

Revocation of deputies and elected officials in modern Russian constitutional and legal conditions

Revocación de diputados y funcionarios electos en las condiciones legales y constitucionales modernas de Rusia

Revogação de deputados e funcionários eleitos nas modernas condições constitucionais e legais Russas

Recibido: 16 de enero de 2019. Aceptado: 06 de febrero de 2019

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Abstract

The article is devoted to the current legal regulation of the revocation of deputies and elected officials by voters. At the post-Soviet stage of the Russian constitutional and legal development, there was a rejection of the idea of a mandatory mandate in favor of a free one. At the same time, this has not led to the complete disappearance of the system of the law of institutions of orders, revocation and reporting of elected officials. However, in the changed political and legal context they have acquired a different content. First of all, it concerns the institute of revocation. The latter was significantly reformatted (largely under the influence of the legal positions of the Constitutional Court of the Russian Federation), as the preservation of its former content was poorly correlated with the new constitutional reality. In relation to this, this article analyzes the current legislation and legal positions of the courts, revealing certain aspects of the legal regulation of revocation in Russia at the present stage (scope, legal grounds for revocation, requirements for the number of votes required to recognize the revocation as valid). The issues of the political and legal nature of revocation in Russia at the current moment and legal obstacles to the implementation of this tool in practice are also considered. As a result of research the author came to the conclusion that to give the revocation the real constitutional and legal values identified with the preservation of the Constitutional Court of the Russian Federation of its legal nature, a clear distinction of the subject of legal assessment of revoked entity acts (the

Resumen

El artículo está dedicado a la regulación legal actual de la revocación de diputados y funcionarios electos por los votantes. En la etapa post-soviética del desarrollo constitucional y legal ruso, hubo un rechazo a la idea de un mandato obligatorio a favor de uno libre. Al mismo tiempo, esto no ha conducido a la desaparición completa del sistema de la ley de instituciones de órdenes, revocación e informe de los funcionarios electos. Sin embargo, en el contexto político y legal modificado, han adquirido un contenido diferente. En primer lugar, se trata del instituto de revocación. Este último fue reformateado de manera significativa (en gran parte bajo la influencia de las posiciones legales del Tribunal Constitucional de la Federación de Rusia), ya que la preservación de su contenido anterior estaba mal correlacionada con la nueva realidad constitucional. En relación con esto, este artículo analiza la legislación actual y las posiciones legales de los tribunales, revelando ciertos aspectos de la regulación legal de la revocación en Rusia en la presente etapa (alcance, fundamentos legales para la revocación, requisitos para el número de votos necesarios para reconocer la revocación como válida). También se consideran los problemas de naturaleza política y legal de la revocación en Rusia en el momento actual y los obstáculos legales para la implementación de esta herramienta en la práctica. Como resultado de la investigación, el autor llegó a la conclusión de que para otorgar a la revocación los verdaderos valores constitucionales y legales identificados

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court) and the subject entitled to implement the consequences of the assessment decision (the electorate) is necessary. This is possible by changing the approach to the range of grounds for revocation (their limitation), which will reduce the requirements for the majority of voters required for revocation.

Keywords: revocation, deputy, elected official, voter, direct democracy, legal responsibility, constitutional responsibility, constitutional duty, voting, elections, Russia.

con la preservación del Tribunal Constitucional de la Federación de Rusia de su naturaleza legal, una clara distinción del tema de la evaluación legal de revocado La entidad actúa (el tribunal) y el sujeto con derecho a implementar las consecuencias de la decisión de evaluación (el electorado) es necesario. Esto es posible cambiando el enfoque del rango de motivos para la revocación (su limitación), lo que reducirá los requisitos para la mayoría de los votantes requeridos para la revocación.

Palabras claves: revocación, diputado, funcionario electo, votante, democracia directa, responsabilidad legal, responsabilidad constitucional, deber constitucional, votación, elecciones, Rusia.

Resumo

O artigo é dedicado à atual regulamentação legal da revogação de deputados e autoridades eleitas pelos eleitores. No estágio pós-soviético do desenvolvimento constitucional e legal da Rússia, houve uma rejeição da idéia de um mandato obrigatório em favor de um livre. Ao mesmo tempo, isso não levou ao desaparecimento completo do sistema da lei de instituições de ordens, revogação e comunicação de funcionários eleitos. No entanto, no contexto político e jurídico alterado, eles adquiriram um conteúdo diferente. Primeiro de tudo, diz respeito ao instituto da revogação. Este último foi significativamente reformatado (em grande parte sob a influência das posições legais do Tribunal Constitucional da Federação Russa), como a preservação de seu conteúdo anterior foi pouco correlacionada com a nova realidade constitucional. Em relação a isso, este artigo analisa a legislação atual e as posições legais dos tribunais, revelando certos aspectos da regulamentação legal da revogação na Rússia no presente estágio (escopo, bases legais para a revogação, requisitos para o número de votos necessários para reconhecer revogação como válida). As questões da natureza política e legal da revogação na Rússia no momento atual e os obstáculos legais à implementação desta ferramenta na prática também são consideradas. Como resultado da pesquisa, o autor chegou à conclusão de que para dar a revogação dos valores constitucionais e legais reais identificados com a preservação do Tribunal Constitucional da Federação Russa de sua natureza jurídica, uma distinção clara do assunto de avaliação jurídica de revogada actos da entidade (o tribunal) e o sujeito com direito a implementar as consequências da decisão de avaliação (o electorado) são necessários. Isso é possível mudando a abordagem da variedade de motivos de revogação (sua limitação), o que reduzirá os requisitos para a maioria dos eleitores requeridos para a revogação.

Palavras-chave: revogação, deputado, funcionário eleito, eleitor, democracia direta, responsabilidade legal, responsabilidade constitucional, dever constitucional, votação, eleições, Rússia.

Introduction

In the most general terms under revocation in the context of forms of direct democracy is defined as “the mechanism through which the voters can terminate the powers of the elected persons before the next scheduled election for the position” [i]. Despite the fact that the revocation is not one of the most popular political and legal instruments in the modern world, it has a certain distribution, including in a number of old democracies (the USA, Germany, Austria, etc.). In 2015, the tools of the revocation

after intensive discussions were legally established in the UK.

At the Soviet stage of Russia’s legal development, revocation was perceived as a key element of the imperative mandate assigned at all levels of public authority during this period. The source basis for such a mandate was the practice of the Paris commune. In the literature of the corresponding period, it was accepted to refer to the words of K. Marx from the work “Civil war in France”:

“delegates had to adhere strictly to the mandate imperatif (exact instructions) of their voters and could be changed at any time” .

Normative expression of these guidelines was already found in 23.11.1917 in the Decree of the UCEC “On the right of revocation of delegates”, which stated: “Any elected institution or assembly of representatives can be considered a true democratic and truly representing the will of the people only at the recognition and application of the right of revocation of their elected by voters. This basic principle of true democracy applies to all meetings of representatives without exception, as well as to the Constituent Assembly”.

Subsequently, the institution of revocation received constitutional recognition. In article 78 of the Constitution (Fundamental law) of the RSFSR of 10.07.1918 it was noted that “voters sent to the Council of the Deputy, have the right at any time to withdraw it and make a new election in accordance with the general regulation”. A similar quoted provision was contained in article 75 of the Constitution (Fundamental law) of the RSFSR of 11.05.1925. The right of revocation of the voters is preserved in article 142 of the new Constitution (Fundamental law) of the USSR from 05.12.1936, which stipulated that “each member ... can be withdrawn at any time by decision of a majority of the electors in the manner prescribed by law” (reproduced in article 147 of the Constitution (Fundamental law) of the RSFSR of 21.01.1937). The Constitution of the USSR of 07.10.1977 provided for a provision according to which “a deputy who did not justify the trust of voters may be revoked at any time by the decision of the majority of voters in the manner prescribed by law” (reproduced in the article 103 of the Constitution (Fundamental law) of the RSFSR of 12.04.1978) In fact, the revocation was perceived as a mechanism to ensure the constitutional obligation of elected officials to voters to implement their will in the implementation of activities (Fukuyama, 2000).

At the present stage of the Russian constitutional and legal development there was a rejection of the idea of a mandatory mandate in favor of the so-called free mandate. However, this has not led to the disappearance of the revocation as such from the legal system. Despite the fact that in the Constitution of the Russian Federation in 1993 there is no direct indication of the possibility of revocation, this kind of institution has been fixed in a number of subjects of the

Russian Federation and municipalities. At the same time, the corresponding regulation was of a fragmented and non-uniform nature.

Actual legal regulation on revocation issues in Russia correlates with the legal positions of the Constitutional Court of the Russian Federation, set out in a number of Resolutions, primarily: from 24.12.1996 № 21-P[ii], from 07.06.2000 № 10-P, from 02.04.2002 № 7-P. These acts set out a number of fundamental approaches regarding the possibility of establishing scope of application, legal grounds and procedure for revocation. At the same time, it is necessary to make a reservation: despite the fact that the Constitutional Court in specific cases examines issues relating to the revocation of various subjects of public power, the nature of the reasoning of the conclusions indicates the admissibility of perceiving the relevant provisions as having a universal character. Further, the relevant legal positions were specifically expressed in normative legal acts. Let us focus on the key aspects of legal regulation of revocation in Russia at the present stage, determining its content and legal nature.

Scope of application

The Constitutional Court of the Russian Federation did not define specifically the circle of persons in respect of whom revocation can be applied as a way of termination of powers. At the same time, the content of the acts of the Russian constitutional control body, other judicial decisions, as well as the existing regulatory legal acts allows drawing the following conclusions.

Firstly, at the moment, there is no revocation as a form of direct democracy in relation to elected federal officials. As A.V. Alekhicheva noted, “in relation to the deputies of the State Duma of the Federal Assembly of the Russian Federation and the President of the Russian Federation, the federal legislator is consistently on the position of the inadmissibility of these persons’ revocation”. Such an approach is consistent with world practice, on the basis of which only “few countries decided to introduce the revocation of elected persons in the executive and legislative bodies of the national level”. Although there are exceptions allowing the revocation, including the head of state (e.g. Ecuador, Venezuela) (Shakirina, 1997).

Current legislation, like the Russian Constitution, does not provide for revocation as a basis for terminating the powers of the President,

members of the Russian Parliament or other persons belonging to federal bodies of state power. Considering the problem of admissibility of the referendum on the right of voters to revoke a deputy of the State Duma (the “lower” chamber of the Russian Parliament), the Supreme Court of the Russian Federation, in principle, without denying such a possibility in the case of legislative settlement, noted that “the status of a deputy of the State Duma, i.e. his rights, duties, guarantees of activity, is defined in the Federal Law “On the status of a member of the Federation Council and the status of a deputy of the State Duma of the Federal Assembly of the Russian Federation”. In article 4 of this Federal Law the revocation of the deputy is not specified as the basis for early termination of powers of the deputy of the State Duma”. With regard to the revocation of the President, in the same decision the court pointed out that “the constitutional and legal status of the President of the Russian Federation is enshrined exclusively in the Constitution of the Russian Federation. Moreover, part 2 of article 92 of the Constitution of the Russian Federation provides for a closed list of grounds on which the President of the Russian Federation terminates the exercise of powers ahead of schedule. Revocation of the President of the Russian Federation as the basis of early termination of his powers in the Constitution of the Russian Federation is not provided. Change of the specified provision is possible by modification of the Constitution of the Russian Federation according to Chapter 9 of the Constitution of the Russian Federation”. In addition to the above, as an obstacle to the introduction of the revocation of deputies of the State Duma their election by means of a mixed electoral system is considered, in which “the institute of revocation can not be applied adequately... in the application of the institute of revocation in a mixed electoral system is not ensured equal status of deputies”.

Secondly, for the regional level, the revocation is provided for the highest official of the subject of the Russian Federation (the head of the Supreme Executive body of the state power of the subject of the Russian Federation), in other words the Governor (the Federal Law “On general principles of the organization of legislative (representative) and executive bodies of the state power of the subjects of the Russian Federation”) (hereinafter – the Law on the organization of power in the subjects of the Russian Federation) (subp. “k” p. 2, subp. “v” part 3 of Art. 5, subp. “l” part 1, paragraph 7.1-

7.4 article 19). It is worth noting that the possibility of revocation of the person does not depend on the order of granting him powers. The mentioned law (paragraph 3, article 18) provides for the possibility of its election directly by the population or the empowerment of the Regional Parliament on the proposal of the President of the Russian Federation.

At the same time, the Law does not provide for the possibility of revoking a deputy of the legislative body of the subject of the Russian Federation. In this case, the previously named argument about the inadmissibility of the revocation of deputies in the conditions of the mixed electoral system is obviously still relevant, as in accordance with the Law on the organization of power in the subjects of the Russian Federation (paragraph 4, article 4) at least 25 percent of deputies of the Regional Parliament (except for the cities of federal significance Moscow and St. Petersburg) are elected by the proportional electoral system on the lists of candidates nominated by electoral associations.

Thirdly, at the level of local self-government in accordance with the Federal Law “On general principles of organization of local self-government in the Russian Federation” [iii] (hereinafter – the Law on local self-government) (p.5 part 1 article 17, article 24, p. 9 part 6 article 36) revocation is allowed both in relation to the deputy, a member of the elected local self-government body, and the elected official of local self-government (including the head of the municipality). At the same time, it is noted that “if deputies or part of deputy mandates in the representative body of the municipality are replaced by deputies elected as part of the lists of candidates nominated by electoral associations, the revocation of the Deputy is not applied” (part 2.1, article 24).

Similar to the situation with the revocation of the Governor, the head of the municipality can be revoked by the population regardless of the procedure for granting him powers. At the same time, we note that the Law on local self-government as appropriate methods offers election in municipal elections, by a representative body of the municipality from its composition or from among the candidates submitted by the Competition Commission on the results of the competition. In small municipalities, where the powers of the representative body are exercised by a gathering

of citizens, the head of the municipality is elected at such a meeting (paragraph 1 part 2 of article 36 of the Law on local self-government).

The legal basis of the revocation

One of the key features of the institution of revocation in modern Russian constitutional and legal conditions is the limited grounds necessary for raising the issue of revocation to the public. In particular, as the Constitutional Court of the Russian Federation noted, "within the meaning of the Constitution of the Russian Federation, which enshrines the principles of a democratic state based on the rule of law, including the principles of ideological and political diversity, multiparty system, the basis for the revocation of a deputy cannot be his political activity, position in voting, etc.". Accordingly, "... because elected through free general election ... not bound by an imperative mandate on the basis of revocation can only serve his unlawful activities, i.e., specific offense, the fact of which that person is installed in the proper jurisdictional order" (Abbaszadeh, 2004).

It should be noted that this approach differs significantly from the logic of the functioning of a revocation within a mandatory mandate. In the latter case, the grounds for revocation, if provided for by law, are formulated very broadly and are subject to evaluation interpretation. Thus, in accordance with the Law of the USSR "On the order of revocation of the deputy of the Supreme Soviet of the USSR" "the deputy of the Supreme Soviet of the USSR by the decision of the majority of voters of the respective constituency may be revoked at any time if he did not justify the trust of voters or committed actions not worthy of the high rank of deputy". At the same time, these grounds were not supported by an adequate procedural mechanism for establishing that, in fact, prevented giving them a real legal value.

The legal position of the Constitutional Court of the Russian Federation on the grounds for revocation is reflected, first of all, in the Federal legislation. So, according to p. 7.2. article 19 of the Law on the organization of power in the subjects of the Russian Federation the revocation of the Governor is possible on one of the following grounds: a) violation of the legislation of the Russian Federation and (or) the legislation of the subject of the Russian Federation, the fact of which is established by the relevant court; b) repeated gross non-performance of his duties,

established by the relevant court. According to part 2 of art. 24 of the Law on local self-government the grounds for revocation can only be specific unlawful decisions or actions (inaction) of a person in case of their confirmation in court.

The analysis of normative legal acts of the levels of subjects of the Russian Federation and municipalities leads to the conclusion that they, as a rule, literally perceive the formulas of grounds for revocation proposed in federal laws. A similar situation (in general) develops in relation to the regulation of the grounds for revocation at the level of the charters of municipalities (Alipour et al, 2009).

At the same time, the cited norms of federal laws that allow the possibility of revocation in principle fix the legal limits for the grounds for such revocation, which are genetically based on the legal positions of the Constitutional Court of the Russian Federation. These norms do not seem to replace the updated legal regulation at the level of subjects of the Russian Federation and municipalities, that defines specifically such grounds, taking into account the restrictions established by federal law. The direct application of the provisions of federal laws suggests that the grounds for revocation may be perceived, including minor offenses that are not related to the activities of the subject as an elected person, regardless of the sectoral nature of such violations (criminal, administrative, civil, law, etc.). In this regard, as N.A. Petrova indicated, "the practice of the Constitutional Court of the Russian Federation and subsequent changes in the legislation on revocation led to new problems in the question of the grounds for revocation. If earlier initiation was not limited to confirmation of the offense in the jurisdictional order and there were problems with the legislative formulation of the grounds for revocation, now the situation is aggravated even more. The answer to the question, what is the offence of the electoral entity should be considered as a basis of revocation, to give much more difficult" This situation raises the question of the compliance of the widespread approach of law-making bodies with the fundamental principles of the Constitutional Court of the Russian Federation, perceiving the revocation as a subsidiary tool that "should not be used to destabilize the elected institutions of power".

The majority of voters needed for the revocation

The Constitutional Court of the Russian Federation offers a very strict approach to the number of votes required for revocation. So, in the Resolution of June 7, 2000 No. 10-P it proceeds from the general message about inadmissibility of distortion of results of elections, opposition of the response to the specified form of direct democracy. In this regard, the court believes that the legislator ought to provide for ... that the revocation may take place only by the decision of the majority of all registered voters and not of the majority of those who took part in the vote". In the Resolution of April 2, 2002 № 7-P, the constitutional control body, guided by the above motives, as well as the need to protect such constitutional and legal values as stability and continuity of the functioning of public power, proceeds from the fact that "the revocation must be voted for by at least no fewer citizens than the one to whom the revoked person was elected, so that the revocation vote does not diminish the value of the will of the voters revealed during the elections and ensures the protection of its results". At the same time, the court points to the inadmissibility of "that the revocation can be carried out mainly by the votes of citizens who remained in the relevant elections in the minority, i.e. those who voted for candidates who did not receive the necessary majority" (Kalantari et al, 2007).

At the level of federal laws, the question of a sufficient number of votes to revocation is implemented in the following (mandatory) way. In accordance with paragraph 7.4 of article 19 of the Law on the organization of government in subjects of the Russian Federation, "the revocation will be considered valid if it is voted by more than half from number of participants of the voting included in lists for voting". And according to part 2 of article 24 of the Law on the organization of local self-government, an elected person "is considered revoked if at least half of the voters registered in the municipality (electoral district) voted for the revocation". Thus, only one (simpler) criterion developed by the Constitutional Court of the Russian Federation – the majority of the list number of voters is implemented.

Conclusion

The study demonstrated that the actual form of revocation in Russia is a very cumbersome kind

of hybrid institution that combines elements of legal responsibility and direct democracy. At the same time, the Constitutional Court of the Russian Federation and law-making bodies are making attempts to coordinate adequately the relevant elements, including them in the system connection. This is a very difficult task. The Constitutional Court of the Russian Federation sets the general context of revocation as a measure of constitutional responsibility, excluding the possibility of using the instrument in the absence of a specific offense. On the one hand, the legislator offers an extremely wide range of legal grounds for revocation – an offence as such. At the same time, implementing the appropriate logic, the constitutional control body, and, taking into account its legal positions, the legislator, in fact, seeks to ensure the connection of the vote of voters with the legal basis of the revocation established in the proper jurisdictional order, that is, an offense, excluding other motives for voting. This desire is reflected, in particular, in the establishment of sufficiently stringent requirements for the majority required to recognize the revocation as valid (at least more than 50 per cent of the list of voters). In modern Russian political conditions, such is actually unattainable, as it is poorly consistent with the low level of voter turnout in regional and, especially, local elections, which is often not more than twenty percent. In the presented form, the revocation is an unrealizable tool, which is essentially nominal in nature, and does not provide, among other things, the function - responsibility set by the constitutional control body. In this respect, it is difficult to disagree with Yu.A. Bokov, who notes that "every state, of course, obliged to endeavour to improve existing democratic institutions, realization of the priority of the rights and freedoms of man and citizen, observance of norms of the Constitution and the generally recognized international standards, existing legal standards, and the unity of the law and legal practice".

It seems that the assignment of the functions of legal assessment of a person's specific actions to the electoral procedures related to the granting or termination of powers cannot be effective due to the extremely low degree of transparency of the reasons for voting, the objective impossibility of determining reliably the connection of the voter's choice with the legal assessment of certain events. We believe that if they seek to give the revocation a real constitutional and legal significance, it is reasonable, while maintaining a common approach to the nature of the

revocation in the current constitutional and legal conditions, to separate clearly the subjects of legal assessment of the acts of the revoked person (courts) and the adoption of an inevitably political decision on the termination of powers (the electoral corps).

This is possible in the first place, by limiting the scope of the legal bases of revocation to a certain range of offences (in relation to a particular category of revoking person), the Commission of which presumes the emergence of the voters needs in a termination of the mandate of a deputy or an elected official. In such a situation, the person concerned may be deemed to have lost immunity from early termination of powers by voters. Voting, then, implements peculiar to such forms of democracy assignment - solution of the issue set to him by population on the basis of the voters' own beliefs. With such a legal organization, it is permissible to consider reducing the requirements for the majority of voters to revocation (for example, on the basis of turnout), taking into account the equal right to vote of both supporters and opponents of the revocation. At the same time, such changes require fine fixing of the relevant mechanism, as they imply an increase in the political importance

of judicial decisions in comparison with the existing organization.

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