Information for citation:
Romanovskaya O. V. Delegirovanie gosudarstvenno-vlastnykh polnomochiy v sisteme publichno-pravovogo regulirovaniya [Delegation of State Authoritative Powers in the Public Regulation System]. *Vestnik Permskogo Universiteta. Juridicheskie Nauki* – Perm University Herald. Juridical Sciences. 2017. Issue 36. Pp. 143–154. (In Russ.). DOI: 10.17072/1995-4190-2017-36-143-154.

UDC 342.97
DOI: 10.17072/1995-4190-2017-36-143-154

DELEGATION OF STATE AUTHORITATIVE POWERS IN THE PUBLIC REGULATION SYSTEM

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Introduction: *the article considers introduction into the system of the state power organization of such an element as delegation of particular public authorities to the subjects of private law.* ***Purpose:*** *to analyze the relations emerging when subjects of private law exercise functions and powers characteristic of governmental bodies; to identify the forms of delegation and gaps emerging in the system of public administration; to perform analysis of each form of delegating authoritative powers.* ***Methods:*** *the research is based on analysis of statutory regulation, technical and comparative law methods.* ***Results:*** *the identified forms of delegating state powers of authority accepted in the Russian Federation are as follows: co-regulation, self-regulation and quasi-regulation; establishment of an organization with a special status combining the features of a state body and those of a non-profit organization but having the right to engage in business activities; management of a territory by a private law organization; outsourcing of the functions of governmental bodies. It has been revealed that the RF Constitution does not provide for (but also does not prohibit) delegating powers of authority to non-governmental organizations. Permissibility of such delegation is based on the broad interpretation of the RF Constitution general provisions given in some rulings of the RF Constitutional Court.* ***Conclusions:*** *modern ideology of libertarianism, which proves inefficiency of the government in performing its public functions, has a considerable influence on the content of the administrative reform. One of the reform lines is the government's renunciation of excessive authorities and their delegation to the third sector – different non-governmental organizations. Lack of unified rules of such delegation in the Russian Federation entails abuses, as well as the government's refusal to control the efficiency of performing public functions.*

Keywords: delegation; power; authority; co-regulation; self-regulation; quasi-regulation; governmental body; non-governmental organizations; libertarianism

Information in Russian

ДЕЛЕГИРОВАНИЕ ГОСУДАРСТВЕННО-ВЛАСТНЫХ ПОЛНОМОЧИЙ В СИСТЕМЕ ПУБЛИЧНО-ПРАВОВОГО РЕГУЛИРОВАНИЯ

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Введение: *статья посвящена внедрению в систему организации государственной власти такого элемента, как передача (делегирование) отдельных публичных полномочий субъектам частного права.* ***Цель:*** *проанализировать отношения, возникающие по поводу осуществления субъектами частного права функций и полномочий, характерных для органов государственной власти. Выделить формы делегирования, пробелы, возникающие в системе государственного управления, провести анализ содержания каждой из форм передачи властных полномочий.* ***Методы:*** *основу данного исследования составили метод анализа нормативно-правового регулирования, формально-юридический и сравнительно-правовой методы.* ***Результаты:*** *установлены формы делегирования государственно-властных полномочий, принятые в Российской Федерации: сорегулирование, саморегулирование и квазирегулирование; создание организации с особым статусом, совмещающей в себе признаки государственного органа и некоммерческой организации, но имеющей право заниматься предпринимательской деятельностью; управление территорией организации частного права; аутсорсинг функций органов государственной власти. Выявлено, что Конституция России не предусматривает (но и не запрещает) делегирование государственно-властных полномочий негосударственным организациям. Допустимость делегирования основывается на расширительном толковании общих положений Конституции России, осуществленном в некоторых постановлениях Конституционного суда РФ.* ***Выводы:*** *современная идеология либертарианства, обосновывающая неэффективность осуществления государством своих публичных функций, оказывает заметное влияние на содержание административной реформы. Одним из направлений реформы является отказ государства от выполнения избыточных полномочий и передача их третьему сектору – различным негосударственным организациям. Отсутствие единых правил такой передачи в Российской Федерации влечет злоупотребления, а также отказ государства в части контроля за эффективностью выполнения публичных функций.*

Ключевые слова: делегирование; власть; полномочия; сорегулирование, саморегулирование; квазирегулирование; государственный орган, негосударственные организации; либертарианство

Introduction

According to Article 1 of the Constitution, the Russian Federation is declared a democratic federative and constitutional state with the republican form of government. According to Article 3 of the Constitution, the holder of sovereignty and the only source of power in Russia is its multinational public that can exercise it either directly or via central and local authorities. Thus, the Constitution defines the subject of power as well as the forms of its exercise, having established the monopoly of public institutions (state and local government authorities). The traditional doctrine of constitutional law proceeds from this idea. As S. A. Avakyan mentions: “If it is necessary for a state to manifest itself in terms of governing, it is done by public authorities acting as independent subjects of constitutional legal relations” [12].

Article 11 of the RF Constitution specifies public authorities, distinguishing two levels (federal level and level of the subject of the Russian Federation) and enumerating them depending on what branch of power they belong to (legislative, executive, judiciary).

However, nowadays we can see changes in many conventional principles of organizing social life: establishment of international associations with supranational authorities, internationalization of law, leadership of transnational corporations, globalization of economy, instantaneous dissemination of information. All this cannot but affects state institutions which are trying to adapt to the changing reality. Over the last 25 years, our country has tested itself almost all possible variants of development: from the policy of chaos and disintegration

of all management systems to strengthening centrist principles (since the tragedy in Beslan and Putin's historical speech about reinforcing the vertical power structure). However, after a short period of time it has become quite clear that the process of centralization has its limits. Political reforms undertaken under the aegis of strengthening democracy and power deconcentration principle coincided with the long-lasting economic crisis and sanctions from the USA and the European Union. All this made the problem of finding an effective national administration system acute. One of the recipes offered to increase the efficiency is to introduce commercial principles into the system of organizing governmental power. The extension of this policy is delegation of particular state authoritative powers to private law subjects. All this is within the logic of the liberal idea to build such a type of societal organization in which the government will have the minimal role.

Political and Legal Reasoning for Delegating State Powers

A basic ideological dogma underlying the delegation of governmental authoritative powers to non-governmental organizations is the theory of libertarianism. It has quite a long history. As early as in the 18th century Jacques Claude Marie Vincent de Gournay declared the "Laissez – faire" principle (from French "let us do") [14, p. 914]. As applied to modern times, libertarianism was developed by the Austrian school representatives: Friedrich August von Hayek (Nobel laureate in Economics, 1974), Ludwig von Mises, Murray Rothbard.

F. A. Hayek systemized the key drawbacks of a state:

1. Subordination of the legislative power to the executive power.

2. Transformation of people's representatives into agents of lobbying groups.

3. Transfer of making decisions important for the society to the sphere of current government.

4. Dependence of the government on the mass media (Hayek gives them a unifying name "media").

At the same time, F. A. Hayek analyzes the functions of a state, demonstrating that many of them could be performed by the private sector. He draws an important conclusion: "In a free society government is one of many organizations necessary only to provide exterior borders in which spontaneous order originates and exists" [23]. In other words, he calls into question the monopoly of a state as the main regulator of public relations.

L. Mises substantiates liberalism as a trend which "opposes further expansion of governmental activity". His idea is to support private property as the main principle of "organizing human life in society". All this must substantiate governmental minimalism [28]. Murray Rothbard derives a formula: "We are not the government, and the government is not us" [30].

Such statements have a significant number of supporters who continue the general idea about withering away of the state as a form of organizing public life. R. Cornwell develops the theory of the "third sector" (an independent sector) which can perform the governmental functions more efficiently [20]. Many ideas, for example, are used to justify the necessity of building the edifice of public-private partnership [15]. Anthony de Jasay delivers a verdict: "Even the most altruistic state cannot pursuit any aims other than their own" [21, p. 26]. Martin van Creveld also draws conclusions impartial for the state: "Having emerged as a tool to allow the monarchs to become absolute sovereigns, the state began to live its own life. As an apocalyptical monster it hung over the society". As a result, the author underlines an ambiguous value of the thing called "state", and he sees the way out of this situation in a gradual "deviation from the state" [21].

It is not enough for the new ethics just to declare that it is necessary to reduce the authority of the government, to deprive its bodies of their excessive functions. The concept of state itself is being revised. It is declared as a dogma that the state is not a single whole. In opinion of the liberal society model representatives, the contrary idea can be useful in political philosophy, but in practice there is no such a concept as state [17]. There are different organizations which in some way participate in administrative activity. In a general sense, they are referred to the components of the governmental machinery.

Based on this ideology, one of the ways out of the described apocalyptic situation is delegation by the government of its particular authorities to non-governmental organizations (third sector, which is being developed).

Constitutional Principles of Delegating State Authoritative Powers in the Russian Federation

The RF Constitution does not use the term "delegation", including when defining the procedure for the exercise of state power. At the same time, the Constitution allows for redistribution of state powers of authority, using different wordings: contract (Article 66 provides for reauthorization between an autonomous okrug and territory (region)); change in the status of the power holder (part 5 of Article 66 provides for the opportunity to change the status of a Russian Federation subject); delegation (Article 78 consolidates the delegation of authoritative powers under the executive branch of power); vesting (Article 132 provides for vesting state powers to local government bodies).

Using such reticence, the Constitutional Court of the Russian Federation has made numerous broad interpretations of these articles, having identified not only the possibility of distributing powers of authority between public power holders but also involvement of non-governmental organization in this range of parties: notary offices (Ruling of May 19, 1998 No. 19-P[1]), self-regulatory organizations of arbitration managers (Ruling of December 9, 2005 No. 12-P[2]). However, these rulings contain only the general conclusion on the permissibility of delegating state authoritative powers. At the same time, the Constitutional Court of the Russian Federation avoided the formulation of constitutional characteristics of delegating power.

It should be noted that one of the claims of the administrative reform declared by the Decree of the President of Russia of July 23, 2003 No. 824 "On Measures of Conducting the Administrative Reform in 2003-2004"[3] was termination of the excessive governmental regulation. Despite the temporary terms of the given Decree, its relevance is preserved in the current decade. The forms of terminating the excessive governmental regulation are rather diversified. Considering that the administrative reform has already been functioning for quite a long time, the government can be seen to have succeeded in the process of "power privatization". Russians have an ambiguous attitude to the word "privatization", but it is exactly this term that is often used when characterizing the practice of delegation in West European legal science [3, p. 65]. Let us add that the negative aspect of the term "power privatization" is revealed in foreign research works, too [26].

Co-Regulation, Self-Regulation, Quasi-Regulation

Delegating powers of authority is sometimes considered to be a paired category of deregulation. However, in the latter case there is a refusal from the governmental regulation when the emerging "niche" can be occupied by a private organization. Some intermediate forms are co-regulation and self-regulation, when delegation can be manifested in various forms.

In a classical way co-regulation appears in adoption of legal regulations by the governmental body together with a non-governmental organization. For example, according to the fundamental principles of legislation of the Russian Federation on the notarial system[4] the joined party in adopting important legal regulations is the Federal Notarial Chamber (non-profit organization based on obligatory membership of privately practicing notary officers). The Ministry of Justice of the Russian Federation jointly (it is exactly this wording which is used in the law) with the Federal Notarial Chamber ratifies the Procedures of taking a qualification exam by individuals willing to become notary officers[5], Regulation on the Review Board[6] and other documents.

Co-regulation can be considered a form of participation of non-governmental organizations in the current administration activity of a regulatory body. Let us take as an example the creation and activity of a special regulatory body which has representation of both the government and the main participants of the regulated activity. According to Article 33 of the Federal Law of March 26, 2003 No. 35–FZ "On Electric Power Engineering"[7], the Review Board (regulatory body) of the Market Council (non-profit organization which unites (on the basis

[1] Collection of Legislative Acts of the Russian Federation. 1998. No. 22. Art. 2491.
[2] Ibid. 2006. No. 3. Art. 335.
[3] Ibid. 2003. No. 30. Art. 3046.
[4] Bulletin of the Congress of People's Deputies of the Russian Federation and the Supreme Soviet of the Russian Federation. 1993. No. 10. Art. 357.
[5] Bulletin of Normative Acts of Federal Executive Bodies. 2015. No. 41.
[6] Ibid. 2000. No. 28.
[7] Collection of Legislative Acts of the Russian Federation. 2003. No. 13. Art. 1177.

of membership) subjects of power engineering and large consumers of electricity) was established. The Review Board includes both representatives of governmental bodies and non-profit organizations.

Co-regulation is a perspective trend in governmental power activity but it has to meet particular requirements which have been worked out clearly abroad. Let us demonstrate them as theses which can be conceived by Russian administration practice. Firstly, there should be an institutional aspect – the presence of a co-regulation subject which has to meet particular requirements: the presence of positive intentions (in Europe this principle is formulated in the following way: "A fox should not be responsible for a henhouse" [18]); orientation towards interaction and cooperation; government's confidence in the co-regulator. Secondly, a criterial aspect should be followed – the law should define the co-regulation criteria [24]. Thirdly, it is necessary to provide transparency of the system, with long-term public control over co-regulation [16]. Fourthly, sound indices of legitimacy and co-regulation efficiency should be established. The state should specify what it expects from co-regulation [29].

The concept of **self-regulation** is given in Article 2 of the Federal Law of December 1, 2007 No. 315-FZ "On Self-Regulatory Organizations"[1]. They are defined as "independent and initiative activity which is carried out by the subjects of entrepreneurial or professional activity and the essence of which is development and establishment of the standards and rules of the given activity, as well as control over compliance with the requirements of the given standards and rules". The RF Government Decree of December 30, 2015 No. 2776-p ratified the Concept of enhancing self-regulation mechanisms, which confirms the governmental attitude to the development of this institution.

Self-regulation can be a result of initiative activity of entrepreneurs interested in self-organization and upholding common interests. However, self-regulation can also appear as a form of delegating state authoritative powers when the state rejects its function of a regulator. The main administrative functions (issuance of permissions, adoption of legal regulations in a particular sphere of activity, monitoring) are delegated to a self-regulatory organization, membership in which becomes obligatory. Self-regulation in this case ceases being initiative activity, establishment of an administrative structure turns into an obligation. The legislation enacts membership criteria, structure of the organization, rights and responsibilities of the regulatory bodies, obligatoriness of their orders, etc. According to M. A. Egorova, "the right to self-regulation de facto turns into the obligation of its implementation" [6, p. 27]. In Russian jurisprudence, there are no doubts that under such an approach a self-regulatory organization is given the features of a public body having powers of authority, built (although indirectly) into the system of public administration. This is also confirmed by the abovementioned Ruling of the RF Constitutional Court of December 9, 2005 No. 12-P.

It is exactly in this way that self-regulatory organizations were created in the sphere of urban development (Chapter 6.1 of the Town-Planning Code of Russia[2]), valuation activities (Federal Law of July 29, 1998 No. 135-FZ "On Valuation Activities in the Russian Federation"[3]), auditing activity (Federal Law of December 30, 2008 No. 307-FZ "On Audit Activity"[4]) and some others.

Russian science has ambiguous opinions on the institution of self-regulation. Its opponents think that a governmental body (even having all the drawbacks of the bureaucratic system) is more independent in solving public tasks, more objective in making obligatory decisions [11, p. 34]. There is no theoretical development of the status of self-regulatory organizations combining public and private law principles [7]. Similar structures can become engaged by or dependent on commercial interests [2].

D. A. Petrov considers the term "quasi-regulation" as "governmental regulation of public relations not by means of government agencies but by delegating public authorities to private individuals, which gives the opportunity to exercise regulatory control with simultaneously a bigger degree of independence, but on condition of maintaining governmental control over their activity" [10, p. 102]. In the course of research, this consideration is not

[1] Collection of Legislative Acts of the Russian Federation. 2007. No. 49. Art. 6076.

[2] Ibid. 2005. No. 1. Pt. 1. Art. 16.

[3] Ibid. 1998. No. 31. Art. 3813.

[4] Ibid. 2009. No. 1. Art. 15.

absolutely clear, especially if compared with the features of co-regulation and self-regulation. Foreign sources demonstrate specific features of this very term. For example, materials of the Australian Law Reform Commission give a particular example: a voluntary memorandum of Internet providers on filtrating URL-addresses containing information about child maltreatment. The voluntariness is provided simultaneously both by legal requirements and regulating activities of governmental agencies [19].

Establishing Organizations with a Mixed Status

One of the forms of delegating state authoritative powers is establishment of an organization with a special status combining features of a governmental body and those of a non-profit organization, but having the right to engage in entrepreneurial activity. A bright example is the state corporation "Rosatom", established according to the Federal Law of December 1, 2007 No. 317-FZ "On Rosatom State Nuclear Energy Corporation"[1]. Article 2 of this law gives characteristics of the corporation pointing at its maximal proximity to the status of a governmental agency: "authorized regulatory body", "vested with the powers on behalf of the Russian Federation to exercise government control". At the same time, the status of a corporation is defined by the Federal Law of January 12, 1996 No. 7-FZ "On Non-Profit Organizations". It has the right (although with limitations) to carry out for-profit activities.

Since the establishment of state corporations (Rosatom is not the only one of this kind), discussions on their place in the system of legal entities have not ceased. Nowadays, there is the Federal Law of July 3, 2016 No. 236-FZ "On Public Companies in the Russian Federation and on Introducing Amendments into Certain Legislative Acts of the Russian Federation". The law defines the status of these new organizations as public companies. They are coming to substitute state corporations, taking most of their features (in part of exercising public functions). Along with this, there are commercial criteria of efficiency of such organizations, which can hardly contribute to exercising the very public functions. A. N. Dementyev names the process of establishing such structures "devaluation of the executive power" [5]. Let us note that 2009–2010 was a period of endless scandals connected with exposing the facts of mere misuse of budget funds by state corporations, which led to negative evaluation of their existence by President of Russia (at that time) D. A. Medvedev[2].

Territory Management by Private Law Organizations

The Russian Constitution enshrines the right to private ownership of land (Article 9). The given provision belongs to the foundations of the constitutional system and cannot be changed without the procedure of reviewing the whole text of the RF Constitution. Regardless of the form of ownership of the land, the government functions as a sovereign. It is a governmental agency that is an operational agent in exercising the sovereign's power [8, p. 10]. The land property, being in private ownership, is not removed from official jurisdiction. However, nowadays federal laws have been passed according to which the sovereign's functions on a certain territory are performed not by governmental agencies but by private law organizations (often by commercial organizations – joint stock companies).

They are the following laws:

– Federal Law of December 3, 2011 No. 392-FZ "On Zones of Territory Development in the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation";

– Federal Law of December 29, 2014 No. 473-FZ "On Arias of Priority Socioeconomic Development in the Russian Federation" [3];

– Federal Law of September 28, 2010 No. 244-FZ "On the Skolkovo Innovation Center"[4];

– Federal Law of July 22, 2005 No. 116-FZ "On Special Economic Zones in the Russian Federation"[5];

– Federal Law of June 29, 2015 No. 160-FZ "On the International Medical Cluster and

[1] Collection of Legislative Acts of the Russian Federation. 2007. No. 49. Art. 6078.

[2] The Presidential Address to the RF Federal Assembly of November 12, 2009. Available at: http://news.kremlin.ru/-transcripts/5979/print (*accessed* 20.02.2017)

[3] Collection of Legislative Acts of the Russian Federation. 2015. No. 1. Pt. 1. Art. 26.

[4] Ibid. 2010. No. 40. Art. 4970.

[5] Ibid. 2005. No. 30. Pt. 2. Art. 3127.

Amendments to Certain Legislative Acts of the Russian Federation"[1];

– Federal Law of July 13, 2015 No. 212-FZ "On the Free Port of Vladivostok"[2].

Analysis of the abovementioned laws indicates the use of a different control matrix: 1) an area is determined, where limitations are placed on the functions performed by governmental agencies and local authorities; 2) establishment of a holding company is provided; 3) delegation of the function of managing the area to the specially established holding company is carried out; 4) the type of legal entity of the holding company is conferred (as a rule, a joint stock company). At the same time, when the laws were being passed, there was no clear explanation of the inefficiency of the "standard" system. Pride of place goes to the axiom: the state cannot cope with performing public functions.

However, establishing joint stock companies with state regulation functions is highly questionable. Now there is a joint stock company "Special Economic Zones", which has the rights and obligations of a holding company. It is in charge of 17 special economic zones (SEZ) of Russia. In June 2016, K. Chuichenko, Head of the Presidential Control Directorate, announced the figures proving the abuses in spending budget funds in SEZs. Over the last 10 years, 186 billion rubles have been spent on developing 33 special economic zones. The cost of one working place in SEZ is 10 million rubles, which equals an average salary in Russia for 25 years[3].

In the RF subjects, there are also attempts to establish SEZs. For example, according to the law of the Lipetsk Region of August 18, 2006 No. 316-OZ "On Special Economic Zones of the Regional Level", there is administration acting on the SEZ's territory – a "commercial organization registered according to the Russian Federation legislation exercising administration of a regional level SEZ".

There are even more questions to the Skolkovo Center, with a specially established Foundation performing functions of its holding company. The abovementioned Law No. 244-FZ gives a blurred definition of a holding company – "a Russian legal entity which, according to the procedure established by the RF President, has the responsibility to ensure implementation of the project" (Article 2). In respect to the Skolkovo Center, particular exceptions from land, urban planning, housing, medical and other sectoral legislation were introduced. The functions performed by governmental bodies and local authorities are delegated to the abovementioned Foundation. E. V. Gritsenko considers this delegation to be "violation of the constitutional principles of a democratic state" [4, p. 117]. V. V. Komarova points at the lack of control over such delegation [9, p. 45].

Unfortunately, the practice shows numerous financial improprieties in the work of the Skolkovo Center, which seriously affects trust to it. In autumn 2016, the Russian Audit Chamber website published a report prepared together with the Federal Security Service of the Russian Federation, disclosing the results of auditing of the use of the federal budget funds aimed at implementing measures connected with establishing and providing the functioning of the Skolkovo Innovation Center in 2013–2015[4]. This document emphasizes the fact that despite the large-scale budgetary financing some state government bodies do not exercise their authorities on the area of Skolkovo. It also compares the expenditures on developing Skoltech with budgetary financing of federal universities. The figures make us to think about the Center's efficiency. Under equal amount of financing, in 2015 Skoltech had 315 students and 60 members of teaching staff. An average salary of the Foundation employees in 2015 was 468 thousand rubles. An average salary of the teaching staff at Kazan Federal University in 2015 was 29,500 rubles.

Outsourcing of State Government Bodies Functions

In the modern world, the practice of outsourcing is becoming increasingly popular. This practice was borrowed from entrepreneurial activity, where many organizations delegate some of their activities

[1] Collection of Legislative Acts of the Russian Federation. 2015. No. 27. Art. 3951.
[2] Ibid. 2015. No. 29. Pt. 1. Art. 4338.
[3] Available at: http://kommersant.ru/doc/3008286 (accessed 20.02.2017).
[4] Report on the Results of the Control Activity (together with the Federal Security Service of the Russian Federation). Available at: http://www.ach.gov.ru/activities/bulleten/882/28144/?sphrase_id=2575494 (*accessed* 20.02.2017).

to another company based on a long-term agreement. Now it is possible to similarly delegate certain functions of state government bodies to non-governmental organizations or private individuals. In this case, there is no vesting with power, the agent performs a function which was earlier performed by a governmental body, but under its control. The result of the agent's activity influences the decision made by the government.

Let us take as an example the status of a bank as an agent of currency control (Part 3 of Article 22 of the Federal Law of December 10, 2003 No. 173-FZ "On Currency Regulation and Currency Control"[1]). Among public authorities of the currency agent, it is necessary to distinguish control over performing currency transactions by residents and non-residents. D. N. Bakhrakh and V. V. Skorokhodova give a negative evaluation to this practice [1].

In respect to educational activity, it is necessary to mention the status of experts participating in conducting state accreditation. According to the Decree of the Russian Ministry of Education and Science of November 9, 2016 No. 1386, as well as Regulation on State Accreditation of Educational Activity (ratified by the Resolution of the RF Government of November 18, 2013 No. 1039[2]), accreditation inspection is carried out by experts who are not civil servants of the Federal Service for the Supervision of Education and Science (Rosobrnadzor). A civil contract is concluded with the experts, but the result of their inspection is the action taken by a government body – Decree of Rosobrnadzor on State Accreditation (or Its Forfeiture) of an Educational Establishment.

On the one hand, outsourcing of certain functions of state governmental bodies can be considered a positive phenomenon. The government can focus its resources on solving other, strategic tasks, without being distracted by routine. On the other hand, outsourcing can lead to *frontolysis* of the state power. Successive removal of some or other functions from a state governmental body can lead to its total liquidation. In case the governmental presence in a particular sphere is excessive, it can only be welcomed. If enthusiasm about outsourcing leads to the deficit of public interest in the process of a private organization's activity, it will be difficult for the government to take its authorities back. The element of the system will be destroyed.

A negative example of that is gradual reduction of police agencies' functions, which is being practices in Western European countries. It is mainly substantiated by the positive statistics which indicates the declining crime rates. For example, in Germany there is a gradual reduction of the number of state police services. They are being substituted by private security companies, which employ specialists with low level of training, salary and costs of their training. The number of private security officers now almost equals the number of police officers and is about 230 thousand people. Low level of requirements imposed on private security companies leads to the increasing number of scandals connected with illegal detentions, rude treatment, abuse of authority [31]. Similar situations can be observed in Russia, where the issue of professionalism of private security officers is constantly raised in the mass media.

When analyzing outsourcing, it is essential to stress that there is delegation of functions of a governmental agency, but not of the government as a whole. However, even here we can see partial "conquering" of space by private organizations. Private military companies are becoming more and more active in military operations at flashpoints. For example, in Ukraine there are officially acting battalions of the oligarch Kolomoisky "Dnepr-1" and "Dnepr-2", which are only formally subordinated to the Ministry of Internal Affairs of Ukraine. Contracts of private military companies in Iraq are evaluated dozens of billions of dollars in total. German researchers from Bremen University use the term "privatization of armed groups" [25]. The RF President emphasized the importance of introducing the federal law on the status of private military companies[3], but the legislative initiatives were not supported by the State Duma of the Russian Federation.

Conclusions

First of all, special attention should be paid to the fact that the Russian Constitution does not contain any special provisions on the opportunity to delegate state authoritative powers to

[1] Collection of Legislative Acts of the Russian Federation. 2003. No. 50. Art. 4859.
[2] Ibid. 2013. No. 47. Art. 6118.
[3] Available at: http://ria.ru/defense_safety/20120411/623227984.html (*accessed* 20.02.2017)

non-governmental organizations. This practice is legalized by interpretation of the Constitution by the RF Constitutional Court. However, some decisions made by the constitutional control body, which allow for such delegation, have not led to the introduction of a special federal law that could complete this gap.

Western doctrine has powerful ideological support for gradual decentralization of the state. Libertarian theory originates from the idea that the state is a manifestation of evil, and it claims with no proof that reduction of authoritative powers is one more step to freedom and well-being of all members of society. If the state is not the only (and not the most effective) regulator of relations, then the center for taking compulsory decisions can be shifted towards many regulators belonging to the "third sector" – non-profit organizations implementing public interest in their activity. V. L. Tolstykh is right when pointing out that the liberal model put forward their slogan "less of the state" because strengthening of the state was considered to be the ground for the rise of totalitarianism [13, p. 47]. Support of this ideology by part of the Russian elite has led to the practice of delegating state authoritative powers.

In the Russian Federation, delegation has different forms: co-regulation, self-regulation and quasi-regulation; establishment of organizations with a special status, combining the features of a governmental agency and those of a non-profit organization but having the right to conduct entrepreneurial activity; territory management by private law organizations; outsourcing of the functions of governmental agencies. All the above mentioned forms have been considered in great detail in the article, so there is no need to repeat the conclusions drawn. It is only necessary to stress that all of them have a common disadvantage: lack of constitutional principles of delegating authoritative powers. The state considers each form as a private case, individualizing the legislation for each particular situation. Such approach is aimed at solving narrow problems, it fragments the serious problem of *frontolysis* of the state. However, here we deal with the key question of organizing state power, whose main intention is implementation of public interest.

References

1. *Bakhrakh D. N., Skorokhodova V. V. Delegirovanie kommercheskim bankam vlastnykh polnomochiy* [Delegation of Authority to Commercial Banks]. *Sovremennoe pravo* – Modern Law. 2007. Issue 11. Pp. 2–5. (In Russ.).
2. *Belov V. A. Samoregulirovanie i samoreguliruemaya organizatsiya kak sostavlyayushchaya chast' obshchestvennykh otnosheniy* [Self-Regulation and Self-Regulative Organization as an Element of Public Relations]. *Konkurentnoe pravo* – Competition Law. 2014. Issue 4. Pp. 32–36. (In Russ.).
3. *Vasil'yeva A.F. Delegirovanie gosudarstvennykh funktsiy sub"ektam chastnogo prava* [Delegation of State Functions to Subjects of Private Law]. *Pravovedenie* – Pravovedenie. 2008. Issue 2. Pp. 65–75. (In Russ.).
4. *Gritsenko E. V. Konstitutsionnye osnovy i pravovye formy privlecheniya chastnykh sub"ektov k resheniyu munitsipal'nykh zadach v Rossii v sravnitel'noy perspektive* [Constitutional Framework and Legal Forms of Attraction of Private Entities to the Solution of Municipal Problems in Russia in Comparative Perspective]. Zakon – «ZAKON» journal. 2013. Issue 2. Pp. 113–128. (In Russ.).
5. *Dement'yev A.N. Zakonodatel'naya deval'vatsiya polnomochiy ispolnitel'nykh organov gosudarstvennoy vlasti: posledstviya i predely dopustimogo* [Legislative Devaluation of Powers of Executive State Authorities: Consequences and Available Limits]. *Konstitutsionnoe i munitsipal'noe pravo* – Constitutional and Municipal Law. 2016. Issue 7. Pp. 37–41. (In Russ.).
6. *Egorova M. A. Chastno-publichnye nachala priobreteniya statusa samoreguliruemoy organizatsii nekommercheskoy korporatsiey* [The Private-Public Bases of a Noncommercial Corporation's Acquisition of the Status of the Self-Regulatory Organization]ю *Predprinimatel'skoe pravo* – Entrepreneurial Law. 2013. Issue 1. Pp. 25–32. (In Russ.).
7. *Ershova I. V. Samoregulirovanie predprinimatel'skoy i professional'noy deyatel'nosti: voprosy teorii i zakonodatel'stva* [Self-Regulation of Business and Professional Activities: Issues of Theory and Legislation]. *Aktual'nye problemy rossiyskogo prava* – Actual Problems of Russian Law. 2014. Issue 10. Pp. 2142–2150. (In Russ.).
8. *Zarshchikov A. V. Pravo sobstvennosti publichnykh obrazovaniy na zemlyu v Rossiyskoy Federatsii: konstitutsionno-pravovoe issledovanie: avtoref. diss. ... kand. yurid. nauk* [The

Public Entities' Property Right to the Ground in the Russian Federation: Constitutional Research: Synopsis of Cand. jurid. sci. diss.]. Penza, 2015. 28 p. (In Russ.).
9. *Komarova V. V. Osobyj pravovoy status territoriy v Rossii (na primere innovatsionnogo tsentra "Skolkovo")* [Special Legal Status of Territories in Russia (on the Example of "Skolkovo" Innovation Center)]. *Rossiyskaya yustitsiya* – Russian Justitia. 2011. Issue 6. Pp. 44–47. (In Russ.).
10. *Petrov D. A. Pravovoy status samoreguliruemoy organizatsii v sfere predprinimatel'stva: diss. ... d-ra yurid. nauk* [The Legal Status of a Self-Regulatory Organization in the Field of Entrepreneurship: Dr. jurid. sci. diss.]. St. Petersburg, 2016. 433 p. (In Russ.).
11. *Romanikhin A. V. Samoregulirovanie po-rossiyski* [Self-Regulation in Russian way]. *Zakonodatel'stvo i ekonomika* – Law and Economics. 2004. Issue 3. Pp. 32–36. (In Russ.).
12. *Sovremennye problemy organizatsii publichnoy vlasti: monografiya* [Current Problems of the Organization of Public Authority: monograph; ed. by S. A. Avak'yan]. Moscow, 2014. 596 p. (In Russ.).
13. *Tolstykh V. L. Mif o voyne kak tsentral'nyy element mezhdunarodno-pravovoy ideologii* [The Myth of the War as a Central Element of International Legal Ideology]. *Rossiyskiy yuridicheskiy zhurnal* – Russian Juridical Journal. 2015. Issue 6. Pp. 43–53. (In Russ.).
14. *Entsiklopedicheskiy* slovar' [Encyclopedic Dictionary; ed. by I. E. Andreevskij]. Vol. 9a. St. Petersburg, 1893. 977 p. Available at: http://dlib.rsl.ru/viewer/01003924242#?page=1 (accessed 20.02.2017). (In Russ.).
15. *Affordable* Housing and Public – Private Partnerships. University of Colorado Law School, USA, 2009. Available at: https://ru.scribd.com/document/329013144/Nestor-M-Davidson-Robin-Paul-Malloy-Affordable (accessed 20.02.2017). (In Eng.).
16. *Balleisen E. J., Eisner M.* The Promise and Pitfalls of Co-Regulation: How Governments Can Draw on Private Governance for Public Purpose. Available at: http://www.tobinproject.org/sites/tobinproject.org/files/assets/New_Perspectives_Ch6_Balleisen_Eisner.pdf (accessed 20.02.2017). (In Eng.).
17. *Brandsen T., De Donk W., Putters K.* The Intangible Third Sector. Hybridity and Change as the Basis for a New Conceptualization / Paper presented at the conference of the European Sociological Association, Murcia, 23–26 September, 2003. Available at: https://www.um.es/ESA/papers/Rn6_7b3.pdf (accessed 20.02.2017). (In Eng.).
18. *Castro D.* Benefits and Limitations of Industry Self-Regulation for Online Behavioral Advertising. Available at: http://www.itif.org/files/2011-self-regulation-online-behavioral-advertising.pdf (accessed 20.02.2017). (In Eng.).
19. *Codes* and Co-regulation. Available at: https://www.alrc.gov.au/sites/default/files/pdfs/publications/11_codes_and_co-regulation.pdf (accessed 20.02.2017). (In Eng.).
20. *Cornuell R. C.* Reclaiming the American Dream: The Role of Private Individuals and Voluntary Associations (Philanthropy and Society). Transaction Publishers, 1993. 199 p. (In Eng.).
21. *Creveld van M.* The Rise and Decline of the State. Cambridge University Press. 1999. 436 p. (In Eng.).
22. *De Jasay A.* The State. Indianapolis: Liberty Fund, 1998. 238 p. (In Eng.).
23. *Hayek F. A.* Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy. Routledge, 2012. 584 p. (In Eng.).
24. *Hepburn G.* Alternatives to Traditional Regulation. Available at: http://www.oecd.org/gov/regulatory-policy/42245468.pdf (accessed 20.02.2017). (In Eng.).
25. *Heupel M., Zangl B.* Die empirische Realität des „neuen Krieges". Available at: http://edoc.vifapol.de/opus/volltexte/2008/502/pdf/AP_27_2003.pdf (accessed 20.02.2017). (In Germ.).
26. *Hibou B.* Privatizing the State. Columbia University Press, 2004. 279 p. (In Eng.).
27. *Hybrid* Rule and State Formation. Public-Private Power in the 21st century. Edited by Shelley L. Hurt and Ronnie D. Lipschutz. New York, 2016. 258 p. (In Eng.).
28. *Mises L.* Liberalism in the Classical Tradition. Available at: https://mises.org/system/tdf/Liberalism%20In%20the%20Classical%20Tradition_3.pdf?file=1&type=document (accessed 20.02.2017). (In Eng.).
29. *Nielsen E.* Regulation, Co-Regulation, or Self Regulation. What is the best approach? Available at: http://www.iso.org/iso/livelink-getfile?llNodeId=21969&llVolId=-2000 (accessed 20.02.2017). (In Eng.).

30. *Rothbard Murray N.* For a New Liberty: The Libertarian Manifesto. 2006. 420 p. Available at: https://mises.org/system/tdf/For%20a%20New%20Liberty%20The%20Libertarian%20Manifesto_3.pdf?file=1&type=document (accessed 20.02.2017). (In Eng.).
31. *Schnee P., Unterberg S.* Privatisierung von Polizeiaufgaben. Ein Rückzug des Staates? Available at: http://www.deutschlandfunk.de/privatisierung-von-polizeiaufgaben-ein-rueckzug-des-staates.724.de.html?dram:article_id=360178 (accessed 20.02.2017). (In Germ.).

References in Russian

1. *Бахрах Д. Н., Скороходова В. В.* Делегирование коммерческим банкам властных полномочий // Современное право. 2007. № 11. С. 2–5.
2. *Белов В. А.* Саморегулирование и саморегулируемая организация как составляющая часть общественных отношений // Конкурентное право. 2014. № 4. С. 32–36.
3. *Васильева А. Ф.* Делегирование государственных функций субъектам частного права // Правоведение. 2008. № 2. С. 65–75.
4. *Гриценко Е. В.* Конституционные основы и правовые формы привлечения частных субъектов к решению муниципальных задач в России в сравнительной перспективе // Закон. 2013. № 2. С. 113–128.
5. *Дементьев А. Н.* Законодательная девальвация полномочий исполнительных органов государственной власти: последствия и пределы допустимого // Конституционное и муниципальное право. 2016. № 7. С. 37–41.
6. *Егорова М. А.* Частно-публичные начала приобретения статуса саморегулируемой организации некоммерческой корпорацией // Предпринимательское право. 2013. № 1. С. 25–32.
7. *Ершова И. В.* Саморегулирование предпринимательской и профессиональной деятельности: вопросы теории и законодательства // Актуальные проблемы рос. права. 2014. № 10. С. 2142–2150.
8. *Зарщиков А. В.* Право собственности публичных образований на землю в Российской Федерации: конституционно-правовое исследование: автореф. дис. … канд. юрид. наук. Пенза, 2015. 28 с.
9. *Комарова В. В.* Особый правовой статус территорий в России (на примере инновационного центра «Сколково») // Российская юстиция. 2011. № 6. С. 44–47.
10. *Петров Д. А.* Правовой статус саморегулируемой организации в сфере предпринимательства: дис. … д-ра юрид. наук. СПб., 2016. 433 с.
11. *Романихин А. В.* Саморегулирование по-российски // Законодательство и экономика. 2004. № 3. С. 32–36.
12. *Современные* проблемы организации публичной власти: монография / С. А. Авакьян, А. М. Арбузкин, И. П. Кененова и др.; отв. ред. С. А. Авакьян. М.: Юстицинформ, 2014. 596 с.
13. *Толстых В. Л.* Миф о войне как центральный элемент международно-правовой идеологии // Российский юридический журнал. 2015. № 6. С. 43–53.
14. *Энциклопедический* словарь / под ред. И. Е. Андреевского. СПб.: Ф. А. Брокгауз, И. А. Ефрон, 1893. Т. 9а. 977 с. URL: http://dlib.rsl.ru/viewer/01003924242#?page=1 (дата обращения: 20.02.2017).
15. *Affordable* Housing and public – Private Partnerships. University of Colorado Law School, USA. 2009. URL: https://ru.scribd.com/document/329013144/Nestor-M-Davidson-Robin-Paul-Malloy-Affordable (дата обращения: 20.02.2017).
16. *Balleisen E. J., Eisner M.* The Promise and Pitfalls of Co-Regulation: How Governments Can Draw on Private Governance for Public Purpose. URL: http://www.tobinproject.org/sites/tobinproject.org/files/assets/New_Perspectives_Ch6_Balleisen_Eisner.pdf (дата обращения: 20.02.2017).
17. *Brandsen T., De Donk W., Putters K.* The intangible third sector. Hybridity and change as the basis for a new conceptualization / Paper presented at the conference of the European Sociological Association, Murcia, 23–26 September, 2003. URL: https://www.um.es/ESA/papers/Rn6_7b3.pdf (дата обращения: 20.02.2017).
18. *Castro D.* Benefits and Limitations of Industry Self-Regulation for Online Behavioral Advertising. URL: http://www.itif.org/files/2011-self-regulation-online-behavioral-advertising.pdf (дата обращения: 20.02.2017).
19. *Codes* and Co-regulation. URL: https://www.alrc.gov.au/sites/default/files/pdfs/publications/11_codes_and_co-regulation.pdf (дата обращения: 20.02.2017).

20. *Cornuell R. C.* Reclaiming the American Dream: The Role of Private Individuals and Voluntary Associations (Philanthropy and Society). Transaction Publishers, 1993. 199 p.
21. *Creveld van M.* The Rise and Decline of the State. Cambridge University Press. 1999. 436 p.
22. *De Jasay A.* The State. Indianapolis: Liberty Fund, 1998. 238 p.
23. *Hayek F. A.* Law, Legislation and Liberty: A new statement of the liberal principles of justice and political economy. Routledge, 2012. 584 p.
24. *Hepburn G.* Alternatives to traditional Regulation. URL: http://www.oecd.org/gov/regulatory-policy/42245468.pdf (дата обращения: 20.02.2017).
25. *Heupel M., Zangl B.* Die empirische Realität des "neuen Krieges". URL: http://edoc.vifapol.de/opus/volltexte/2008/502/pdf/AP_27_2003.pdf (дата обращения: 20.02.2017).
26. *Hibou B.* Privatizing the State. Columbia University Press, 2004. 279 p.
27. *Hybrid Rule* and State Formation. Public-priwate power in the 21st century / Ed. by Shelley L. Hurt and Ronnie D. Lipschutz. New York, 2016. 258 p.
28. *Mises L.* Liberalism In The Classical Tradition. URL: https://mises.org/system/tdf/Liberalism%20In%20the%20Classical%20Tradition_3.pdf?file=1&type=document (дата обращения: 20.02.2017).
29. *Nielsen E.* Regulation, Co-regulation, or Self Regulation. What is the best approach? URL: http://www.iso.org/iso/livelinkgetfile?llNodeId=21969&llVolId=-2000 (дата обращения: 20.02.2017).
30. *Rothbard Murray N.* For a New Liberty: The Libertarian Manifesto. 2006. 420 p. URL: https://mises.org/system/tdf/For%20a%20New%20Liberty%20The%20Libertarian%20Manifesto_3.pdf?file=1&type=document (дата обращения: 20.02.2017).
31. *Schnee P., Unterberg S.* Privatisierung von Polizeiaufgaben. Ein Rückzug des Staates? URL: http://www.deutschlandfunk.de/privatisierung-von-polizeiaufgaben-ein-rueckzug-des-staates.724.de.html?dram:article_id=360178 (дата обращения: 20.02.2017).