spiritual. Thus, "constitutional law establishes the foundations of the state's relations with other social actors in the main spheres of society's life, defines the foundations of its own self-organization, and establishes the basic legal norms for all other branches of law. Each institution of any branch of law has its own legal basis in the norms of constitutional law. Therefore, it occupies the highest level in the legal system. Its functionally leading role, as V. M. Levchenko quite rightly believes, forms a hierarchy in the legal system" [19].

Thirdly, the person, his rights and freedoms, the peculiarities of the relationship between the individual, society and the state, the development and functioning of civil society, the progressive development of the legal and social state represent the content of the subject of constitutional law. N. A. Bogdanova notes that the personality becomes the central element in the relationship "state –

society – man", where The state is the guarantor, and society is considered as a link between a person and the state [20].

Fourthly, the subjects of constitutional legal relations, unlike other branches of law, except for individuals and legal entities, are also: "Communities of people: the people of a given country, the peoples of regions, the population of administrative-territorial units, municipal associations; the state; state-territorial entities (republics, states, lands, autonomies); public authorities: central (parliament, head of state, government, courts), regional (representative body, regional administration), state bodies of local government; bodies of constitutional supervision; local self-government bodies; deputies of central and local representative institutions; associations of citizens: political parties, mass public organizations, trade unions, religious associations, etc." [21].

Fifth, the volume of regulated public relations is not the same depending on the sphere of activity of society. For example, in the economic sphere, these are only property relations, which represent the peculiarities of the economic structure in the country. Therefore, it is necessary to talk about the dual nature of the subject of legal regulation; thus, according to I. D. Levin, general and special social relations are simultaneously regulated [22].

Sixth, most authors define constitutional law as a branch of public law, since the main content of its subject is the whole set of public relations subject to legal regulation, namely: the foundations of the constitutional system of the Russian Federation; the legal status of the individual; features of the federal structure; the mechanism of the state. Therefore, N. S. Bondar comes to the conclusion that the leading branch of Russian law is a public-private branch of law [23]. In his opinion, the main goal of constitutional law in this regard is "the search for a balance, an optimal ratio between public values, on the one hand, and personal, private values, on the other," the ratio of sovereign state power and freedom, which is the main content of the theory and practice of modern constitutionalism [24].

S. A. Avakian, characterizing the subject of constitutional law, notes that its content consists of "the most fundamental social relations, which characterize: the foundations of the constitutional (social) system of the Russian state, the essence and forms of power of the people; the foundations of the legal status of the individual; the state structure of Russia; the system, the order of formation, the principles of organization and the mechanism of activity of state bodies government and local self-government" [25]. V. E. Chirkin emphasizes that "constitutional law regulates the foundations of the socio-economic structure of society, its political system, spiritual life and the legal status of the individual" [26].

M. V. Baglay argues that the subject of constitutional law can only be the relationship between a person and the state and the power relations themselves, therefore, "human relations with society", "consolidation of the foundations of the social system", "establishment of the principles of civil society" should be defined as echoes of Soviet state law, the era of totalitarianism [27]. However, Yu. A. Tikhomirov noted that the consolidation of Russia as a state governed by the rule of law in Chapter 1 of the Constitution of the Russian Federation of 1993 "it changes the orientation of the branch and science of constitutional law, moving away from purely state-related issues (in fact, state-building) and to a greater extent turning to the rights and freedoms of man and citizen, institutions of civil society (in fact, humanitarian, "public" law)" [28].

Summing up this scientific discussion, it should be noted that the content of the subject of the branch of constitutional law should include public relations, "through which the organizational and functional unity of society as a state-organized society based on common principles of society is ensured, which is embodied in the regulation of the foundations of the constitutional system, the foundations of the legal status of man and citizen, the federal structure, the system of state bodies and systems of local self-government" [29]. This approach is dominant today, but there are other points of view.

Thus, A. N. Kokotov and D. M. Evstifeev believe that constitutional law is not only a separate branch of law that has public power relations as the subject of legal regulation, but also a universal branch (general part) Russian law, since, according to A. N. Kokotov, the norms of constitutional law determine the allocation of the main branches in it (civil, civil procedural law; administrative, administrative procedural law; criminal law, criminal procedure law), as well as predetermine the emergence of complex industries (customs, tax, business, trade law) [30]. Some authors believe that constitutional law is an "integrating" branch that arose as a result of the penetration of other sectoral norms and institutions into it, as well as a "super-branch", the norms of which are simultaneously present in all branches of law [31].

This point of view is criticized by S. V. Narutto, who opposes the "construction of a branch of law" from the content of sources of constitutional law, since only spheres of public relations regulated by constitutional law and other branches of law can be common, and not a specific area of public relations representing the content of the subject of a separate branch of law. "Therefore, constitutional law should be considered as a branch "adjacent" to all other branches of law at the same level, the substantive distinction between which should take place exclusively

horizontally, i.e. depending on the sphere of public relations and regardless of other qualitative characteristics of these relations" [32]. As N. S. Bondar notes, the value of constitutional law is determined by the specifics of the content of the subject of constitutional law, its social purpose in the legal system of the state [33].

In conclusion, it should be noted that the branch of constitutional law is the most dynamic in comparison with other branches in the legal system of any country, because it is obliged to respond to changes in legal reality and legal reality. The content of the subject of constitutional law changes in accordance with changes in public relations, while priority should be given to those types of them that are recognized as fundamental at a particular stage of the development of the state. Thus, the subject of constitutional law of a particular state is always evolving, but within certain boundaries, the purpose of which is to maintain a balance of interests of the individual, society and the state.

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