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Reevaluating constitutional liability: Russian and international perspectives

Reavaliando a responsabilidade constitucional: perspectivas russas e internacionais

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Abstract

While a comprehensive research and literature exists on legal responsibility, the nature of constitutional liability is much less explored. Constitutional liability is a crucial tool for strengthening and development of democracy. In practice, not all countries have a direct constitutional and legislative establishment of constitutional liability as a special form of legal responsibility. For example, Russia has its own way of determining constitutional liability, which can serve as grounds for thought provoking reflection in other legal systems. In this article, the author will consider the constitutional liability as a form of legal responsibility, address the questions of interrelation between constitutional liability and other forms of legal responsibility, as well as explore the grounds of constitutional liability by comparing constitutions, a number of various laws, some subordinate legislative acts of Russia and about fifteen other countries. Such analysis allows one to draw conclusions that bring some novelty, newness into the field of public law as a whole.

Keywords: constitutional liability; constitutional tort; grounds for constitutional liability; legal responsibility; Russia.

Resumo

Embora exista pesquisa abrangente e literatura sobre responsabilidade jurídica, a natureza da responsabilidade constitucional é muito menos explorada. A responsabilidade constitucional é um instrumento essencial para reforçar e promover a democracia. Na prática, nem todos os países têm previsão constitucional e legislativa explícita de responsabilidade constitucional como um tipo específico de responsabilidade jurídica. A Rússia, por exemplo, tem a sua própria forma de definir a responsabilidade constitucional, o que pode constituir motivo de reflexão em outros sistemas jurídicos. Neste artigo o autor examina a responsabilidade constitucional como uma forma de responsabilidade jurídica, analisa a relação entre a responsabilidade constitucional e outras formas de responsabilidade jurídica e também investiga a base da responsabilidade constitucional comparando constituições, uma série de leis diferentes, algumas leis em vigor na Rússia e em cerca de quinze outros países do mundo. Tal análise permite tirar conclusões que conduzem a novidades no campo do direito público em geral.

Palavras-chave: responsabilidade constitucional; infração constitucional; fundamentos de responsabilidade constitucional e jurídica; responsabilidade jurídica; Rússia.

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1. INTRODUCTION

The institution of legal responsibility has been explored from many angles already.¹ Legal responsibility is the most important institution of any legal system, and one of the most essential features of the law, and furthermore, a necessary element of any legal system's mechanism of action. In this regard, issues of legal responsibility occupy one of the central points in the theory of law and jurisprudence. The issue of legal responsibility is also an acute and all-important issue in constitutional law.

Constitutional liability can be a powerful and reliable tool for protecting the rights and freedoms of citizens, which is an essential condition for the strengthening and development of democracy. Thus, constitutional liability is not only capable of serving as a theoretical model, but also has practical significance.

However, it is necessary to distinguish between two categories: liability in constitutional law and constitutional liability. The first category relates to all issues of legal responsibility covered in constitutional law. The second responsibility to which this article is devoted is a separate type of legal responsibility, which has its own sectoral channel of implementation through constitutional and legal sanctions. In other words, the mere fact that legal responsibility is provided of in constitutional norms is not sufficient to recognize this responsibility as constitutional.

In some countries, there is a direct constitutional and legislative establishment of constitutional liability as a special form of legal responsibility, while Russian law does

¹ For example, see: LAZARUS, Liora; GOOLD, Benjamin J.; DESAI, Rajendra; RASHEED, Qudsi. **The Relationship between rights and responsibilities**. Ministry of Justice Research Series 18/09. Vancouver: Allard Faculty Publications, 2009; JANSEN, Nils. The idea of legal responsibility. *Oxford Journal of Legal Studies*, Oxford, vol. 34, n. 2, pp. 221-252, 2013; WATKINS, Jeremy. Responsibility in context. *Oxford Journal of Legal Studies*, Oxford, vol. 26, n.3, pp. 593-608, 2014.

not use the term ‘constitutional liability’. At the same time, however, this term has long been widely used by the Constitutional Court of Russia and legal scholars.

It is important to note that the constitutional liability that is separate and special in other countries is very often labelled political liability or legal-political liability, and will be classified among administrative, civil, and criminal liability. Examples include Latin America, i.e., Chile, Peru, and Mexico.² However, in contrast to their Russian counterparts, foreign constitutionalists do not pay such close attention to the theoretical study of the concept of constitutional liability, its differences and peculiarities.

For example, in the Russian legal system and jurisprudence, the topic of studying the theoretical grounds for constitutional liability is currently very relevant, much sought-after, and very popular among legal scholars, professors, and authors of books and monographs on legal disciplines.

It can be stated that for all the differences in approaches, the positions of Russian legal scholars and practitioners agree on one thing: constitutional liability must be reflected in legislation because otherwise, the development of the theory and practice of legal responsibility in the area of constitutional law is difficult.

Constitutional liability in the Russian legal system and jurisprudence, as compared to other types of legal responsibility, has received separate treatment only relatively recently.

During the Soviet era, constitutional responsibility was a subject rarely researched. In the USSR, the scientific development of issues regarding constitutional responsibility as a type of legal responsibility began in the 1970s. In fact, the term ‘state-legal liability’ was used, which corresponded to the more common name of that area of law at the time - state law. During this period, liability in constitutional law was thoroughly studied by Soviet legal scholars.³ First of all, the responsibility of the government to the councils (collegiate representative bodies) was researched, and in addition, the responsibility of parliamentary representatives to the voters.

² GAMBOA MONTEJANO, Claudia; VALDÉS ROBLEDO, Sandra. **Responsabilidad de los Servidores Públicos**. México, DF: Centro de Documentación, Información y Análisis de la Cámara de Diputados, 2007. Available at: www.diputados.gob.mx/sedia/sia/spi/SPI-ISS-07-07.pdf. Accessed in 27 May, 2021.

³ See AVAK'YAN, S. A. Gosudarstvenno-pravovoiaia otvetstvennost [State-legal liability]. **Sovetskoie gosudarstvo i pravo** [Soviet state and law], Moscow, n. 10, pp. 16-24, 1975; RUDINSKIY, F. M. Prava, Svobodi i otvetstvennost grazhdan v usloviiah razvitogo sotsiolizma [Rights, freedoms and responsibility of citizens in the conditions of developed socialism]. **Sovetskoie gosudarstvo i pravo** [Soviet state and law], Moscow, n. 5, pp. 21-29, 1977.

In the 1980s and early 1990s, the theory of constitutional liability continued to develop in the writings of individual scholars.⁴ The first monographs specifically devoted to this topic were being published by some scholars during this period.⁵

Since the mid-1990s, interest in issues of constitutional liability and the development of Russian legislation in this area has increased dramatically. However, there was still an insufficient number of generalizing and comprehensive theoretical studies in this area.

In recent years, sections regarding constitutional liability have appeared in textbooks about the constitutional law of Russia, and this issue is being more actively discussed in scholarly circles and touched upon in the speeches of both scholars and practitioners. Issues of liability have been researched in the following selected areas: in the sphere of electoral and voting rights, in federal relations, in the sphere of political parties, and in the sphere of local self-government.

At present, we can talk about the active formation in Russia of an independent institution of constitutional liability within the system of institutions of constitutional law, which is due to the peculiarity of constitutional and legal relations over constitutional liability. The decisions and legal positions of the Constitutional Court of the Russian Federation play a special role in this process.

One of the essential hallmarks of constitutional liability is its foundation, which largely defines the characterization of constitutional liability as a whole.

The basis of constitutional liability (constitutional tort) differs significantly not only from the basis of criminal liability (crime), but also from other offenses (torts), e.g., administrative, disciplinary or civil liability. At the same time, the basis of constitutional liability may not only be behavior that does not comply with constitutional norms or laws, but also the occurrence of circumstances directly provided for by constitutional law. In that way, constitutional liability may be imposed for the actions of others.

Thus, the need for a systematic analysis of the current state of constitutional liability in Russia and abroad, the development of the concept, the need to improve the legal regulation of constitutional liability as a means of ensuring the constitutional order in Russia, have all led to choosing this particular topic for this article and studies.

⁴ See LUCHIN, Viktor Osipovich. *Otvetstvennost' v mekhanizme realizatsii konstitutsii'* [Liability in the Mechanism of Implementation of the Constitution]. *Pravo y zhizn* [Law and life], Moscow, n. 1, pp. 34-42, 1992.

⁵ See ZRAZHEVSKAYA, T. D. *Otvetstvennost' po sovetskomu gosudarstvennomu pravu* [Liability in the Soviet state law]. Voronezh: Voronezh University Press, 1980.

2. CONSTITUTIONAL LIABILITY - A FORM OF LEGAL RESPONSIBILITY?

In different countries, legal responsibility is viewed from a different perspective. In the People's Republic of China (PRC), for example, the main type of legal responsibility to which close attention is given is criminal liability, which is central to the institute of legal responsibility.⁶ Along with constitutional liability, other types of liability stand out, e.g., civil, administrative (which is in its formative stages with many different scholarly views), constitutional, disciplinary and economic liabilities. Constitutional liability in China began to receive a lot of attention only relatively recently, with many prominent Chinese legal theorists commenting on its independence.⁷ At the same time, the works of Chinese legal theorists, rather than constitutionalists, who have been much less likely to address this topic, have been devoted to the main issues of its distinction.⁸ It is important to note that in China, constitutional liability is understood as being legally responsible for violations of the Constitution.

In Latin America, for example, particularly in Chile, Peru and Mexico, administrative, civil, criminal and political liabilities are distinct from one another. It is the last one, however, that is essentially a constitutional liability but simply called by a different name.⁹

In Brazil, too, it is about political liability. Thus, according to legal scholars from Brazil, political liability is not just a constitutional concept, but primarily a cultural one.¹⁰ It is essentially a constitutional liability for political persons.¹¹

And in Spain, they do not talk about constitutional and legal, but rather, political liability. However, they use this term in relation to the joint political liability of the

⁶ See official statutory interpretation:

CHINA. 第六章 法律责任. Available at: www.npc.gov.cn/npc/c2170/200011/0d1490f5131141b0b-7241554f7446aaa.shtml accessed 12 June 2021; CHINA. **Criminal Law of the People's Republic of China**. Articles 1 and 13. Available at: www.npc.gov.cn/wxzl/wxzl/2000-12/17/content_4680.htm. Accessed in June 2nd, 2021.

⁷ JIANGLIN, Wu. () ‘论我国宪法责任制度的完善’ [On the improvement of my country's constitutional liability system]. Available at: www.chinacourt.org/article/detail/2013/04/id/941137.shtml. Accessed in June 10, 2021.

⁸ TROSHCHINSKIY, Pavel. V. **Yuridicheskaiia otvetstvennost' v prave kitaiskoi narodnoi respublikii** [Legal responsibility in the law of the people's republic of China]. Moscow: IDV, 2011.

⁹ GAMBOA MONTEJANO, Claudia; VALDÉS ROBLEDO, Sandra. **Responsabilidad de los Servidores Públicos**. México, DF: Centro de Documentación, Información y Análisis de la Cámara de Diputados, 2007. Available at: www.diputados.gob.mx/sedia/sia/spi/SPI-ISS-07-07.pdf. Accessed in 27 May, 2021.

¹⁰ CHEIBUB, Joseph Antonio; PRZEWORSKI, Adam. Democracia, Eleições e Responsabilidade Política. **Revista Brasileira de Ciências Sociais**, São Paulo, vol.12, n. 35, pp.1-16, 1997.

¹¹ MASCARENHAS, Rodrigo Tostes de Alencar. **A responsabilidade constitucional dos agentes políticos**. Belo Horizonte: Fórum, 2021.

Government to the Cortes¹². Recently, legal theorists also say that there is an indication in the Spanish Constitution that ministers may have individual political liability to the Congress of Deputies, but this issue remains debatable.¹³

In Italy, a special kind of legal responsibility has been proposed - political and constitutional.¹⁴ This type has been proposed for the reason that the President of the Republic is not responsible for acts committed in the performance of presidential duties, except in cases of treason or violation of the Constitution.¹⁵ In this case, political and constitutional liability implies the special nature of the powers that the Constitution confers on the head of state and which stem from his status as a representative of national unity.

In Canada they do speak of constitutional liability (constitutional responsibility), but so far, no large-scale theoretical research has been devoted to this issue, and it is viewed more from an applied point of view in the context of the collective or individual responsibility of the Government and ministers to The Parliament and the Crown.¹⁶ In this sense, Canada completely follows the 'British model' of political liability, i.e., the Government's responsibility to parliament.¹⁷

In the United States, constitutional liability as an independent form of legal responsibility is not distinctive but rather concerns liability in constitutional law where constitutional liability implies any legal responsibility, whether criminal, administrative or civil, which occurs as a result of any violation of the Constitution, its articles and provisions. However, it might be said that political liability exists when senior executive officials are obliged to resign upon impeachment or after a vote of no confidence by the U.S. Congress.

Moldova and Romania distinguish between different types of legal responsibility such as civil (material), administrative, criminal, and disciplinary. However, modern researchers also speak of political liability while calling it constitutional liability and separating it from other types of legal responsibility.¹⁸ At the same time, a single, uni-

¹² SANZ ENCINAR, Abraham. El concepto jurídico de la responsabilidad en la teoría general del derecho. **Anuario de la Facultad de derecho de la Universidad Autónoma de Madrid**, n.4, p. 27-59, 2000.

¹³ MELLADO PRADO, Pilar. La responsabilidad política del gobierno. **Revista de Derecho Político**, Madrid, n. 37, pp. 139-147, 1992.

¹⁴ SACCO, Francesco. **La responsabilità politico-costituzionale del Presidente della Repubblica**. Aprilia: Aracne, 2012.

¹⁵ ITALY. **Constitution of the Italian Republic** [Costituzione della Repubblica Italiana]. Available at: www.senato.it/documenti/repository/istituzione/costituzione.pdf. Accessed in June 15th, 2021. Art. 90.

¹⁶ Regarding responsibility in CANADA. **Constitution of Canada**. Available at: www.canada.ca/en/privy-council/services/publications/responsibility-constitution.html. Accessed in 12th of June 2021.

¹⁷ MARSHALL, Geoffrey. **Constitutional Conventions: the rules and forms of political accountability**. Oxford: Oxford University Press, 1987.

¹⁸ MIRON, Adriana. Legal Liability in Constitutional Law, **Law Review**, Bucharest, vol. 7, special issue, pp. 200-208, Dec. 2017.

fied definition of the concept and essence of constitutional liability has not yet been developed, but this is a pertinent topic and significant for current research in these countries.

In Poland, constitutional and liability was explicitly stipulated for in the Constitution. Article 198 of the Constitution of the Republic of Poland, for example, contains a list of persons who are 'constitutionally liable for violating the Constitution or laws in connection with their position or in the performance of their official duties'.¹⁹

In Belarus, due to the historical affinities and geographical proximity, and the general Soviet theoretical and legal research base, the development of constitutional liability and its distinction is following the same path as in Russia.²⁰

Russian jurisprudence, which differentiates such types of legal responsibility as civil, administrative, criminal, and disciplinary liabilities, also proposes to single out constitutional liability as an independent form of legal responsibility. It is rightly noted that the various types of legal responsibility, being aimed at protecting the Constitution, do not acquire (even if only within these limits) the properties and characteristics of constitutional liability.²¹ Recognizing the absolute importance of civil, administrative, criminal and disciplinary liabilities, it should be borne in mind that the rules establishing these types of legal responsibility are not sufficient to regulate public relations, which are the subject of constitutional law, i.e., relations in the areas of membership, organization, exercise of state power, as well as in the relationship between individuals and the state.

The peculiarities of constitutional liability and, accordingly, its distinction as a type of legal responsibility are explained by the subject and method of constitutional and legal regulation of public relations; functions that constitutional law performs in the general system of law; specific status of the subjects of constitutional and legal relations; features of the legal nature of unlawful conduct in constitutional and legal spheres; the nature of constitutional and legal sanctions and regulations, on the basis of which legal responsibility arises; and special procedures for its implementation.

Constitutional liability is an independent form of legal responsibility, the implementation of penalties for which (in the form of various kinds of adverse consequences for subjects), is not only established by constitutional and legal norms, but also aimed, primarily, at the protection of constitutional and legal relations. Its constitutional and legislative recognition and establishment as a type of legal responsibility will increase the effectiveness of constitutional and legal norms, strengthen their influence on

¹⁹ POLAND. **Constitution of the Republic of Poland** [Konstytucja Rzeczypospolitej Polskiej]. Available at: www.rpo.gov.pl/konstytucja. Accessed in June 15th, 2021. Art. 198.

²⁰ PUGACHEV, A. N. Konstitutsionno-pravovaia otvetstvennost' v mekhanizme okhrany osnovnogo zakona [Constitutional and legal liability in the mechanism of protection of the Basic Law], **Ekonomicheskie y yuridicheskie nauki** [Economic and Legal Sciences], Moscow, n. 4, pp. 105-111, 2009.

²¹ LUCHIN, V.O. Otvetstvennost' v mekhanizme realizatsii Konstitutsii [Liability in the mechanism of implementation of the Constitution], **Pravo y zhizn [Law and life]**, Moscow, n. 1, p. 35, 1992.

socio-political practice, that is, contribute to solving one of the most pressing problems of constitutional law.

The type of legal responsibility under consideration appears in the unity of system-wide characteristics inherent in legal responsibility in general, as well as those properties and qualities that point to its originality as a relatively independent legal phenomenon. The general signs of legal responsibility are specifically refracted in relation to constitutional liability. However, constitutional liability cannot be the complete equivalent to other types of legal responsibility since the content of legal responsibility must be adequate to the content of relevant public relations, and at least, there should not be any inconsistencies between them.

Given the system-wide characteristics of legal responsibility, the constitutional liability that arises in the majority of cases can be defined as follows. It is the duty of the subject of constitutional and legal relations, as enshrined in constitutional and legal norms, to be responsible for non-compliance of his legally relevant conduct to that prescribed by said norms, and ensured by the possibility of the authorized body applying penalties of state (or the equivalent public body) influence (coercion).

Thus, the system which forms constitutional liability includes: the subject (who is the responsible party) - the basis (for which one is responsible) - the subject of jurisdiction (the institution before which one is responsible), and the penalties imposed for such responsibility (constitutional and legal sanctions). If one of these elements is missing (not yet established), constitutional liability is generally not possible.

One of the main functions of constitutional liability is a restorative one (correction of the conduct of subjects of constitutional relations). At the same time, it is similar to other types of legal responsibility, carrying out a punitive function against subjects who have committed sanctionable conduct in the sphere of constitutional and legal relations. Of course, constitutional liability also serves a stimulating (organizational) function, since it encourages participants in constitutional and legal relations to behave appropriately. By preventing future constitutional torts, constitutional liability also fulfills a preventive function. These objectives, although not explicitly enshrined in the norms of constitutional law, follow from the legal nature of constitutional liability.

3. HOW DOES CONSTITUTIONAL LIABILITY RELATE TO OTHER TYPES OF LEGAL RESPONSIBILITY?

Particular attention should be paid to the relationship of constitutional liability with other types of legal responsibility, from which it differs in many respects. This is also important because, in some cases, the application of constitutional liability

excludes the need to apply any other type of legal responsibility.²² However, the imposition of constitutional liability may, on the contrary, be the basis for other types of legal responsibility. Thus, according to the German Criminal Code, a sentence of up to five years' imprisonment threatens that person who participates in the activities of a party declared unconstitutional by the Federal Constitutional Court.²³ The Criminal Code of the Republic of Hungary is not so severe: imprisonment for up to one year is provided, but only for the leader of a party declared unconstitutional.²⁴

The most difficult areas of law, within the sphere of public law, to distinguish constitutional liability from other types of legal responsibility are administrative and criminal. However, its relationship with civil liability is also of interest, to which even special research has been devoted.²⁵ Constitutional liability in Russia is based upon the norms of the Constitution of the Russian Federation and federal constitutional laws, and as a comprehensive institution of constitutional law, it has been established by other sources as well, including federal laws, the laws of the subjects of the Russian Federation, and various acts of subordinate legislation. It should be noted that at present, criminal liability is established only by federal law, and administrative liability by federal law and the laws adopted by the subjects of the Russian Federation in accordance with it. There are also peculiarities in the very establishment of constitutional liability, for example, unlike other types of legal responsibility, there may be cases when sanctions and penalties are provided, but the legal basis for responsibility is unclear, and vice versa.

Both physical persons (individuals) and legal (collective) entities are subjects of constitutional liability. Only individuals can be criminally liable, but both individuals and legal entities can be administratively liable. Individuals as subjects of constitutional liability are represented by citizens, foreign nationals, stateless persons, and officials, etc. Legal (collective) entities include state bodies, non-state bodies, and associations, etc.

The basis for constitutional liability (constitutional tort) differs significantly not only from the basis for criminal liability (crime), but also from other offenses (torts)

²² KUTAFIN, Oleg. E. **Predmet konstitutsionnogo prava** [Subject of constitutional law], Moscow: Lawyer, 2001. p. 394.

²³ GERMANY. **German Criminal Code** [Strafgesetzbuch]. Available at: www.gesetze-im-internet.de/stgb/. Accessed in June 17th, 2021. § 84.

²⁴ HUNGARY. **Act C/2012 the Criminal Code of the Hungarian Republic** [2012 évi C. törvény a Büntető Törvénykönyvről]. Available at: www.kozlonyok.hu/kozlonyok/Kozlonyok/28/PDF/2012/7.pdf. Accessed in June 15th, 2021.

²⁵ See e.g.: GADZHIEV, G. A. K voprosu o razgranichenii konstitutsionno-pravovoi i grazhdansko-pravovoi otvetstvennosti [To the issue of differences between constitutional and legal liability and civil and legal liability]. In: AVAK'YAN, S.A. (Ed.). **Konstitutsionno-pravovaia otvetstvennost: problemi Rossii, opit zarubezhnikh stran** [**Constitutional and legal liability: Russian problems, foreign states' experience**], Moscow: Lomonosov Moscow State University Press, 2001.

- administrative, disciplinary, and civil. At the same time, the basis for constitutional liability might not only be behavior which does not conform to constitutional law and norms, but also the occurrence of other circumstances directly proscribed by constitutional law. Thus, constitutional liability can be imposed on one person for the actions of others. For example, the constitutional liability of candidates for the actions taken by their authorized persons in accordance with the Federal law 'About the election of Deputies to the Federal Duma of the Russian Federation'. If bribery of voters can be established, the authorized representative of the candidate or the registered candidate may be either denied registration or their registration cancelled, respectively.²⁶

The penalties (constitutional and legal sanctions)²⁷ for constitutional liability provided for in cases of constitutional torts do not even remotely coincide with the penalties for crimes and the administrative penalties imposed for administrative offences. Thus, deprivation of rights is allowed in both criminal and administrative law, as well as constitutional law. However, in some cases, the application of criminal or administrative penalties or sanctions is not possible because of various constitutional and legal immunities (which are possessed, for example, by the head of state and parliamentarians).

Constitutional and legal sanctions and penalties are applied by a wide range of authorized bodies and entities (responsible bodies and entities), e.g., legislative, executive, judicial,²⁸ local government, officials, citizens, etc., in relation to non-subordinated and unaccountable subjects, thus differing from disciplinary penalties. In general, the distinction between constitutional and disciplinary liability is of great practical importance, since the penalties of these two types of legal responsibility in some cases may appear on the surface to be similar, such as dismissal²⁹ and removal from office.³⁰ The differences between these types of liability lie in both the grounds and the procedures for applying them. Firstly, the grounds for constitutional liability are found in the area of constitutional and legal relations, and disciplinary liability is imposed for violation of

²⁶ RUSSIA. **Federal law 'About the election of deputies to the Federal Duma of the Russian Federation'** [Federalnii zakon 'O vborah deputatov Gosudarstvennoi Dumi Federal'nogo Sobraniia Rossiiskoi Federatsii']. Available at: www.kremlin.ru/acts/bank/38146. Accessed in June 25th, 2021. Subpara. 6 para. 3 art. 50 and subpara. 3 para.10, subpara. 3 para. 11, subpara. 3 para. 12 art. 99.

²⁷ For more information about constitutional and legal sanctions and their difference from penalties of other types of legal responsibility, see VINOGRADOV, V. A. *Konstitutsionno-pravovyye sanktsii* [Constitutional law sanctions]. *Zakonodatel'stvo* [Legislation], Moscow, n. 12, pp. 54-62, 2001.

²⁸ However, it is possible to create specialized (quasi-judicial) bodies or institutions for this purpose.

²⁹ RUSSIA. **Labor Code of the Russian Federation** [Trudovoi Kodeks Rossiiskoi Federatsii]. Available at: www.kremlin.ru/acts/bank/17706. Accessed in 23 June, 2021. Art. 192.

³⁰ RUSSIA. **Federal Law 'On the general principles of organizing legislative (representative) and executive authorities of the subjects of the Russian Federation'** [Federalnii zakon 'Ob obshih printsipah organizatsii zakonodatel'nykh (predstavitel'nykh) i ispolnitel'nykh organov gosudarstvennoi vlasti sub'ektov Rossiiskoi Federatsii']. Available at: www.kremlin.ru/acts/bank/14498/page/9. Accessed in 25 June, 2021. Art. 19.

internal regulations. Secondly (and this is perhaps the most important), penalties for constitutional liability are usually, in one way or another, integrated into the system of separation of powers, or checks and balances. In any case, as noted, they are applied regardless of the relationship of subordination (accountability) of the subject of liability and the courts of responsibility (court of jurisdiction).

The coercive nature of legal responsibility in relation to constitutional liability is manifested not only in state coercion, but also in other similar types of public (societal) coercion.³¹

Of course, such public (societal) coercion, as well as that of the state, is carried out on the basis of constitutional and legal norms (or when sanctioned) and, as a rule, under state control. Thus, the charter of a political party must contain the grounds and procedures for the withdrawal of candidates, registered candidates, and other elected positions in state (federal) and local government nominated by the party, and the procedures for expelling candidates nominated by the political party, its regional branches, and other structural units³².

The purpose of coercive activity is achieved by influencing the political, moral, organizational and property spheres of the activities of particular subjects of constitutional and legal relations.

Thus, constitutional liability is characterized by the following features: 1) state or an equivalent type of coercion; 2) a constitutional tort has been committed; 3) the occurrence of adverse consequences for the subject of the constitutional tort in the form of constitutional penalties and sanctions; and 4) a special application procedure by an authorized party or authority. The existence of these elements allows us to distinguish constitutional liability from other legal and illegal, including political, categories.

It is obvious that without a clear reflection of constitutional liability in legal acts, provisions, and statutes, both the development of the theory of legal responsibility in constitutional law and its practical implementation will be extremely difficult. Moreover, it is impossible not to agree with the statement that liability is one of the elements that serves a purpose in its own way of establishing the constitutional and legal status of any subject of constitutional law, and furthermore, occupies a central place in it.³³

In Russian legislative acts, despite the establishment of separate penalties and sanctions for constitutional liability, the corresponding term is not used.³⁴ The Russian

³¹ For example, if voters recall an official.

³² RUSSIA. **Federal law 'On political parties'** [Federalnii zakon 'O politicheskikh partiiah']. Available at: www.kremlin.ru/acts/bank/17169, Accessed in 23 June, 2021. Art. 21.

³³ BOGDANOVA, N. A. **Sistema nauki konstitutsionnogo prava** [The system of science of constitutional law], Moscow: Lawyer, 2001. p. 68.

³⁴ An attempt was made to legitimize constitutional liability in the draft federal law on federal executive authorities, pursuant to Article 13 of which the federal executive branch is governed by the legislation of the Russian Federation. *Constitutional* (highlighted by me, author), disciplinary, civil, and criminal liability for

Constitution does not explicitly recognize constitutional liability. It is also significant that the word 'liability' is used only in four of its articles (41, 54, 113 and 122), the last of which refers exclusively to criminal liability.

At the same time, the need for adequate penalties to influence the subjects of constitutional law in order to protect the Russian Constitution, arises directly from the foundations of the constitutional order of the Russian Federation as a democratic state governed by the rule of law, which is obliged to ensure the recognition, observance and protection of a whole range of constitutional values: the rights and freedoms of the individual, sovereignty, state integrity, the unity of the system of state power, and the integrity of its economic territory, etc. Therefore, the legislators must establish a control mechanism that would ensure that all subjects of constitutional and legal relations effectively enforce their constitutional and legal obligations – ensuring compliance with the Constitution and federal laws and preventing noncompliant behavior. Such a control mechanism, in the event of noncompliance with constitutional law and legal relations of the subjects of this duty, cannot but imply negative consequences for them, including, of course, penalties for constitutional liability.

Since there is no direct constitutional and legislative reference to constitutional liability in Russia, the legal position taken by the Constitutional Court of the Russian Federation, which, unlike the legislators, not only uses the term 'constitutional liability', but also recognizes the existence of penalties in federal laws,³⁵ has taken on crucial importance in its development. The Constitutional Court of the Russian Federation, relying on the Russian Constitution, has formulated a number of principles that should guide legislators in regulating constitutional liability. Thus, the Constitutional Court of the Russian Federation has consistently pursued the principle of certainty of the legal grounds for liability, that is, the clear establishment of all elements of the composition of constitutional torts, in order to avoid ambiguity in understanding and accordingly, errors in application. It follows from the legal position of the Constitutional Court that penalties and sanctions must be commensurate with constitutionally established requirements of justice and proportionality. Sanctions and penalties must be commensurate with constitutionally established goals and values, as well as the nature of any constitutional torts committed, and other factors. Any deviation in legislative acts from these specified constitutional postulates leads to the recognition by the Constitutional Court of the Russian Federation of such acts as not conforming to the Constitution of Russia. In particular, due to the uncertainty of the legal basis for liability,

failure to perform or improperly perform their duties (RUSSIA. **Archive of the State Duma of the Russian Federation**. 1997).

³⁵ See, for example: RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated April 19, 2001, n. 65-O (SZ RF 2001, n. 20, art. 2059) and RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated December 6, 2001, n. 249-O (SZ RF 2002, n. 4, art. 374).

the Constitutional Court found the establishment of the recall of an elected official to be unconstitutional if it is permitted not considering concrete decisions or actions (inactions) that can be confirmed or refuted by the courts.³⁶ For example, on the grounds of a violation of the principle of proportionality, the Court evaluated as noncompliant with the Russian Constitution which, if illegally refusing to register a candidate, limit the court's power to cancel the results of the vote, the results of the elections, and to determine the adequacy of the true will of the voters, replacing such identification with a formal 'determination of the validity of the results of the voter's will' who took part in the voting.³⁷

The question of the need for a special law regarding constitutional liability has been raised in Russian legal literature. It has been proposed to adopt both a single 'kind of constitutional code'³⁸ and, in addition, special federal laws on constitutional liability in specific areas of law. The intended purpose of all these acts is to specify constitutional laws and norms similar to how they are done in relation to other types of legal responsibility.

Part of the idea of enshrining constitutional liability is reflected in the federal laws and legislation of the Russian Federation. Analyzing Russian law, rules and regulations, we can conclude that constitutional liability does have its own legal basis. In particular, issues of constitutional liability are addressed in federal constitutional laws, for example, 'On the Constitutional Court of the Russian Federation'³⁹, 'On the Government of the Russian Federation',⁴⁰ as well as in federal laws, such as 'On the general principles

³⁶ See: RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated April 2, 2002, n. 7-P in the case of the constitutionality of certain provisions of the Krasnoyarsk Region Act 'On the procedure to recall of Deputies of the representative body of the Local Government' and the law of the Koryak Autonomous Region 'On the procedure for recalling a representative body of Local Government or an Elected Official of Local Government in the Koryak Autonomous Region' in connection with the application of complainants A.G. *Slobin* and *Hnaeva* (SZ RF 2002 № 14 art 1374).

³⁷ See: RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated January 15, 2002, n. 1-P in the case of verifying the constitutionality of certain provisions of Article 64 of the Federal Law 'On the basic guarantees of voting rights and the right of citizens of the Russian Federation to participate in referendums' and Article 92 of the Federal Law 'On the election of Deputies to the State Duma of the Federal Assembly of the Russian Federation' in connection with the complaint of citizen A.M. *Traspova* (SZ RF 2002 № 6 art 626).

³⁸ KOLOSOVA, Nina. M. *Konstitutsionnaia otvetstvennost' - samostoyatel'nyi vid yuridicheskoy otvetstvennosti* [Constitutional liability is an independent type of legal responsibility], **Gosudarstvo i pravo** [State and Law], Moscow, n. 2, pp. 89-115, 1997. p. 87.

³⁹ RUSSIA. **Federal Constitutional Law 'On the Constitutional Court of the Russian Federation'** [Federalnii Konstitutsionnii zakon 'O Konstitutsionnom Sude Rossiiskoi Federatsii']. Available at: www.kremlin.ru/acts/bank/6650, Accessed in June 15th, 2021. Arts. 17, 18, 80.

⁴⁰ RUSSIA. **Federal Constitutional Law 'On the Government of the Russian Federation'** [Federalnii Konstitutsionnii Zakon 'O Pravitelstve Rossiiskoi Federatsii']. Available at: www.kremlin.ru/acts/bank/46015. Accessed in 25 June, 2021. Para. 9 art. 5, para. 6 art. 13.

of organizing Local Government in the Russian Federation’;⁴¹ ‘On political parties’;⁴² ‘On the basic guarantees of voting rights and the right of citizens of the Russian Federation to participate in referendums’;⁴³ and ‘On the election of Deputies to the State Duma of the Federal Assembly of the Russian Federation’;⁴⁴ etc.

A striking example is the establishment of measures of influence (penalties) by the federal public authorities on the public authorities of the subjects of the Federation, as set out in the Federal law ‘On the general principles of the organization of legislative (representative) and executive authorities of the subjects of the Russian Federation’.⁴⁵ The constitutionality of a number of applicable penalties came into question, including the early termination of the powers (dissolution) of the legislative (representative) body, and the removal of the highest official (the head of the highest executive body) from office. This is most likely due to the fact that the Russian Constitution not only does not regulate the imposition of such penalties, but also does not mention them at all. However, the Constitutional Court of the Russian Federation has recognized, in accordance with the Russian Constitution, the federal penalties provided for in federal laws against the state authorities of the subjects of the Federation, indicating that they are a constitutionally conditioned and complex legal institution.⁴⁶

At the same time, however, the legal position of the Constitutional Court of the Russian Federation regarding the provisions of the Federal Law ‘On the general principles of the organization of legislative (representative) and executive authorities of the subjects of the Russian Federation’, which establishes these penalties for

⁴¹ RUSSIA. **Federal Law ‘On the general principles of the organization of legislative (representative) and executive authorities of the subjects of the Russian Federation’** [Federalnii zakon ‘Ob obshih printsipah organizatsii mestnogo samoupravleniia v Rossiiskoi Federatsii’]. Available at: www.kremlin.ru/acts/bank/20035. Accessed in 23 June, 2021. Arts. 47, 48, 49.

⁴² RUSSIA. **Federal law ‘On political parties’** [Federalnii zakon ‘O politicheskikh partiiah’]. Available at: www.kremlin.ru/acts/bank/17169. Accessed in 23 June, 2021. Arts. 9, 20, 37-43.

⁴³ RUSSIA. **Federal Law ‘On the basic guarantees of voting rights and the right of citizens of the Russian Federation to participate in referendums’** [Federalnii zakon ‘Ob osnovnih garantiiah izbiratel'nykh prav i pravo na uchastie v referedume grazhdan Rossiiskoi Federatsii’]. Available at: www.kremlin.ru/acts/bank/18173. Accessed in 23 June, 2021. Arts. 31, 38, 77.

⁴⁴ ⁴⁴ RUSSIA. **Federal Law ‘On the election of deputies to the State Duma of the Federal Assembly of the Russian Federation’** [Federalnii zakon ‘O viborah deputatov Gosudarstvennoi Dumi Federal'nogo Sobraniia Rossiiskoi Federatsii’]. Available at: www.kremlin.ru/acts/bank/38146. Accessed in 25 June, 2021. Arts. 99, 100.

⁴⁵ ⁴⁵ RUSSIA. **Federal Law ‘On the general principles of organizing legislative (representative) and executive authorities of the subjects of the Russian Federation’** [Federalnii zakon ‘Ob obshih printsipah organizatsii zakonodatel'nykh (predstavitel'nykh) i ispolnitel'nykh organov gosudarstvennoi vlasti sub'ektov Rossiiskoi Federatsii’]. Available at: www.kremlin.ru/acts/bank/14498/page/9. Accessed in 25 June, 2021. Arts. 3.1, 9, 19, 29, 29.1.

⁴⁶ See: RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated April 4, 2002, n. 8-P in the case of verifying the constitutionality of certain provisions of the Federal Law ‘On the general principles of the organization of legislative (representative) and executive authorities of the State Authorities of the Subjects of the Russian Federation’ in connection with the requests of the State Assembly (II Tumen Republic of Sakha (Yakutia) and the Council of the Republic of the State Council - Hase Republic of Adygea (SZ 2002 № 15 art 1497).

liability, seems ambiguous. The Constitutional Court has recognized the conformity of all the penalties provided for in the Russian Constitution that were being contested, since the Federal law provides for judicial procedures as a mandatory element for their imposition. At the same time, the Court confirmed once again that, by virtue of applicable provisions of the Constitution, it is the only court that is authorized to resolve public law disputes regarding compliance with the Constitution of the Russian Federation. It follows from the federal law referenced that the imposition of penalties under consideration is possible on the basis of the decision by an 'appropriate court', but the Constitutional Court has decided that it is the exclusive constitutional authority to do so. Another interpretation of the law regarding such measures of influence, in the opinion of the Constitutional Court, does not and cannot derive from this Federal law since it would not comply with the Constitution.⁴⁷ Thus, absent a final decision from the Constitutional Court, all other judicial decisions establishing violations of the Constitution and federal laws do not carry legal finality, and thus cannot serve as the basis for the imposition and enforcement of the penalties provided. As a result, the mechanism for implementing and enforcing such penalties seems to be somewhat different than the legislators intended, and it is becoming more cumbersome, and therefore, less effective and more difficult to implement.

It would seem that the recognition of separate penalties against the state authorities and the highest officials of the subjects of the Federation in accordance with the Constitution allows one to agree with some researchers who have proposed to enshrine in federal law the institution of federal interference, intervention⁴⁸ (similar to that existing in the Federal Republic of Brazil or the Federal Republic of Germany). However, this legal position of the Constitutional Court of the Russian Federation does not allow a resolution of the issue of federal interference at all, i.e., the establishment in federal law of penalties of constitutional and legal enforcement in relation to the subjects of the Russian Federation as a whole.

All this might be considered a violation of the constitutional status of a subject of the Russian Federation, inasmuch as the stability of the state power of such subject is violated. Subsequently, when the institution of constitutional liability in Russia obtains

⁴⁷ See: RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated April 4, 2002, n. 8-P in the case of verifying the constitutionality of certain provisions of the Federal Law 'On the general principles of the organization of legislative (representative) and executive authorities of the State Authorities of the Subjects of the Russian Federation' in connection with the requests of the State Assembly (Il Tumen Republic of Sakha (Yakutia) and the Council of the Republic of the State Council - Hase Republic of Adygea (SZ 2002 № 15 art 1497).

⁴⁸ See AVAK'YAN, S. A.; ARBUZKIN, A.M.; ARININ, A.N. Federalnoie vmeshatelstvo: kontseptsyia i proekt zakona [Federal intervention: the concept and draft of the Federal Law]. **Vestnik Moskovskogo Universiteta** [Bulletin of the Lomonosov Moscow State University], Moscow, n. 6, pp. 20-48, 2000.

definitive contours, it will be feasible, for example, by way of analogy with administrative liability, to codify the penalties of constitutional liability.

Contrary to Russian practice, in other countries there is a direct constitutional and legislative establishment of constitutional liability as a special kind of legal responsibility. For example, the Constitution of the Republic of Poland identifies persons who are 'in violation of the Constitution or law in connection with their position or in the performance of their official duties, as liable constitutionally'.⁴⁹ The Federal Constitutional Law of the Republic of Austria⁵⁰ establishes 'constitutional liability' of the supreme bodies of the Federation and the lands, their officials, for offences committed.

Thus, it has been shown that constitutional law is characterized by its own capacity to ensure the validity of its laws and legal norms, i.e., its own institution of legal responsibility. In fact, it can and should become a leading institution, and thus predetermine the specific parameters of other institutions of constitutional law. Moreover, only if there exists independent responsibility as a crucial condition and the original basis of the independence of this branch, will constitutional law be able to acquire sufficiently convincing evidence of its own completeness and internal completion.

4. WHAT ARE THE GROUNDS FOR CONSTITUTIONAL LIABILITY?

The grounds for constitutional liability are the circumstances under which it arises in accordance with constitutional law and other legal norms.

The analysis of laws and legal acts of different countries, makes it possible to identify a number of types of grounds for constitutional liability (constitutional torts). The proposed division of the grounds for constitutional liability is taken from the important and typical characteristics that unite different constitutional torts.

4.1. Violation of the constitution and encroachment on the constitutional order

Most constitutional torts can be reduced to this ground. However, several constitutions treat this tort as a separate one having its own independent grounds for constitutional liability. In some cases, the constitutional laws and norms formulate qualifying characteristics. For constitutional liability to arise, the violation of the constitution should be, for example, gross (substantial, significant, etc.). Thus, in

⁴⁹ POLAND. **Constitution of the Republic of Poland** [Konstytucja Rzeczypospolitej Polskiej]. Available at: www.rpo.gov.pl/konstytucja. Accessed in June 15th, 2021. Art. 198.

⁵⁰ AUSTRIA. **Federal Constitutional Law of the Republic of Austria** [Bundes-Verfassungsgesetz]. Available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138. Accessed in 23 June, 2021. Art. 142.

accordance with the Constitution of the Republic of South Africa, the National Assembly has the power to dismiss the president on the grounds of a serious violation of the constitution.⁵¹ In conditions where the criteria for such ‘materiality’, ‘rudeness’ or ‘seriousness’ are not constitutionally established, the court having jurisdiction will have to impose constitutional liability based solely on its subjective assessment of the acts of the subject under consideration. A striking example of this occurred in the Republic of Albania, where in June of 2021, the Parliament impeached the President of the Republic, Ilir Meta. Pursuant to the Albanian Constitution, the President of the Republic may be dismissed from office for serious violation of the Constitution and for committing a serious crime.⁵² As a violation of the Constitution, the Head of State is charged, in particular, with the concentration of legislative, administrative and judicial powers in his hands, while the powers vested in him are predominantly symbolic. It is also alleged that the President of Albania violated the constitutional obligations⁵³ as to which he took an oath, namely, to uphold the Constitution, respect the rights and freedom of citizens, defend the independence of the Republic, and serve the general interests of the people.⁵⁴ As for which violations of the Constitution should be considered gross, there is a perception in the legal literature that this is a violation that attempts to encroach on the constitutional order and causes significant damage to the interests of the state and society, destroys the rights and freedoms of the people, and causes material harm to the state and the authority of its individual institutions. But this list is not, and cannot be considered definitive and final, as it all depends on the actions of those persons charged with this.⁵⁵ Constitutions may establish various prohibitions, the violation of which will give rise to Constitutional liability. Thus, in accordance the Constitution of the Republic of Madagascar, no one who is called upon to discharge his duties according to the Constitution, may, under penalty of loss of rights, accept from either individual persons or legal entities, either foreign or domestic, remuneration or compensation in the performance of their functions.⁵⁶

⁵¹ SOUTH AFRICA. **Constitution of the Republic of South Africa**. Available at: www.justice.gov.za/legislation/constitution/index.html. Available at: Accessed in August 5th, 2021. Art. 89.

⁵² ALBANIA. **Constitution of the Republic of Albania** [Kushtetuta e Republikës së Shqipërisë]. Available at: www.parlament.al/Files/sKuvendi/kushtetuta.pdf. Accessed in June 17th, 2021. Art. 90.

⁵³ ALBANIA. **Constitution of the Republic of Albania** [Kushtetuta e Republikës së Shqipërisë]. Available at: www.parlament.al/Files/sKuvendi/kushtetuta.pdf. Accessed in June 17th, 2021. Para. 3 art. 86.

⁵⁴ ALBANIA. P55/2021 dismissal of the President of the Republic of Albania for serious violation of the constitution [Vendim Nr. 55/2021 Për Shkarkimin e Presidentit të Republikës së Shqipërisë për Shkelje të Rënda të Kushtetutës]. Available at: www.parlament.al/Files/Akte/20210614155420vendim%20nr.%2055,%20dt.%209.6.2021.pdf. Accessed in June 17th, 2021.

⁵⁵ STATKIAVICHUS, M. *Konstitutsionnaya praktika Litvi: otvetstvennost v poriadke impichmenta* [Lithuanian constitutional practice: Liability in the form of impeachment]. **Comparative Constitutional Review**, Moscow, vol. 48, n. 3, pp. 195-201, 2004.

⁵⁶ MADAGASCAR. **Constitution of the Republic of Madagascar**. Available at: www.constituteproject.org/constitution/Madagascar_2010.pdf. Accessed in June 15th, 2021. Art. 41.

Constitutional torts, which are characteristic only for certain subjects of constitutional relations, are distinguished from this type of grounds for liability. In particular, a violation of the order to leave the country established by the Constitution may form the basis for constitutional liability for the head of state.⁵⁷

Infringements on the Constitution may manifest themselves in actions aimed at unconstitutional goals and the very establishment (declaration) of such goals. According to K. Hesse, the goals are considered unconstitutional if not identical or compatible with the democratic structure of the constitution, i.e., Basic law.⁵⁸ In addition, the torts under consideration may consist of unconstitutional methods of achieving goals as well as the very establishment (declaration) of such methods, and in calling for unconstitutional actions (or advocating such actions).

4.2. Violations of the law (other constitutional and legal acts and norms), failure to comply with judicial decisions

This basis is perhaps the most diverse and varied in terms of constitutional torts. For example, in regional legislation of the Russian Federation, specifically, in the law of the Tyumen region 'On Liability for non-compliance with the laws of the Tyumen Region',⁵⁹ a distinction is made between firstly, *non-compliance with laws*, i.e., an act (action or inaction) expressed in a violation of law by subjects or improper performance of duties assigned to them by law. Secondly, *the violation of the law* is an illegal act (action or inaction) expressed in the restriction of or possibility of limiting the rights and freedoms enshrined in the law, the powers of the state authorities, local governments, and their officials as a result of non-compliance with the laws and legal norms enshrined in the law; and thirdly, the *improper enforcement of the laws*, i.e., an incomplete fulfillment of the requirements of the law, e.g. violation of time periods or deadlines and not following established forms and procedures.

The most clearly considered basis for liability manifests in the violation of constitutional prohibitions. However, it is not always specified which acts should be considered a violation of a prohibited action. A rare exception is the provision of the Federal Law 'On the election of Deputies to the State Duma of the Federal Assembly of the Russian Federation', which describes in detail the conduct that violates the

⁵⁷ IRELAND. **Constitution of Ireland**. Art. 12. Available at: www.irishstatutebook.ie/eli/cons/en/html. Accessed in June 15th, 2021.

⁵⁸ HESSE, Konrad. **Grundzge des Bundesrepublik Deutschland**. Heidelberg: Karlsruhe, 1978. Translated in: **Osnovi konstitutsionnogo prava FRG** [Fundamental principles of the FRG constitutional law]. Moscow: Legal Literature, 1981. p. 247.

⁵⁹ ⁶² RUSSIA. **Law of the Tyumen Region 'On liability for non-compliance with the laws of the Tyumen Region'** [Zakon Tyumenskoi oblasti 'Ob otvetstvennosti za neispolnenie zakonov Tyumenskoi oblasti'] Available at: <https://tyumen-pravo.ru/zakon/1999-07-08-n-121/>. Accessed in 25 June, 2021.

statutory prohibition against using the advantages of office or official position.⁶⁰ Similar to cases of violation of the constitution, there may be qualifying signs of violation of the law established, e.g., systematic character, repetitiveness, materiality. For example, in accordance with the Federal Law 'On the election of the President of the Russian Federation',⁶¹ the reason for refusing to register a candidate is the repeated use by the candidate of the advantages of his office or official position.

Qualifying signs of violations of the law are also provided for in the legislation of some subjects of the Russian Federation, where in some cases they are revealed as more universal concepts. Thus, according to the Altai Region's Electoral Code, referendums, and recalls,⁶² a *systematic violation* of law is understood as committing

⁶⁰ According to this law (para. 4 art. 53), it is understood as follows:

- 1) Attract the involvement of persons who are subordinate or are dependent on the services of governmental or municipal employees, during service (working) hours and times, to carry out activities enabling the furthering of federal lists of candidates and/or the election of candidates;
- 2) The use of premises occupied by state or local governments or organizations, regardless of ownership, except for premises occupied by political parties, to carry out activities that facilitate the nomination of federal lists of candidates, candidates and/or the election of candidates, in the event that other political parties that have nominated federal lists of candidates, candidates in single-member constituencies, other candidates, single-member constituencies will not be guaranteed the provision of the premises on the same terms;
- 3) The use of telephone, facsimile and other forms of communication, office equipment and information services to ensure the functioning of public bodies, local governments, state and municipal institutions, and organizations regardless of the form of ownership, except for those types of communication listed, office equipment and information services that ensure the functioning of political parties for election campaigning, if their use is not paid for from the relevant Electoral Fund;
- 4) The use on a pro bono or preferential basis of vehicles held in state or municipal ownership by organizations, with the exception of vehicles owned by political parties, to carry out activities that facilitate the nomination of federal lists of candidates, candidates and/or the election of candidates. This provision does not apply to persons using these vehicles in accordance with the legislation of the Russian Federation on state security;
- 5) The collection of voter signatures, campaigning by persons who are filling public or elected municipal positions, or who are in public or municipal service, or who are heads of local administrations, or are members of the administration of organizations, regardless of the form of ownership (in the organizations whose highest governing body is the assembly - members of the bodies that manage the activities of these organizations), except for political parties during official (paid for by the relevant budget, funds of the relevant organization) travel;
- 6) Access (providing access) to state and municipal media in order to collect voter signatures, to campaign for election purposes in the event that other political parties that have nominated federal lists of candidates, candidates in single-member constituencies, other candidates nominated in single-member constituencies, for the same purpose, will not be guaranteed such access under this Federal law;
- 7) Campaigning during the election when holding a mass (public) event organized by state and/or municipal bodies and organizations regardless of the form of ownership, except for political parties; and
- 8) Publication of reports on the work done during the election campaign in the mass media, in printed campaign materials of reports on the work done, distribution on behalf of the candidate of congratulatory and other materials not paid for from the funds of the relevant electoral fund (Interestingly, it is considered a tort of an official, but who is acting in a different capacity).

⁶¹ RUSSIA. **Federal Law 'On the election of the President of the Russian Federation'** [Federalnii zakon 'O vborah Prezidenta Rossiiskoi Federatsii']. Available at: www.kremlin.ru/acts/bank/19006. Accessed in 23 June, 2021. Art. 39.

⁶² RUSSIA. Altai. **The Altai Region's Electoral Code, referendums, and recalls** [Kodeks Altaiskogo kraia o vborah, referendum, otzive]. Available at: http://pravo.gov.ru/proxy/ips/?doc_itself=&backlink=1&nd=168017918&page=1&rdk=32#0. Accessed in 25 June, 2021. Art. 222.

two or more violations during the current term of office, which violations have resulted in the violation of the rights and freedoms of a significant number of citizens, and a *gross violation* of legal acts refers to a decision or action (or inaction), that has resulted in a violation of the rights and freedoms of a significant number of citizens, or an unlawful action or inaction which has resulted in violation of the normal functioning of state authorities, local governments, public and religious associations, enterprises, institutions, organizations, and a violation of the constitutional rights and freedoms of citizens (the Tyumen Region Act, 'On the liability for non-compliance of the laws of the Tyumen Region').⁶³

Moreover, in some cases, the enshrining of qualifying signs of violation of the law is a prerequisite for establishing constitutional liability. Thus, according to the position of the Supreme Court of Russia, a violation of the laws of the Russian Federation or its subjects which provides the basis for a recall of deputies, is not appropriate to incorporate into the laws of the subject of the Russian Federation without reference to the guilt, systematic character, and gross violation of official duties, because it creates deep uncertainty in the interpretation of the rules on violation of the law, which in turn encroaches on the constitutional principle of equality of everyone before the law (Article 19 of the Russian Constitution).⁶⁴ The rights of a member of the legislative (representative) body of a subject of the Russian Federation become less protected than the rights of other persons for whom the law defines clear grounds for termination of duties arising, in particular, from an employment contract or service.⁶⁵

In connection with the characterization of this type of basis for constitutional liability, the position of the Constitutional Court of Russia regarding the dismissal of the highest official (head of the highest executive body of state power) of a subject of the Russian Federation is interesting. In the opinion of the Constitutional Court, a dismissal cannot be based on a court decision that there are only some 'signs' of a violation, as this renders the grounds for release essentially uncertain. Moreover, in accordance with the Constitution of the Russian Federation,⁶⁶ the prosecutor's conclusion that there

⁶³ RUSSIA. **Law of the Tyumen Region 'On liability for non-compliance with the laws of the Tyumen Region'** [Zakon Tyumenskoi oblasti 'Ob otvetstvennosti za neispolnenie zakonov Tyumenskoi oblasti'] Available at: <https://tyumen-pravo.ru/zakon/1999-07-08-n-121/>. Accessed in 25 June, 2021. Art. 3.

⁶⁴ RUSSIA. **Constitution of the Russian Federation** [Konstitutsiia Rossiiskoi Federatsii]. Available at: www.kremlin.ru/acts/constitution. Accessed in 23 June, 2021. Art. 19.

⁶⁵ On these grounds, the Supreme Court considered Article 1 of the Moscow Region Act 'On the order of recall of the Deputy of the Moscow Regional Duma' invalid in terms of the possibility of recalling a deputy for violation of Russian law, the Moscow region (RUSSIA. **Supreme Court of the Russian Federation**. Ruling dated January 23, 1997, n. 4-G96-8, Reference legal system 'Consultant Plus'.

⁶⁶ RUSSIA. **Constitution of the Russian Federation** [Konstitutsiia Rossiiskoi Federatsii]. Available at: www.kremlin.ru/acts/constitution. Accessed in 23 June, 2021.

were signs of a crime in the actions of the head of the administration could only justify his suspension from office.⁶⁷

Within the framework of the grounds under consideration here, violations of the law in various areas of public life can be highlighted. Thus, some authors distinguish electoral torts,⁶⁸ torts in the field of local government,⁶⁹ and others.

Constitutional liability may also occur in connection with the violation of the law of the subjects of a federation (the Tyumen Region Act 'On liability for non-compliance with the laws of the Tyumen Region'),⁷⁰ as well as non-compliance with judicial decisions (the Constitution of the Federal Republic of Brazil).⁷¹

4.3. Violation (non-compliance) of human rights and freedoms of citizens

The constitutional tort under consideration here is directly related to a violation of the Constitution and laws that contain the relevant human rights and freedoms of citizens, but some constitutional and legal norms place emphasis upon it as the basis for constitutional liability. Thus, the Constitution of the Republic of Bulgaria establishes a ban on the activities of organizations whose activities are aimed at violating the rights and freedoms of citizens⁷².

4.4. Violation (deviation, with reservations, qualifications) of an oath

This type of basis for constitutional liability is usually provided for in relation to individual persons directly exercising state power (head of state, member of the

⁶⁷ RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated January 18, 1996, n. 2-P in the case of the verification of the constitutionality of a number of provisions of the Charter (Basic Law) of the Altai Region (SZ RF 1996 n. 4, art. 409).

⁶⁸ LUCHIN, Viktor Osipovich; BOBROVA, N. A. Izbirateľ'nie pravonarusheniya y otvetstvennost za nih [Electoral torts and liability for them]. In: AVAK'YAN, S. A. (Ed.). **Konstitutsionno-pravovaia otvetstvennost: problemi Rossii, opit zarubezhnikh stran** [Constitutional and legal liability: Russian problems, foreign states' experience]. Moscow: Lomonosov Moscow State University Press, 2001.

⁶⁹ NUDNENKO, L. A. Dosrochnyy otziv deputata, vibornogo dolzhnostnogo litsa mestnogo samoupravleniia-konstitutsionnyi delict [Early recall of a Deputy, an elected official of local Government - a constitutional tort]. In: AVAK'YAN, S. A. (Ed.). **Konstitutsionno-pravovaia otvetstvennost: problemi Rossii, opit zarubezhnikh stran** [Constitutional and legal liability: Russian problems, foreign states' experience]. Moscow: Lomonosov Moscow State University Press, 2001. p. 391.

⁷⁰ RUSSIA. **Law of the Tyumen Region 'On liability for non-compliance with the laws of the Tyumen Region'** [Zakon Tyumenskoi oblasti 'Ob otvetstvennosti za neispolnenie zakonov Tyumenskoi oblasti'] Available at: <https://tyumen-pravo.ru/zakon/1999-07-08-n-121/>. Accessed in 25 June, 2021.

⁷¹ BRAZIL. **Constitution of the Federative Republic of Brazil** [Constituição da República Federativa do Brasil]. Available at: www2.senado.leg.br/bdsf/bitstream/handle/id/518231/CF88_Livro_EC91_2016.pdf. Accessed in June 17th, 2021. Art. 34.

⁷² BULGARIA. **Constitution of the Republic of Bulgaria** [Konstitucia na Republika Bǎlgaria]. Available at: <https://m.president.bg/bg/cat115/Konstitucia-na-Republika-Balgaria>. Accessed in June 15th, 2021.

government, parliamentary representatives, judges, etc.) and by virtue of their position, before taking office, they are obligated to take an oath. In Lithuania, for example, in connection with the impeachment of President R. Paksas, lengthy discussions were held about the correlation of a gross violation of the oath and violation of the Constitution. This issue was also discussed by the Constitutional Court of Lithuania, which concluded that a violation of the oath of office is, at the same time, a gross violation of the Constitution, and a gross violation of the Constitution is simultaneously a gross violation of the oath of office.⁷³ However, although the Constitutional Court did not argue this clearly, it is obvious that such a conclusion can be drawn based on the fact that if the oath has been violated, and this reflects the fundamental values of a democratic state based on the rule of law, then the Constitution itself has been grossly violated as well.

4.5. Failure to perform (improper execution) of constitutional duties

The liability of subjects for constitutional torts arises, inter alia, from the obligations imposed on them by constitutional and legal norms. However, it is not possible to agree with those authors who confine constitutional liability only to violations (nonfulfillment) of their constitutional duties.⁷⁴

An example of constitutional liability for non-compliance with constitutional duties is the provisions of the Constitution of the Republic of Finland, according to which, if a deputy fails to perform his duties, Parliament may terminate or suspend his powers for a certain period of time.⁷⁵ This basis can sometimes be established as the inability of the subject of constitutional and legal relations to carry out his duties. Thus, if Parliament fails to form a government, it may be dissolved (the Constitution of the Republic of Poland).⁷⁶

⁷³ LITHUANIA. **Constitutional Court of the Republic of Lithuania**. Ruling dated December 30, 2003. "On the contradiction of Decree No. 40 of the President of Lithuania of April 11, 2003. 'On granting citizenship of the Republic of Lithuania by way of exception to Yuri Borisov' of the Constitution of the Republic of Lithuania part 1 of art. 16 of the Citizenship Law" (**Gazette of the Republic of Lithuania**, 2003, n. 124-5643).

⁷⁴ NESTERENKO, A. V. *Grazhdane Rossijskoj Federatsii kak sub'ekti konstitutsionnoi otvetstvennosti* [Citizens of the Russian Federation as subjects of constitutional liability]. In AVAK'YAN, S. A. (Ed.). **Konstitutsionno-pravovaia otvetstvennost: problemi Rossii, opit zarubezhnikh stran** [Constitutional and legal liability: Russian problems, foreign states' experience], Moscow: Lomonosov Moscow State University Press, 2001. p. 179.

⁷⁵ FINLAND. **Constitution of Finland** [Suomen perustuslaki]. Art 28. Available at: www.finlex.fi/fi/laki/ajantasa/1999/19990731. Accessed in June 17th, 2021.

⁷⁶ POLAND. **Constitution of the Republic of Poland** [Konstytucja Rzeczypospolitej Polskiej]. Available at: www.rpo.gov.pl/konstytucja. Accessed in June 15th, 2021. Art. 155.

4.6. Abuse of rights (authority)

In a broad sense, abuse can be seen as causing evil through the law. There are cases when subjects, giving their actions the full appearance of legal correctness, in actuality, are using their rights and individual institutions to accomplish goals and purposes contrary to substantive law.⁷⁷ Thus, by abusing the rights (authority) of subjects of constitutional and legal relations, they exceed the limits formally established by constitutional and legal norms. It follows from the preamble of the Russian Constitution that people were relying on their belief in goodness and justice by adopting the Constitution.⁷⁸ Abuse of those same rights and authority contradicts the belief demonstrated. For example, constitutional liability for abuse of rights is provided for in the Constitution of the Republic of Azerbaijan.⁷⁹ And in accordance with the Constitution of the State of Illinois, officials may be removed from office by the Governor of the state for abuses committed in performing their duties.⁸⁰

4.7. Loss of trust (confidence)

This basis for liability has a somewhat abstract character, and in connection therewith, demands an additional legal specificity as it is generally applied to elected bodies and officials. In providing for such a basis of constitutional liability, the legislator takes a kind of detached position in regulating issues of liability. However, this can be explained and is understandable since the judicial authority for this basis of liability is the people (population), who convey to the relevant bodies and officials a mandate, and the confidence of the people (population) in the integrity and decency of elected bodies and officials is an important element of democracy.

The moment when constitutional liability occurs on this basis is important. It is obvious that the trust of the people (population) is given to the relevant authorities and officials from the moment of their election. The loss of trust of the people (population) may be evidenced by opinion polls and mass protests, but they are not the legal facts of the loss of trust of the people (population). A legally relevant loss of trust is established in accordance with that procedure provided for by law (for example, as a result of a recall procedure).

⁷⁷ BERGEL, Jean-Louis. **Théorie Générale du Droit**. Paris: Dalloz, 1989. Translated in: **Obshchaia teoria prava** [General theory of law], Moscow: Nota Bene, 2000; see also GADZHIEV, Gadis. A. *Konstitutsionnie printsipi dobrosovestnosti y nedopustimosti zlupotrebleniya sub'ektivnimi pravami* [Constitutional principles of good faith and non-abuse of subjective rights]. **Gosudarstvo i pravo** [State and Law], Moscow, n.7, pp. 59-62, 2002.

⁷⁸ RUSSIA. **Constitution of the Russian Federation** [Konstitutsiia Rossiiskoi Federatsii]. Available at: www.kremlin.ru/acts/constitution. Accessed in 23 June, 2021.

⁷⁹ AZERBAIJAN. **Constitution of the Republic of Azerbaijan** [Azərbaycan Respublikasının Konstitusiyası]. Available at: <https://justice.gov.az/documents/AZ/Konstitusiya.pdf>. Accessed in June 17th, 2021. Art. 80.

⁸⁰ UNITED STATES OF AMERICA. State of Illinois. **Constitution of the State of Illinois**. Available at: <http://www.ilga.gov/commission/lrb/conmain.htm>. Accessed in June 15th, 2021. Art. V s 10.

The Constitutional Court of Russian has, in its decisions, also addressed issues related to the loss of trust and confidence by election bodies and officials, and has repeatedly stressed the necessity of establishing clear legal criteria for such cases.⁸¹ Thus, the Constitutional Court considers that the provisions allowing an extensive interpretation of the grounds of liability (in the absence of guarantees of inadmissibility of subjective evaluation of activities) are contrary to the Constitution of Russia. The very list of circumstances associated with the loss of trust or confidence as a basis for the recall, in the Court's view, should exclude that these may include, not specific actions (inactions), but a general negative assessment of the activity without its justification by verifiable facts, since this may arbitrarily call into question the results of elections that resulted in the election of the official in question.⁸²

4.8. The commission of actions contrary to public (national) interests

Despite the fact that this basis for constitutional liability is rather abstract, it is still contained in a number of constitutions (the Federal Constitution of the Swiss Confederation).⁸³ Likewise, the Constitution of the Kingdom of the Netherlands provides that the basis for the revocation of the decisions of provincial authorities may be contrary to public interest.⁸⁴

4.9. Violation of incompatibility requirements

Sometimes constitutional liability arises in cases of violation by subjects of constitutional and legal relations (usually officials) of the restrictions placed upon them by constitutional and legal norms for combining their mandate with various activities. For example, the members of the Hungarian Parliament cannot be a regular employee

⁸¹ RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated June 7, 2000, n. 10-P in the case of verification of the constitutionality of certain provisions of the Constitution of the Altai Republic and the Federal Law 'On the general principles of the organization of legislative (representative) and executive bodies of state power of the subjects of the Russian Federation' (SZ RF 2000 n. 25, art. 2728).

⁸² Ruling of the Constitutional Court of the Russian Federation, No. 7-P of the Constitutional Court of Russia dated April 2, 2002 in the case concerning the verification of the constitutionality of certain provisions of the Law of the Krasnoyarsk Territory 'On the Procedure for recalling a Deputy of a representative local Self-Government Body' and the Law of the Koryak autonomous okrug 'On the procedure for recalling a Deputy of a representative local Self-Government Body, an Elected Official of local Self-Government in the Koryak Autonomous okrug' in connection with the complaints of the applicants A. G. Zlobin and Yu. A. Khnaev (SZ RF 2002 №.14 St 1374).

⁸³ SWISS CONFEDERATION. **The Federal Constitution of the Swiss Confederation** [Bundesverfassung der Schweizerischen Eidgenossenschaft]. Available at: www.fedlex.admin.ch/eli/cc/1999/404/de. Accessed in June 17th, 2021. Para 3 art. 48.

⁸⁴ NETHERLANDS. **Constitution of the Kingdom of the Netherlands** [Grondwet voor het Koninkrijk der Nederlanden]. Available at: www.rijksoverheid.nl/documenten/rapporten/2019/02/28/grondwet-voor-het-koninkrijk-der-nederlanden-2018. Accessed in June 17th, 2021. Art. 132 para 4.

of the armed forces or the police, otherwise, according to the Constitution of the Republic of Hungary, their powers will be terminated.⁸⁵

In accordance with the Russian Constitution, deputies of the State Duma may not be engaged in public service, or engaged in other paid activities, except teaching, scientific and other creative activities, otherwise their powers will be terminated early.⁸⁶ The termination of the deputy's power and authority on this basis by the Constitutional Court was recognized as a penalty of constitutional liability, where it stated bluntly that 'enduring these negative consequences, not related in nature to criminal, administrative or civil legal tort or disciplinary misconduct, is not a measure of criminal, administrative or civil liability, and is not applicable to penalties of disciplinary liability. Such a process is, in fact, a special penalty or sanction of constitutional liability, i.e., the powers of a member of the State Duma are terminated early and he loses his status as a result of violation of the prohibition (non-compliance) established directly by the Constitution of the Russian Federation, which has the highest legal force, direct action and applies throughout the Russian Federation, and which should not contradict the provisions of laws and other legal acts adopted in the Russian Federation'.⁸⁷

4.10. Inappropriate (unethical) behavior

In some cases, constitutional and legal norms specifically prohibit such conduct. The basis for liability under consideration here is related to the commission of actions that are qualified as a violation of the moral and ethical norms accepted in society, as well as those which undermine the authority of state and public bodies, and the trust placed in them on the part of society. Thus, in accordance with the Riksdag Act of the Kingdom of Sweden, a member of Parliament cannot, in an obscene manner, express themselves in meetings with other persons, or commit any actions contrary to the notion of integrity⁸⁸. Similarly, the President of the State of Israel may be dismissed from

⁸⁵ HUNGARY. **Constitution of the Republic of Hungary** [Magyarország Alaptörvénye]. Available at: www.parlament.hu/irom39/02627/02627.pdf. Accessed in June 17th, 2021. Art. 4 pt. 3b.

⁸⁶ RUSSIA. **Constitution of the Russian Federation** [Konstitutsiia Rossiiskoi Federatsii]. Available at: www.kremlin.ru/acts/constitution. Accessed in 23 June, 2021. Art. 97; RUSSIA. **Federal Law 'On the status of a member of the Federation Council and the status of a member of the State Duma of the Federal Assembly of the Russian Federation'** [Federalnii zakon 'O statuse deputata Soveta Federatsii i statuse deputata Gosudarstvennoi Dumi Federalnogo Sobranii Rossiiskoi Federatsii']. Available at: <http://www.kremlin.ru/acts/bank/6032/page/1>. Accessed in 25 June, 2021. Art.4.

⁸⁷ RUSSIA. **Constitutional Court of the Russian Federation**. Ruling dated December 27, 2012, n. 34-P. 'In the case of verification of the constitutionality of the provisions of para «v» pt 1 and pt 5 of art 4 of the Federal Law 'On the status of a member of the Federation Council and the status of a member of the State Duma of the Federal Assembly of the Russian Federation' in connection with the request of a group of deputies of the State Duma'.

⁸⁸ SWEDEN. The **Riksdag Act of the Kingdom of Sweden**. Available at: www.riksdagen.se/globalassets/07-dokument--lagar/the-riksdag-act-2015.pdf. Accessed in June 23, 2021. Ch. 6 art. 16.

office on the grounds of constitutional liability. Thus, according to the Basic Law on the President of the State of Israel, the Knesset can decide to do so if it finds the President unworthy of his office due to behavior incompatible with the status of the presidential office.⁸⁹

4.11. The commission of high treason or other act (crime, misconduct) with which constitutional and legal norms connect with a loss of trust or confidence in the person that is the subject of constitutional and legal relations as a holder of political rights (governmental authority)

It is precisely in connection with these grounds for constitutional liability that the question of the relationship between criminal and constitutional law arises, which has already been discussed in detail. An example is the Constitution of Mexico, which states that during their term of office, the President of the Republic can be charged and prosecuted for treason, corruption, electoral crimes and any and all of those crimes for which any citizen can be prosecuted.⁹⁰ Treason, in accordance with the Mexican Federal Penal Code refers to: 1) the commission of acts against the independence, sovereignty or integrity of the Mexican nation in order to subordinate it to a foreign person, group or government; or 2) engaging in hostile actions against a nation through military action on the orders of a foreign state or cooperating with it in any way that could harm Mexico.⁹¹ The maximum penalty is five to forty years' imprisonment and a fine of up to 50,000 pesos.

An interesting example from the Basic Law on the Government of the State of Israel is that grounds for the removal of the Knesset Prime Minister cannot be just any crime, but must be one that the court recognizes as morally low.⁹² At the same time, the criteria of what can be considered 'morally low' have not been constitutionally established, and accordingly, imposing constitutional liability on a person is accomplished only on the basis of subjective assessments of those actions alleged to be a constitutional tort.

⁸⁹ ISRAEL. **The Basic Law: the President of the State (1964)**. Available at: <https://mfa.gov.il/mfa/mfa-archive/1960-1969/pages/basic%20law-%20the%20president%20of%20the%20state.aspx>. Accessed in 23 June, 2021. Art. 20.

⁹⁰ MEXICO. **Political Constitution of the United Mexican States** [Constitución Política de los Estados Unidos Mexicanos]. Available at: www.diputados.gob.mx/LeyesBiblio/pdf_mov/Constitucion_Politica.pdf. Accessed in 25 June, 2021. Art. 108.

⁹¹ MEXICO. **Mexican Federal Penal Code** [Código Penal Federal]. Available at: www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Penal_Federal.pdf. Accessed in 23 June, 2021. Art. 123.

⁹² ISRAEL. **The Basic Law: The Government (2001)**. Available at: <https://mfa.gov.il/MFA/MFA-Archive/2001/Pages/Basic%20Law-%20The%20Government%20-2001-.aspx>. Accessed in 25 June, 2021. Art. 18.

The grounds for constitutional liability under consideration here may take many forms depending on who the subject is, who is alleged to have perpetrated the constitutional tort. For example, public associations may find these grounds arise in the commitment of actions contrary to the purposes of their creation, or in refusing to achieve these purposes. And for deputies (members of parliament), such grounds can be attributed to a change of party affiliation (leaving the party), if their election was associated with the corresponding party, resulting in the exclusion of the deputy from that party. Another example of liability on these grounds is the termination of the powers of the head of state for initiating a referendum on the dissolution of parliament, if the results of the popular vote do not support the dissolution (the Constitution of the Republic of Latvia).⁹³ And, according to the Constitution of the Republic of Lithuania, even bureaucracy can form the legal basis for constitutional liability.⁹⁴

The list of grounds provided hereinabove for constitutional liability is not exhaustive. Moreover, it is obvious that the classification of constitutional torts, important for their characterization, can be carried out on other grounds, for example, on subjects (constitutional torts of state bodies, citizens, public associations, etc.), and objects of offences. Thus, scholars divide constitutional torts based on areas of constitutional regulation. That is, torts in various areas, as follows: 1) the basics of the constitutional order; 2) the human rights and freedoms of persons and citizens; 3) the federal system; 4) institutional organizations and the functioning of state power; 5) local government; and 6) torts related to amendments and revisions of the Russian Constitution.⁹⁵ However, any classification is important, first of all, to identify the characteristics and features as well as the prospects for the further development of the legal grounds for constitutional liability.

5. CONCLUSION

As discussed, different scholars in their publications use different versions of constitutional liability, encountering other names – ‘state-legal’, ‘political’ and others. As a rule, all these names are used as identical, but they do not convey the meaning as ‘constitutional and legal’ does.

In this article the constitutional liability is considered as an institution of constitutional law. It is universal because liability, by acquiring various legal forms, serves as an essential element of the status of almost all subjects of constitutional law.

⁹³ LATVIA. **Constitution of the Republic of Latvia** [Satversme]. Available at: www.satv.tiesa.gov.lv/en/2016/02/04/the-constitution-of-the-republic-of-latvia/. Accessed in June 15th, 2021. Arts. 48, 50.

⁹⁴ LITHUANIA. **Constitution of the Republic of Lithuania** [Lietuvos Respublikos Konstitucija]. Available at: www.lrs.lt/home/Konstitucija/Konstitucija.htm. Accessed in June 15th, 2021. Art. 73.

⁹⁵ ⁹⁷ LUCIN, V. O. *Konstitucionnie Delicti* [The Constitutional torts]. **Godudarstvo i pravo** [State and Law], Moscow, n.1, 2000, p. 14.

The institution of constitutional liability, with its extensive legal content, 'runs through' all constitutional law. Comparative legal analysis of the constitutions and regulations of different countries suggests that constitutional liability can only be understood on the basis of system-wide characteristics and traits inherent in legal responsibility.

Constitutional liability can be defined as the duty of subjects of constitutional and legal relations, as enshrined in constitutional and legal norms, to be responsible for non-conformity of their legally relevant conduct to those prescribed to him by the dispositions of these norms, ensured by the possibility of authorized bodies of the state (or equivalent public institutions) imposing sanctions or penalties.

In Russian law, unlike the legislation of a number of other countries, and despite the establishment of separate penalties for constitutional liability, this term is not used.⁹⁶ The Russian Constitution does not explicitly recognize constitutional liability. The word 'liability' is used in only four of its articles, and these articles refer to other types of legal responsibility. Whereas in other countries, the term is used in their constitutions, but has no applied meaning.

In Russia, unlike other countries, the issue of constitutional liability is gradually becoming more and more relevant due to the general development of constitutional legislation. An increasing number of constitutional and legal relations inevitably require new penalties, grounds for legal responsibility and, in general, improvement of the law. As a positive trend, it should be noted that in the last few years, Russia has become more actively engaged in establishing and applying sanctions and penalties for constitutional liability. The constitutional liability of state authorities of the political subjects of the Russian Federation, e.g., local governments and their officials, as well as the subjects of the electoral process, is developing dynamically.

The peculiarity of constitutional and legal relations regarding constitutional liability leads to the conclusion of the relative independence of constitutional liability as an institution of constitutional law. Although the institution of constitutional liability is a set of constitutional and legal norms governing homogeneous public relations relative to the imposition of this type of legal responsibility, it differs from many other institutions of constitutional law by the richness of its legal content. This is due to the fact that the penalties, legal foundations, subjects and mechanisms for the implementation of constitutional liability are extremely diverse in both form and content.

⁹⁶ An attempt was made to legitimize constitutional and legal responsibility in the draft federal law on the federal executive authorities, under art 13 of which, federal executive authorities bear *constitutional* (emphasis added by author) disciplinary, civil and criminal liability established by the legislation of the Russian Federation for nonperformance or improper performance of the functions assigned to them. (RUSSIA. **Archive of the State Duma of the Russian Federation**. 1997).

The most reasonable approach is that constitutional liability 'is a political responsibility, not just any, but rather one that takes constitutional forms'.⁹⁷ Indeed, constitutional liability has a relatively clear political content as to the legal grounds, range of subject matter and penalties and sanctions imposed. At the same time, it is necessary to avoid transforming constitutional liability from a legal institution into an instrument of political struggle. The imposition of constitutional liability should be limited to constitutional and legal objectives, and above all, to the protection of the constitutional order.

It is obvious that in a number of countries constitutional law is characterized by its own capacity to ensure the validity of its norms, that is, its own institution of legal responsibility. It can and should become, in fact, a leading institution, and thus predetermine the specific parameters of other institutions of constitutional law. Moreover, only if an independent responsibility exists as a crucial condition and the original basis of the independence of the area will constitutional law acquire sufficiently convincing evidence of its own completeness and internal completion.

Therefore, constitutional liability is a separate branch type of legal responsibility, which adequately expresses the subject of constitutional law and the nature of relations protected by it. As such, it is organically integrated into the system of existing, widely recognized types of legal responsibility, taking a specific place in it.

The necessity of the constitutional liability is due to the fact that without it the other types of legal responsibility are not sufficient to ensure the effective action of the constitutional-legal norms. Constitutional liability is a particular part that constitutional law acquires as a sufficiently strong indication of its own completeness and internal comprehensiveness.

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⁹⁷ LUCHIN, Viktor Osipovich. *Otvetsvennost' v mekhanizme realizatsii konstitutsii* [Liability in the Mechanism of Implementation of the Constitution]. **Pravo y zhizn** [Law and life], Moscow, n. 1, pp. 34-42, 1992.

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