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Вступление в должность высшего должного лица субъекта Российской Федерации как проявление ограниченного суверенитета

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В статье рассматривается институт инаугурации высшего должностного лица субъекта Российской Федерации как одно из проявлений ограниченного суверенитета субъекта. По мнению авторов, возможность региона самостоятельно определять порядок вступления в должность главы субъекта является важным аспектом, формирующим политический климат региона и способствующим демонстрации его самостоятельности. Авторы анализируют федеральное законодательство на предмет наличия в нем норм, регулирующих процедуру вступления в должность глав субъектов, а также рассматривают законодательство регионов, входящих в Уральский федеральный округ. В результате исследования выделяется три основных подхода к регулированию процедуры вступления в должность высшего должного лица субъекта федерации, что свидетельствует о возможности регионов самостоятельно устанавливать такую процедуру в соответствии с собственными особенностями. Кроме того, обнаруживается возможность региона регулировать такую процедуру не только законодательно, но и с помощью обычаев. По мнению авторов, такая самостоятельность может расцениваться как наличие ограниченного суверенитета у субъекта федерации, однако этот суверенитет не должен быть преувеличен, так как это может привести к нарушению территориальной целостности Российской Федерации. Ключевые слова: конституционное право, субъект федерации, высшее должностное лицо, губернатор, Российская Федерация, право, инаугурация.

The inauguration procedure of the highest officer of entity of the Russian Federation as a manifestation of limited sovereignty

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The article considers the institution of inauguration of the highest officer of the entity of the Russian Federation as one of the manifestations of the limited sovereignty of this entity. According to the authors, the ability of the region to determine the order of entry into office of the head of the region is an important aspect that forms the political climate of the region and contributes to the demonstration of its independence. The authors analyze the Federal legislation for the presence of the rules governing the procedure of inauguration of the governors of entities, as well as the legislation of the regions included in the Ural Federal district. As a result of the study, three main approaches to the regulation of the procedure for the inauguration are identified, which indicates the ability of the regions to establish such a procedure independently in accordance with their own characteristics. In addition, the possibility of the region to regulate such a procedure not only by law, but also through customs was explored. According to the authors, such independence can be regarded as the presence of limited sovereignty of the subject of the Federation, but this sovereignty should not be exaggerated, as it can lead to violation of the territorial integrity of the Russian Federation.

Keywords: constitutional law, entity of federation, highest officer, governor, Russian Federation, law, inauguration.

According to the Constitution, Russian Federation consists of entities, which are equal in relationship between each other and with federal center [1, art. 5]. These entities are considered to be partially sovereign. For example, they can establish international connections with entities of other states, they have their own budgets and taxes and can adopt their own laws (but only if they do not contradict federal ones).

There are two parts of legislative power in Russia: exclusive power of the Russian Federation itself and common privileges of the Russian Federation and its parts. These types are divided and recorded in articles 71 and 72 of the Constitution [1, art. 71-71]. It means that there are

a number of points that must be regulated only by federal legislative bodies and there are several questions that can be regulated by federal and regional bodies together.

Relative sovereignty of federal entities manifests itself behind the borders created by the Constitution in questions that legislators have not mentioned in it. In other words, regional authorities can regulate what they want to unless the point of regulation is written in the Constitution.

Nowadays scientists believe that “limited sovereignty” of federal entities mentioned above is nothing but a fiction. S.V. Narutto claims, that points of common regulation of the Russian Federation and its regions mentioned in article 72 of the Constitution have transformed into appendages of exclusive federal regulation [13]. For example, system of public bodies of federal entity is a question of common regulation, but federal legislator has adopted federal law ‘Of the system of public bodies in federal entities of the Russian Federation’, which binds regions strictly and does not allow them to define their own unique public bodies. Moreover, this law contains rules even in spheres that always were considered as spheres of exclusive regulation of the federal entity [13].

The above information leads us to a question whether federal entities are relatively independent, as it is written in the Constitution, or they do not have any sovereignty. Let us try to figure it out.

One of the most interesting institutions of public authority is an inauguration. On the one hand, it is a symbolic procedure that dates back to ancient rituals of empowering kings by priests [14], on the other hand, it is a legally significant moment that signals the beginning of powerfulness of public authority or body. Moreover, this event often defines political climate in the country or region and in fact is a way to prove and show sovereignty and independence of the political power of a particular area. In other words, this procedure can serve as an evidence of federal entities’ independence in some questions.

However, we need to understand if this institution is regulated by law or maybe by something else. Every year in Russia, we have many elections. For example, in 2018 governors were elected in twenty-three entities of Russian Federation, in 2017 the number of entities was sixteen and in 2016 - seven [15]. The necessity to inaugurate the head officer of the region appears every year and not just once because each of the selected governors has to be empowered. That is why it is very important to understand the way of this procedure regulation.

Federal law 184 from 6th of October 1999 “of the system of public bodies in federal entities of the Russian Federation” does not give us a coherent answer. It contains only the statement that every elected head officer of federal entity has to take an oath [2, part 5.1 art. 18], nothing is said about the procedure. Statutes of federal entities (for the purpose of this research we selected such

cities as Tyumen, Kurgan, Sverdlovsk, Chelyabinsk; and Khanti-Mansiisky and Yamalo-Nenetsky regions of the Russian Federation and their legislation) add that this oath has to be taken in solemn atmosphere in the presence of judges, deputies of the regional Parliament, representatives of federal public bodies and other politicians [3; 4; 5; 6; 7; 8].

As federal legislation and main documents of federal entities do not contain rules about inauguration it becomes obvious that all other regional legal acts should also be taken in to consideration. There are several different approaches to this. The first one is inherent to Tyumen and Kurgan regions. Statute of Kurgan region and law of Tyumen region “Of the Tyumen region’s governor’s sign” have regulations about a special symbol of head officer’s power [3; 9]. In fact, all the inauguration process comes down to an award ceremony when the head of the regional Parliament reward new governor with the sign. Another approach occurs in Sverdlovsk and Khanti-Mansiisky regions. There is a tradition to adopt a special legal act, within which the governor empowers himself [11]. It is a tradition because there are no any rules about similar acts in these regions’ legislation. Finally, Yamalo-Nenetsky region has a law “Of the Anthem of Yamalo-Nenetsky region” that says that the procedure of the head officer’s inauguration has to be accompanied by performing the entity’s anthem [9]. The peculiarity of Chelyabinsk region is mixing the first and second approaches. Here the governor gets a special sign and adopts a legal act of self-empowering [12]. Similar to Sverdlovsk region adoption of this act is not specified by the regional legislation. As it follows from the above, different regions have different patterns of organizing an inauguration procedure. There are normative acts of this procedure in one federal entities, legal practice in others and mixing of legal regulation and tradition in the third ones.

As entities of federation have their own regulation of inauguration process, they can express their national or regional identity and show independence. Moreover, federal legislator gives them such an opportunity because it does not establish a common procedure that every region has to follow. It means that despite actual legislative practice, federal entities have a power to regulate some questions by themselves and one of these questions is inauguration of the region’s head officer.

In conclusion, we would like to point out that federal entities surely have limited sovereignty that manifests itself in general regulation approaches. Attempts of the federal legislator to bind regional bodies of power seem reasonable. Otherwise, diversity in general questions of public power organizations will lead to exaggeration of independence by entities of federation and as a result to violation of the territorial integrity of the Russian Federation. Although sovereignty of regions should not be completely neglected it must be strictly limited.

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