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The State Council of the Russian Federation: the legal position and possible role in the authoritarian system of power

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The constitutional reform in the Russian Federation (hereinafter: RF) in 2020 has been the subject of vast analyses and in-depth studies. It is broadly recognized that the reform strengthened the political position of the President of the Russian Federation, who was already dominating the system of government bodies and introduced a more isolationist, Russo-centric axiology into the constitution.¹ Regarding the current constitutional stipulations regarding the President of the RF, it should be noted that his term of office lasts 6 years and one re-election is possible.² It has a wide range of competencies; in particular, the President independently

¹ A.H. Медушевский, *Конституционная реформа в России: содержание, направления и способы осуществления*, "Общественные науки и современность" 2020, No. 1, pp. 39–60; R. Czachor, *Reforma konstytucyjna w Federacji Rosyjskiej w 2020 roku*, "Przegląd Prawa Konstytucyjnego" 2021, No. 3(61), pp. 261–276; W. Partlett, *Russia's 2020 Constitutional Amendments: A Comparative Analysis*, "Cambridge Yearbook of European Legal Studies" 2021, Vol. 23, pp. 311–342.

² Конституция Российской Федерации, www.kremlin.ru/acts/constitution (access: 22.04.2024).

determines the directions of the state's internal and foreign policy, supervises the government's decisions, and has the law-making power, issuing decrees (Chapter 4 of the Constitution).³ The 2020 reform introduced into the constitution provisions regarding, *inter alia*, the previously functioning consultative body under the President of the RF – the State Council of the RF. The purpose of the following paper is to discuss its place in the system of public authorities of the RF, and to confirm the thesis that the constitutionalization of the State Council of the RF, and even its very existence, seems doubtful from the point of view of the clarity of the division of competences between the authorities. Among the potential justifications for strengthening the State Council of the RF within the reform mentioned above, one should consider a possible transfer of power. It means a transfer of the office of President of the RF to a beforehand designated person while maintaining decisive influence on state policy by the current leader, through the State Council of the RF. This would be an improvement of the mechanism implemented in the RF in 2008–2012 when Dmitry Medvedev was president and Vladimir Putin held the position of the RF Prime Minister.

1. History of the State Council of the RF and its legal position

The history of the functioning of the modern State Council of the Russian Federation goes back to September 1, 2000, when Vladimir Putin, who has been in office as the President of the Russian Federation since March of that year, established this body by his decree.⁴ The legal doctrine sees the reasons for this in

³ Cf. E. Kuźelewska, *Prezydent w systemie politycznym Rosji. Rozwiązania prawne i praktyka polityczna*, "Studia nad Autorytaryzmem i Totalitaryzmem" 2021, Vol. 43, No. 2, pp. 83–95.

⁴ The paper omits the history of the consultative bodies functioning under the monarchs of the Russian Empire, dating back to the Permanent Council established by Tsar Alexander I in 1801. Cf. Е.Н. Савинова, Л.А. Зубова, *Институционализация Государственного Совета в России в контексте конст-*

Vladimir Putin's efforts to increase the effectiveness of actions and political subordination of the then-power, post-Yeltsin elites.⁵ It is worth mentioning that in the twilight of the Soviet Union (hereinafter: the USSR), from September to December 1991, the State Council of the USSR operated, consisting of the President of the USSR and the presidents of USSR republics.⁶ It adopted legally binding resolutions on the most important issues of state policy and served as a platform for developing common political positions of the Soviet republics' authorities. Simultaneously, from July to November 1991, the State Council operated under the President of the Russian Soviet Federative Republic. It carried out consultative tasks, consisting of the State Secretary, state advisors, government members and heads of state committees it carried out consultative tasks.⁷ Despite discussions on the reasonability of its restoration during the drafting of the new Constitution of the RF, which was finally adopted in 1993, the State Council of the RF was not restored.

Currently, the State Council of the Russian Federation has been operating since 2000, but its status was not constitutionally regulated only in 2020. It was established as a consultative body under the mentioned decree of the President of the RF issued on September 1, 2000.⁸ The statute of the State Council of the RF, adopted as an annex to that decree, stated that it was "an advisory body facilitating the implementation of the powers of the head of state in mat-

итуционной реформы 2020 года, "Среднерусский вестник общественных наук" 2020, No. 15(4), pp. 172–194.

⁵ В.О. Лучин, *Государственный совет Российской Федерации: проблемы становления*, "Право и политика" 2001, No. 4, pp. 19–28; И.И. Кузнецов, *Государственный совет в системе власти Российской Федерации 2000–2004 годов*, "Вестник Поволжской академии государственной службы" 2004, No. 7, pp. 10–19.

⁶ Закон СССР от 5 сентября 1991 г. № 2392-I «Об органах государственной власти и управления Союза ССР в переходный период», <https://constitutions.ru/?p=6685&yssclid=lvciw0o06k127100388> (access: 22.04.2024).

⁷ Указ Президента РСФСР от 19.07.1991 г. № 12 «О Государственном совете при Президенте РСФСР», www.kremlin.ru/acts/bank/31 (access: 22.04.2024).

⁸ Указ Президента Российской Федерации от 01.09.2000 г. № 1602 «О Государственном совете Российской Федерации», www.kremlin.ru/acts/bank/16037 (access: 22.04.2024).

ters of ensuring coordinated functioning and cooperation of state bodies” (Article 1), so having any major powers. In its activities, it was to be guided by the Constitution of the RF, federal constitutional laws, federal laws, decrees and orders of the President of the RF. The State Council of the RF began to be more active in 2018, and the agenda of its meetings was vastly discussed in the media.⁹

When proposing an amendment to the constitution at the beginning of 2020, Vladimir Putin called for the regulation of the legal position of the State Council of the RF, as part of the revised catalogue of the Presidential competencies. The amended Constitution of the RF implements his proposal, mentioning the State Council in Article 83, Sec. e-5, which refers to the competencies of the President of the RF. The relevant provision states that the President of the RF “creates the State Council of the RF to ensure the coordinated functioning and cooperation of public authorities, to determine the main directions of the domestic and foreign policy of the RF and the priority areas of the socio-economic development of the state; the status of the State Council of the RF is determined by federal law”. By the way, it can be noted that as a result of the political reform of 2020, the concept of “public authority” was introduced into the constitutional norms of the Russian Federation (including in Article 67(1), Article 71(g), Article 80.2, Article 132.3 of the Constitution).

The amending bill to the Constitution of the RF does not clearly indicate what was the purpose of constitutionalising the State Council of the RF. The cited Article 83, Sec. e.5 of the Constitution stipulates that it is created by the President of the RF for harmonious operation and cooperation of public authorities, and its system is regulated by federal law. This allows us to conclude that the place in the political system and the scope of competencies of the State Council of the RF remain unclear.¹⁰ It is one of three

⁹ Е.С. Тихонова, *К вопросу о конституционно-правовом статусе Государственного Совета Российской Федерации*, “Гуманитарные и политико-правовые исследования” 2020, No. 4(11), p. 54.

¹⁰ И.А. Брикульский, *Конституционные симулякры: усиление персоналистского режима или транзит власти?*, “Сравнительное Конституционное Обозрение” 2023, No. 3(154), p. 131.

collegiate bodies called the “council” established by the Constitution of the RF. The two other organs are: the Federation Council, the second chamber of the Russian Parliament, and the Security Council of the RF.

In the ruling of March 16, 2020 on the constitutionality of the proposed amendments to the Constitution, the Constitutional Court of the RF paid relatively little attention to the State Council of the RF. It was then stated that its constitutionalization would not lead to a conflict of competencies of state bodies indicated in Article 11, Section 1 of the Constitution and serves to fulfil the duties of the President of the RF to ensure consistent and harmonious operation of state bodies.¹¹

The basic document regulating this issue is the federal law “On the State Council of the RF” of December 8, 2020 (hereinafter: the Act), consisting of 17 articles grouped into four chapters.¹² The Act defines this body as a “constitutional state body” which is “established by the President of the RF to ensure the coordinated functioning and cooperation of the bodies that are part of the unified system of public authority, setting the main directions of the domestic and foreign policy of the RF and the priority areas of the socio-economic development of the RF” (Article 3, Sec. 1 of the Act). Previously, the concept of “constitutional state body” was not used by the Russian legislators. Moreover, the State Council is not mentioned in Article 11 of the Constitution of the RF among bodies exercising state power.¹³ The Act states that the purpose of the State Council of the RF is to ensure the harmonious function-

¹¹ Заключение Конституционного Суда РФ от 16 марта 2020 г. N 1-З “О соответствии положениям глав 1, 2 и 9 Конституции Российской Федерации не вступивших в силу положений Закона Российской Федерации о поправке к Конституции Российской Федерации “О совершенствовании регулирования отдельных вопросов организации и функционирования публичной власти”, а также о соответствии Конституции Российской Федерации порядка вступления в силу статьи 1 данного Закона в связи с запросом Президента Российской Федерации”, www.garant.ru/products/ipo/prime/doc/73647918/?ysclid=ivan3vbqbc341093452 (access: 22.04.2024).

¹² Федеральный закон от 08.12.2020 г. № 394-ФЗ “О Государственном Совете Российской Федерации”, www.kremlin.ru/acts/bank/46186 (access: 22.04.2024).

¹³ И.А. Брикульский, *op.cit.*, pp. 131–132.

ing and cooperation of the bodies that create a “unified system of public authority”. It is worth mentioning that this duty, under Article 80, Sec. 2 of the Constitution, rests on the President of the RF. It also should be noted, that the Russian lawmakers fully regulated the issue of a “unified system of public authority” only in December 2021, by adopting the federal law “On general principles of the organization of public authority in the constituent entities of the RF”.¹⁴ For this reason, Article 2 of the Act “On the State Council of the RF” contains the legal definition of the “unified system of public authority”.¹⁵

2. Tasks, composition and legal forms of activity of the State Council of the RF

The Act states that the State Council of the RF, within the limits of its competencies, participates in shaping the strategic tasks and goals of the domestic and foreign policy of the RF, the state policy in the field of socio-economic development of the RF and the constituent entities of the RF, as well as facilitates the coordinated functioning and cooperation of the bodies of a unified system of public authority to respect and protect the rights and freedoms of Russian citizens (Article 3, Sec. 2 of the Act).

Article 5 of the Act briefly lists the basic tasks of the State Council of the RF. Among the eight tasks, the most important are

¹⁴ Федеральный закон от 21.12.2021 г. № 414-ФЗ “Об общих принципах организации публичной власти в субъектах Российской Федерации”, www.kremlin.ru/acts/bank/47393 (access: 22.04.2024).

¹⁵ “The unified system of public power is formed by federal bodies of state power, bodies of state power of the constituent entities of the RF, other state bodies, bodies of local self-government, operating within constitutionally defined field, based on the principles of coordinated functioning and established based on the Constitution of the RF and in line with legislation on organizational, legal, functional and financial-budgetary cooperation, including matters of transfer of powers between the tiers of public governance, its activities to respect and protect the law and freedom of a man and citizen, creating conditions for the socio-economic development of the state” (Article 2(1) of the Act).

“cooperation with the President of the Russian Federation” and “preparation of proposals to the President of the Russian Federation” within the entire spectrum of competencies of the head of the Russian state (Article 5, Sec. 1.1–5). This means that they may concern: the cooperation with other public authorities, resolving competence disputes between these bodies, determining priority directions and goals of the state’s development, and determining the directions of the state’s internal and foreign policy. Moreover, at the request of the President of the RF, it considers draft federal laws and decrees of the President of the RF, considers the basic provisions of the federal budget law and information from the Government of the RF on its current implementation, and also finds basic issues of the personnel policy of the RF (Article 5, Sec. 1.6–8). Unlike the Security Council of the RF, the catalogue of competencies of the State Council of the RF is not closed; following the provisions of Article 5, Sec. 2 of the Act, the President of the RF may entrust it with any other duty “of significant state importance”. This allows the State Council of the RF to act across the entire spectrum of power of the President of the RF.

The Act contains seven functions of the State Council of the RF. This is primarily: considering issues related to the cooperation of public authorities, discussing the main directions of internal and foreign policy and the priority directions of the socio-economic development of the state; considering issues related to the coordination and cooperation of federal government bodies, government bodies of constituent entities of the RF and local self-government bodies, including issues of the division of competences between these bodies; analysis of the practice of activities of executive bodies, presenting proposals for improvements in this area; participation in establishing, agreeing and approving criteria and performance indicators of the activities of executive bodies of constituent entities of the RF and local government bodies (Article 6 of the Act). The Act also regulates the principles of cooperation of the bodies constituting a uniform system of public authority, including, in particular: the effectiveness of public administration, the effectiveness of the implementation of public functions and the fulfillment

of their socio-economic obligations, the independence of public authorities in the exercise of their powers, and the division of powers between the authorities, and ensuring the necessary financial support in a case when powers and duties are transferred between the tiers of public governance (Article 17, Sec. 1 of the Act).

The State Council of the RF consists of its chairman and members. These functions are performed without salary (Article 7, Sec. 1–3). The Chairman of the State Council of the RF is the President of the RF, who orchestrates the activities of the State Council of the Russian Federation; calls meetings of the State Council of the RF and its Presidium; chairs meetings of the State Council of the RF and its Presidium; determines the work plan of the State Council of the RF and the agenda of its meetings. The State Council of the RF appoints its secretary from among its members;¹⁶ and decides on other matters relating to the activities of the State Council of the RF (Article 8, Sec. 2 of the Act). The *ex officio* members of the State Council of the RF are the Prime Minister of the RF, the speakers of both chambers of the parliament: the Federation Council and the State Duma, the head of the Presidential Administration and the heads of the executive bodies of the constituent entities of the RF (governors and other, occupying equal positions). The State Council of the RF may include, by decision of the President of the RF, representatives of political parties having factions in the State Duma and representatives of local self-government bodies or other persons.¹⁷ The mandate of a member of the State Council of the RF cannot be delegated to another person. Members of the State Council of the Russian Federation have the right to submit to the Presidium proposals regarding the Council's

¹⁶ Before the adoption of the law in 2020, the Secretary of the State Council of the RF was appointed by the head of the Presidential Administration of the RF from among the assistants (advisors) of the President of the RF.

¹⁷ There have been fundamental changes in the composition of the State Council of the RF. In its original version, the decree establishing this organ stipulated, that its members were the heads of the executive bodies of the constituent entities of the RF (governors). In 2007, former governors were also added, in 2012 – the speakers of both chambers of the Russian Parliament, the plenipotentiary representatives of the President of the RF in federal districts and the heads of party factions operating in the State Duma.

working agenda. Its members prepare materials for meetings of the State Council and draft resolutions of the State Council of the RF (Article 9, Sec. 2–3 of the Act). The Act gives members of the State Council of the RF the right to submit proposals on priority areas of the socio-economic development of the state and constituent entities of the RF, on matters of improving cooperation between bodies of federal power, administrative bodies of constituent entities of the RF and local government bodies, as well as on other issues within the scope of competencies of the State Council of the RF (Article 12, Sec. 1 of the Act).

To ensure the operation of the organ, the Presidium of the State Council of the RF is established, whose composition is determined by the President of the RF (Article 10, Sec. 1–2 of the Act). Members of the State Council of the RF work in thematic commissions and working groups. They are established by the Chairman of the State Council of the RF (Article 11 of the Act).

Meetings of the State Council of the RF should be held regularly, by plans approved by the Chairman of the State Council and under his or her chairmanship. By decision of the Chairman of the State Council, extraordinary meetings may be held. For the meeting to be valid, the presence of the majority of its members is required (Article 13, Sec. 1–3 of the Act).

The legal form of activity of the State Council of the RF is a resolution signed by its Chairman of this body (Article 14, Sec. 1 of the Act). A resolution on the need to adopt or amend a constitutional federal law or a federal law is presented to the State Duma as a draft of a relevant legal act. The resolution on the need to adopt strategic planning documents of the RF is addressed to the Government of the RF, and similar documents regarding the constituent units of the RF, including local government units – to these entities respectively (Article 14, Sec. 2–4 of the Act).

3. Critical assessment of the legal provisions of the State Council of the RF

The assessment of the validity of the functioning of the State Council of the Russian Federation should begin with the general conclusion that the organ does not change the existing structure of power, mainly its division within the legislature and executive, but duplicates some functions currently performed by other organs, should be considered unnecessary and redundant. In the case discussed here, the strengthening of the political position of the State Council of the RF raises several doubts, not only as to the intentions of the Russian legislator but also as to the practice of its functioning. In general, one can, without risk of making a serious mistake, put forward the thesis that the potential, hidden goal of the State Council of the RF is to control the policy implemented by the President of the RF and to influence his decisions.

Firstly, the legal definition of the State Council of the Russian Federation as a constitutional body of public authority raises fundamental doubts since Article 11 of the Constitution of the RF does not mention it.

Some other doubts are related to the implementation by the State Council of the RF of tasks falling within the catalogue of competencies of the President of the RF. According to the provisions of Article 5, Sec. 2 of the Act, the State Council of the RF, at the request of the President of the RF, considers draft presidential decrees of state-wide importance. The lack of precise regulations regarding the procedure for this activity means that the State Council of the RF may potentially act independently and duplicate the competencies of the head of a state. As a result, a transfer of factual public power from the institution of the President of the RF to the State Council of the RF is possible.

According to Article 14, Sec. 1 of the Act, the State Council of the RF is allowed to issue resolutions signed by the Chairman. The legal nature of such resolutions remains unclear. This is because neither the Constitution of the RF nor federal legislation defines the resolutions of the State Council of the RF as a source of law.

It should be considered whether they are only recommendations, and therefore not binding on the addressees, or whether they are obligatory in their nature, equal in terms of the legal force to the decrees of the President of the RF (what seems to be reasonable because the State Council of the RF is a body operating under the auspices of the President of the RF). Taking into account the political circumstances of the functioning of the political system of the RF, it is hard to expect that any legal acts of the State Council of the RF, signed by the President of the RF, will remain unimplemented by their addressees.¹⁸ An important prerogative of the State Council of the RF, under Article 14, Sec. 2 of the Act, is the right to submit draft normative acts to the State Duma.

Article 6, Sec. 4 of the Act states that the State Council of the RF participates in the development, agreement and approval of efficiency indicators of the executive bodies of the constituent entities of the RF and local government bodies. Thus, this body participates in developing a formula for the activities of the executive power and local government, failure to comply with which may result in specific sanctions and personal responsibility. Therefore, it should be assumed that resolutions of the State Council of the RF may have a significant impact on the content of state policy.

The Act also gives the State Council of the RF the right to interfere in the scope of competencies of state authorities other than the President of the RF. Under the Article 6, Sec. 7 of the Act, the State Council of the RF considers the basic provisions of the federal budget law. According to Article 114, Sec. 1 of the Constitution of the RF, the only authority entitled to draft the federal budget law and submit it to the State Duma is the Government of the RF. The “coordination of activities” by the State Council of the RF also refers to local government bodies, which violates their independence guaranteed in Article 12 and 130 of the Constitution of the RF.

Hence, if the Article 85 of the Constitution of the RF defines the tasks of the Council of State of the RF quite narrowly (mainly ensuring cooperation of public authorities), the Act adds to this

¹⁸ И.А. Брикульский, *op.cit.*, p. 134.

catalogue important competencies of participation in determining the basic directions of state policy and directions of socio-economic development or state personnel policy.

Concluding critical considerations on the political position of the State Council of the RF, it should be noted that due to the violation of the principle of separation of powers in the RF, the President of the RF does not find a counterweight in the Parliament.¹⁹ The State Council of the RF, embedded within the legal framework of the President's competencies, is also not balanced and limited by any other organ of state power. None of them may influence the agenda of the State Council of the RF or the content of its decisions and has no right to dismiss its members. Moreover, although the State Council of the RF is currently a "constitutional state body", it does not have strong legitimacy. Rather it relies on the legitimacy of other authorities, primarily the President of the RF. Therefore, we can agree with the opinion that it is difficult to assign the State Council of the RF to any of the branches of state power, since the President of the RF, as the guarantor of the system and continuity of state power, stands above them. Thus, the President and the State Council of the RF can be considered a kind of superstructure over the tripartite division of power.²⁰ Also, the so-called Venice Commission pointed out that the constitutional amendments regarding the State Council of the RF threaten to weaken the political position of the government and create channels for dual management of the state.²¹

¹⁹ Cf. R. Czachor, *Konstytucyjne naruszenie zasady trójpodziału władzy w państwach niedemokratycznych. Kazusy Federacji Rosyjskiej, Republiki Białoruś i Republiki Kazachstan*, "Przegląd Prawa i Administracji" 2023, No. 135, pp. 133–147.

²⁰ А.Н. Верещагин, В.Б. Румак, *На пороге конституционной реформы*, "Закон" 2020, No. 1, p. 122.

²¹ CDL-AD(2021)005-e Russian Federation – Interim opinion on constitutional amendments and the procedure for their adoption, adopted by the Venice Commission at its 126th Plenary Session (online, 19–20 March 2021), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)005-e) (access: 22.04.2024).

4. The possible political importance of the State Council of the RF

Russian constitutional doctrine is not unanimous in the assessment of the content and purpose of the constitutionalization of the State Council of the RF. Some of the scholars express their approval, claiming that strengthening the position of this organ will allow for better solving “strategic tasks of the state”, there will be no conflicts of competencies. Moreover, “an optimal balance of the public authority system will be reached”.²² The State Council of the RF is considered “an independent constitutional state body with its own constitutional goals and unique legal status”²³ and has no analogous counterparts in the world.²⁴ Some legal scientists point out that, in fact, there has been no serious change, as the State Council of the RF, and especially its role in the decision-making process by the President of the RF, did not undergo any changes during the 2020 reform.²⁵ If the political strengthening of the State Council of the RF was carried out for the purpose of a future transfer of power, it should be accompanied by a deeper reorganisation of the government structure and governance processes, which has not happened until now.²⁶ For this reason, this organ is sometimes called “an important platform for discussion

²² Ю.В. Анохин, А.Е. Баньковский, *Государственный Совет Российской Федерации и его место в системе органов публичной власти сквозь призму конституционных поправок*, “Алтайский юридический вестник” 2021, No. 2(34), pp. 7–11.

²³ О.А. Кожевников, А.В. Безруков, А.Н. Мещеряков, *Конституционно-правовой статус Государственного Совета Российской Федерации в зеркале современных конституционных преобразований*, “Правоприменение” 2021, Vol. 5, No. 3, p. 61.

²⁴ Ibidem; Е.В. Виноградова, *Эволюция правового статуса Государственного Совета Российской Федерации*, “Государство и право” 2020, No. 11, p. 8.

²⁵ В.В. Гриценко, *Государственный Совет Российской Федерации: к дискуссии об определении нового правового статуса*, “Журнал юридических исследований” 2021, No. 6, pp. 42–49; Н.С. Малютин, *Государственный Совет Российской Федерации: результаты конституционной реформы*, “Журнал Белорусского государственного университета. Право” 2022, No. 1, pp. 37–41.

²⁶ В.Л. Шейнис, *Конституционные страсти*, “Конституционный вестник” 2020, No. 5(23), pp. 190–199.

on problems and issues of national importance”.²⁷ Critical acclaim of the 2020 constitutional amendments includes the imprecise nature of the relationship between the State Council of the RF and the President of the RF.²⁸ The political background of the changing role of the State Council of the RF, seems to be extremely important. Firstly, it is another step (after introducing federal districts and changing the method of appointing governors) of consolidating the presidential power and therefore centralizing the state. In these conditions, the implementation of the constitutional principle of the federal system of the RF appears to be illusory.²⁹ Secondly, the regulations regarding the State Council of the RF, as part of the imbalance between the branches of state power and its concentration in the hands of the President of the RF, raise concerns about the possible creation of a mechanism of control and pressure on the President of the RF from the State Council of the RF.

Concerning the first of the mentioned issues, it seems not to be the case that the concept of a “unified system of public authority” was introduced to the Russian constitutional terminology with the 2020 amendments and regarding the State Council of the RF. This uniformity is ensured, under Article 81 of the Constitution of the RF by the President of the RF, however, the existence of a collegial body competent in this area seems to be a step towards both greater legitimization of the executive power of the RF and towards deeper centralization (hypercentralization).³⁰ Full control of the State Council of the RF over all tiers of the administrative and territorial division of the RF, including federal, regional and local,

²⁷ С.И. Плотноков, *Государственный Совет Российской Федерации: вопросы правового статуса и перспективы развития в свете конституционной реформы*, “Вопросы российской юстиции” 2020, No. 8, p. 83.

²⁸ И.А. Брикульский, *op.cit.*, pp. 123–149.

²⁹ А.А. Троицкая, *Принцип федерализма*, in: *Основы конституционного строя России: двадцать лет развития*, ed. А.Н. Медушевский, Москва 2013, pp. 123–157.

³⁰ Here another important issue is omitted. The adoption to the Russian legal terminology of the term “public authority” follows the Western legal and administrative culture. So far, continuing the Socialist concept, the power was identified within the state and government, and thus, leaving beyond the public nature of local government authorities.

means that the process of shaping so-called “vertical presidential power” came to an end. Therefore, it is difficult to agree with the view present in the Russian literature, that the State Council of the RF is to become a place for realizing regional interests in national politics and influencing the directions of national socio-economic development.³¹

Concerning the second of the issues mentioned above, it is worth considering the strong personalization of power in the RF and the institutional design that allows the head of state to control all aspects of the public sphere, including law-making processes, and the activities of the executive and the judiciary.³² Therefore, the strengthening of the position of the State Council of the RF can be understood in the context of a possible transfer of power, i.e., its controlled transfer into the hands of the successor, while maintaining the extraordinary powers to control its activities by the predecessor. A precedent in this field is the case of Kazakhstan. The first president of this country, Nursultan Nazarbayev, obtained the normatively regulated status of “the Elbasy – the Leader of the Nation”, who had the right to chair the Security Council of the Republic of Kazakhstan for life.³³ In practice, when Nursultan Nazarbayev resigned from the office of the President in 2019 and this function was taken by Kasym Zhomart Tokayev, there was a dual power of the current and former presidents. This situation came to an end after mass protests that triggered Kazakhstan in

³¹ А.А. Клишас, *Госсовет утвердил себя в качестве одного из значимых политических институтов страны*, “Парламентская газета” 2020, No. 9, p. 14.

³² М.А. Краснов, И.Г. Шаблинский, *Российская система власти: треугольник с одним углом*, Москва 2008; R. Czachor, *Główne tendencje w procesach kształtowania się systemów politycznych państw postradzieckich*, “Przegląd Wschodnioeuropejski” 2015, No. VI/2, pp. 85–98.

³³ In 2018, a new law “On the Security Council of the Republic of Kazakhstan” was adopted, which defines this organ as “a constitutional body appointed by the President to coordinate uniformed state policy” (Article 1.1). Закон Республики Казахстан от 5 июля 2018 года № 178-VI «О Совете Безопасности Республики Казахстан», https://online.zakon.kz/Document/?doc_id=38039248 (access: 22.04.2024). Cf. R. Czachor, *Instytucja “lidera narodu” w republikach Azji Środkowej. Analiza prawno-porównawcza*, “Wrocławsko-Lwowskie Zeszyty Prawnicze” 2019, No. 10, pp. 245–257.

January 2002 and the eventual repeal of the act regulating the status of “the Elbasy” by the Constitutional Court.

It cannot be excluded that the contemporary RF may follow a similar path. The possible resignation of Vladimir Putin from the position of the President of the RF, who began his fifth term in May 2024, may involve taking up the mandate of a member of the Council of State of the RF. As noticed, the Act provides for the possibility for its chairman to freely shape the composition of this body. In this situation, taking into account Vladimir Putin’s position in the Russian power elite, even as a member of the State Council of the RF, he could influence the content of its activities, the adopted resolutions and individual decisions made by the next President of the RF. The State Council of the RF could then also serve as a facilitator for developing consensus among the ruling elite.³⁴ Such a scenario would mean the shift of the state power towards the State Council of the RF, in a similar way as it happened in 2008–2012, when Vladimir Putin served as the Prime Minister of the RF.

It should be considered that the current status of the State Council of the RF is not final and may be modified following current needs, especially if the procedure of transfer of power is to be launched. This is supported by the fact that the structure of this organ is regulated by federal law and not by federal constitutional law, as is the case with other state bodies. This means that the legal position of the State Council of the RF can be changed more simply than, for example, the legal position of the government.

5. Conclusions

In 2020, along with the constitutional reform in the RF, the political position of the State Council of the RF was strengthened. Although formally it is a consultative body operating under the President of

³⁴ I. Viktorov, O. Kryshatanovskaya, *Presidential Succession in Russia: Political Cycles and Intra-Elite Conflicts*, “Russian Politics” 2023, Vol. 8, No. 1, pp. 97–121.

the RF, the detailed legal regulations raise some doubts. As indicated above, generally it is a “constitutional state body” appointed by the President of the RF to ensure harmonious operation and cooperation of public authorities. In practice, it can even politically dominate over the head of the state.

The basic legal problems related to the State Council of the RF include the lack of relevant regulations in Article 11 of the Constitution of the RF that defines the organs of state power. Additionally, it lacks strong legitimacy and derives it from the President of the RF. The duplication of competencies of the head of state and an unclear mechanism of cooperation with the State Council justifies the thesis that the final legal position of the State Council of the RF will be determined in the future.

In light of the above, it should be assumed that the State Council of the Russian Federation may be a potentially useful organ in influencing the decisions of the President of the RF in the situation of the so-called transfer of power, i.e., Vladimir Putin’s resignation from office. Regulation of the status of the State Council of the RF by a federal law, and not a federal constitutional law, can be interpreted as a safeguard in the event of the need to adopt its legal position to current political circumstances.

SUMMARY

The State Council of the Russian Federation: the legal position and possible role in the authoritarian system of power

The paper discusses the legal position of the State Council of the Russian Federation. This issue seems significant, as its importance in the system of power was increased by the constitutional reform of 2020. Being officially a consultative body under the President of the Russian Federation, it gains the capacity to influence the content of state policy. The thesis of the article is that the State Council of the Russian Federation, doubling the entire scope of the President’s powers, may, in certain political circumstances, dominate him and take over the leading role in the orchestration of a state policy. The analysis of the Constitution of the Russian Federation and the legislation reveals several legal problems related to the failure to include the State Council of the Russian Federation in the

constitutional provisions regarding state power organs. The paper asserts that the final legal position of the State Council of the Russian Federation is not determined.

Keywords: the State Council of the Russian Federation; constitutional law of Russia; constitutional reforms in the post-Soviet states; authoritarian model of governance

STRESZCZENIE

Rada Państwa Federacji Rosyjskiej – pozycja ustrojowa i potencjalna rola w autorytarnym systemie władzy

W artykule omówiono pozycję ustrojową Rady Państwa Federacji Rosyjskiej. Zagadnienie wydaje się ważne, ponieważ w wyniku reformy konstytucyjnej z 2020 r. podniesiono jej znaczenie w systemie rządów. Będąc formalnie organem konsultacyjnym przy Prezydencie FR, zyskuje ona możliwość wpływania na treść polityki państwa. Główna teza artykułu głosi, że Rada Państwa FR, dublując w całym zakresie uprawnień Prezydenta, może w określonych okolicznościach politycznych zdominować go i przejąć czołową rolę w określaniu kierunków polityki państwa. Na podstawie analizy Konstytucji FR oraz ustawodawstwa wskazano szereg problemów natury prawnej związanej z niewłączeniem Rady Państwa FR do konstytucyjnie unormowanych organów władzy państwowej, stawiając tezę, że jej ostateczna pozycja ustrojowa nie została jeszcze wypracowana.

Słowa kluczowe: Rada Państwa Federacji Rosyjskiej; prawo konstytucyjne Rosji; reformy konstytucyjne państw postradzieckich; autorytarny system rządów

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