Reorganization of Federal Executive Authorities: Comparative Analysis of Russia and the USA

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Abstract: The article has an aim of comprehensive comparative analysis of approaches to the process of reorganization of federal executive authorities in the Russian Federation and the United States of America. Different legal frameworks significantly influence the logic and intensity of federal executive authorities transformations.

One of the key features of the administrative legal framework of the federal executive authorities of the Russian Federation is that the federal law "On executive authorities of the Russian Federation" that is foreseen by the Constitution has not been adopted for over 25 years, and their system and structure are regulated by legal acts of the President of the Russian Federation. As a result, during the period 2004-2019 about 60 decrees of the President of the Russian Federation that modify the system and structure of executive authorities have been adopted. So, based on this figure it can be easily calculated that on average every 85 days the structure of the federal executive authorities faces changes: executive authorities are established, abolished, merged, reformed, renamed or change their subordination.

Whereas in the USA starting from 1984 to the present, power to reorganize federal executive bodies has not been granted to the President of the United States. Thus, in the United States the powers to reorganize federal executive bodies are held by the Congress and, thus, a complex legislative procedure is required for any reorganization of executive authorities. As a result, since 2002, after establishing the Department of Homeland Security, no federal executive department has been established or abolished in the United States.

Summing up the abovementioned development tendencies it can be concluded that the structure of the federal executive authorities in Russia is characterized by a fairly high rate of transformations taking place despite of the fact that there is a certain level of political stability within the country.

Obviously, public administration must be characterized by long-term goals and a stable apparatus for achieving them. Thus, one of the ways to improve the quality of reforms, reduce the unreasonably high rate of changes, ensure consistent and successive reform in the system and structure of the federal executive authorities of the Russian Federation is to regulate the executive branch by means of law that would also lead to more effective functioning of the mechanics of checks and balances.

Points for Practitioners

- Statutory regulation of the system and structure of the federal executive bodies in comparison with sub-statutory regulation allows ensuring their stable functioning and reduces the number of reorganizations.

- One of the ways to improve the quality of reforms, reduce the unreasonably high rate of changes, ensure consistent and successive reform in the system and structure of the federal executive authorities of the Russian Federation is to regulate the executive branch by means of law that would also lead to more effective functioning of the mechanics of checks and balances.

Key words
Administrative reform, executive branch, government, ministry, reorganization

Introduction
The modern structure of executive authorities of the Russian Federation has undergone significant changes and transformation over the past 25 years and seems to have obtained its final form at this stage. However, such a
position is likely to be erroneous, since the various elements of the executive branch are in constant dynamics trying to find an adequate response to challenges that the state faces. The system of executive authorities in the Russian Federation is directly influenced by transition period in the development of new Russia, the impact of the global financial and economic crises.

The improvement of the legal mechanism that regulates the reorganization of the system of federal executive bodies of the Russian Federation provides for a comprehensive study of similar practices and mechanisms used in foreign countries. In this context, taking into account the federal structure, as well as the experience of reforming the executive branch, the United States constitute the particular scientific interest.

Methodology

The article uses the methodology of comparative analysis of legal acts, regulating the process of organization and reorganization of federal executive authorities in Russia and the United States. In case of the Russian Federation such legal acts are mainly presidential decrees, in case of the United States – presidential reorganization plans of 20th century as well as acts of the U.S. Congress, granting the right to reorganize federal agencies. Since the study is conducted in historical retrospect, the methodology of historical analysis is widely used. The historical analysis focuses on the intensity and conditions of reorganization of federal executive authorities in Russia and the United States. All the analyzed legal acts are available online for further research at http://pravo.gov.ru/ (Russia) and http://uscode.house.gov/ (the United States).

1. General characteristics of the executive system of Russia and the United States

1.1. Approaches to cabinets formation in Russia and the USA

Giving a brief description of the system of the federal agencies of the USA, it is necessary to note some distinctive features in comparison with the Russian Federation. One of the main features of fundamental importance in the context of this study is the place of the President of the United States in the mechanism of separation of state power: the U.S. President heads the executive branch, while the President of the Russian Federation does not formally belong to any branch of power, but at the same time, has a significant amount of authority in relation to each branch of power. The consequence of this is that the U.S. President actually heads and exercises leadership of the Cabinet, and in the Russian Federation, the leadership of the Cabinet is carried out by the Chairman of the Government of the Russian Federation. At the same time part “b” of Art. 83 of the Constitution of the Russian Federation provides the right of the President of the Russian Federation to preside at meetings of the Government.

The composition of the cabinets in the Russian Federation and the United States also differs greatly: the U.S. Cabinet, in addition to the President of the United States and the 15 heads of departments of the United States (similar to Russian ministers), also includes the Vice President, White House Chief of Staff, Director of the Office of Management and Budget, Administrator of the Environmental Protection Agency, Head of the Office of U.S. Trade Representatives, Ambassador to the United Nations, Administrator of the Small Business Administration - the so-called Cabinet-level officials. In addition to the Chairman, the Government of the Russian Federation includes his deputies (10) and federal ministers (21). Thus, the quantitative composition of the US Cabinet is 25 people, the Government of the Russian Federation - 32 people.

There are also differences in the appointment procedure of the members of the Cabinets as well as other heads of the executive authorities: in accordance with Part 2 of Art. 2 of the U.S. Constitution, the appointment procedure foresees the advice and consent of the Senate (this rule does not apply to the Vice President and Head of the White House Administration). For example, at the very beginning of the presidential term there were around 4,000 political appointment positions which the incoming Trump administration needed to review, and fill or confirm, of which 1,212 required Senate confirmation. Whereas in Russia only the candidacy of the Chairman of the Government of the Russian Federation is subject to approval by the State Duma (one of the Chambers of Russian Parliament, can be compared to the U.S. House of Representatives), and the remaining members of the Russian Cabinet are appointed by presidential decrees and do not require prior approval from Parliament.

If we compare the position of the "second persons" of the state in the administrative hierarchy, it is also possible to identify a number of features. The Vice-President of the United States, in contrast to the appointed Prime Minister of the Russian Federation, is elected. But the most important fact is that the Vice-President of the United States is at the same time the President of the Senate, i.e. is directly related to the legislative branch, while being part of the Cabinet.
1.2. Formation of the structure of federal executive bodies

The formation of the structure of the Federal Executive authorities of the United States is characterized by a long period of evolution. If we consider current 15 departments, 2 of them were created in the XVIII century (Department of State – 1789; Department of the Treasury – 1789), 3 in the XIX century (Department of Agriculture, 1863; Department of Justice 1870); 9 – throughout the twentieth century (Department of Trade, 1903; Department of Labor, 1913; Department of Defense – 1947; Department of Health and Human Services – 1953; Department of Housing and Urban Development in 1965; the Department of Transportation -1966 ; Department of Energy – 1977; Department of Education, 1980; Department of Veterans Affairs – 1989), and the only one Department (Department of Homeland Security – 2002) was established in the beginning of the XXI century. Thus, since 2002, no Department has been established or abolished in the United States. As for comparison, we can see the example of the Russian Federation, where, after significant changes in 2004, at least 5 federal ministries were created, 8 were transformed, 12 were formed as a result of reorganizations and 2 federal ministries were abolished.

In the structure of the Federal Executive authorities of the United States, in addition to these 15 departments, there are subordinate authorities, which are collectively referred to as federal agencies. Despite the fact that in the system of Federal Executive bodies of the United States there are different types of federal agencies (agencies, administrations, bureaus, services, commissions) to make a systematic difference between them is not possible, because in each case the functions and powers of a federal agency are determined separately by acts of the Congress.

2. Approaches to legal regulation of the system and structure of Federal Executive authorities

The most fundamental difference can be seen in the legal approaches to the mechanism of reorganization of the Federal executive authorities in Russia and the United States. In accordance with Article 1 of the U.S. Constitution, the reorganization of federal executive authorities falls within the competence of Congress and is carried out by adopting laws. In the Russian Federation the reorganization of the system and structure of Federal Executive bodies is carried out by the President by means of presidential decrees. Thus, at the moment, the reorganization of the system and structure of the Federal Executive authorities in the United States has statutory nature, and in the Russian Federation – sub-statutory.

Moreover, it should be noted that for a long time in the Russian Federation the necessity to adopt a Federal law on executive bodies has been discussed, and the President, by issuing decrees regulating the system and structure of federal executive bodies, in fact, closes the "legal vacuum", formed due to the lack of legislative regulation. This position was confirmed by the Decision of the Constitutional Court of the Russian Federation of 27 January 1999 "On case of interpretation of articles 71 (point "g"), 76 (part 1) and 112 (part 1) of the Constitution of the Russian Federation".

3. US Presidential Reorganization Plans

Despite the fact that in the United States the powers to reorganize the system and structure of the Federal Executive bodies are attributed to the competence of Congress, the United States has been characterized for a long time by the practice of granting these powers to the President of the United States by an act of Congress (Presidential reorganization authority).

Providing authority for reorganization of federal executive bodies was implemented through the enactment of the reorganization act. For the purpose of a comprehensive analysis of the evolution of the mechanism for granting powers to reorganize the federal executive bodies, it seems appropriate to consistently consider the above-mentioned legislative acts.

In 1918 one of the first attempts of legislative authorization of the reorganization was made by the adoption of the Overman Act\(^1\), which was adopted in wartime conditions and gave to the President Woodrow Wilson the appropriate permissions of reorganization of the federal bodies of executive power during the war and for 6 months after. A distinctive feature of this law was that at the end of 6 months after the end of the war, all reorganization

measures lost their force and the structure of the Federal Executive authorities of the United States had to return to the pre-war composition.

It should be noted that the powers granted by Congress to the President of the United States to reorganize the federal executive bodies were not absolute and indefinite. Thus, during the 20th century, the term for which the power was granted was on average about two years, except, for example, the reorganization Act of 1949 – the powers to reorganize were granted for 4 years, and in accordance with the amendments to the said law of 1964 – only for 1 year. At the same time, the Administration of the President repeatedly raised the issue of granting the President powers to reorganize federal bodies for an indefinite period.

In addition to the time limits for the reorganization, the President of the United States was also limited in the areas of implementation of reorganization measures: for example, the Congress could set a ban on the reorganization of certain bodies or the creation of new ones, etc.

In 1937, Franklin Roosevelt in his address to Congress noted that there are more than 100 different departments, councils, commissions, corporations, agencies through which executive power is exercised. At the same time, neither the President nor the Congress could exercise proper control and management of such "chaos of establishments", which lead to the imposition of competence, duplication of powers and the development of controversial decisions. A government without good governance is a house built on sand. F. Roosevelt also emphasized that in the current structure of government, it is physically impossible for the President to carry out his constitutional duties due to the overload of minor details and contacts, which are a direct consequence of the poor organization and equipment of the government. But F. Roosevelt also believed that the reorganization is not a technical task, but a social task, because the government is not a machine, but a living organism.

A significant influence on the development of the mechanism for granting the US President the authority to reorganize the executive branch was rendered by the decision of the U.S. Supreme Court, which recognized the mechanism of unicameral or bicameral disapproval by Congress of the reorganization plan as unconstitutional. This decision of the U.S. Supreme Court also put on the agenda the question of the constitutionality of all previous decisions on the reorganization of the federal executive authorities in the framework of the plans initiated by the U.S. presidents, in connection with which a law was adopted confirming all previously changes in the structure of the federal executive authorities.

From December 1984 to the present, the powers to reorganize federal executive bodies have not been granted to the President of the United States, despite numerous attempts and initiatives to renew them. But despite the fact that the mechanism has not been used for a long time in the U.S. public administration, the content and legal approaches used in the preparation of reorganization plans are of considerable scientific and practical interest.

4. Reorganization of federal executive authorities in Russia

4.1. Administrative reform of 2004

The system of federal executive bodies, established by the decree of the President of the Russian Federation of 09.03.2004 No. 314 "On the system and structure of federal executive authorities" (hereinafter also - Decree No. 314), implied the creation of federal ministries, federal agencies and federal services instead of previously existing types of executive authorities. As a result of the adoption of Decree No. 314 15 federal executive bodies were transformed, 41 - formed, 3 - renamed, 24 – abolished. Thus, according to the results of the reform in 2004 there were 76 federal executive bodies- 14 federal ministries, 28 federal agencies, 34 federal agencies.

The dynamics of the number of federal ministries is also quite interesting: if in 1996 and in 2018 there were 24 and 22 federal ministries, respectively, then according to the first edition of the above-mentioned Decree of 2004 No. 314 - there were only 14 federal ministries (5 in the "presidential" bloc and 9 in the "socio-economic" bloc), so in the context of the administrative reform that took place in 2004 there was a serious attempt to optimize the administrative apparatus, that, however, finally led to a further increase in the number of federal ministries.

The changes that took place during the period of 2004 – 2019 provide a unique opportunity to trace the forms, intensity and frequency of executive authorities evolution, as well as to identify common characteristics. All in all,

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4 Pub.L. 98-532; 98 Stat. 2705
during the period 2004-2019 about 60 decrees of the President in one way or another modifying the system and structure of executive authorities have been adopted. So, based on this figure it can be easily calculated that on average every 85 days the structure of the federal executive authorities faces changes: executive authorities are established, abolished, merged, reformed, renamed or change their subordination.

The longest period in which there have been no changes was since the decision of the President on 21.05.2012, No. 636 "About structure of federal executive authorities" and till the abolition of the Federal Service for Financial Markets (430 days). The most intense year from the point of view of introducing changes to the structure of executive bodies (after the 2004 reform) was 2008 - 8 decrees of the President of the Russian Federation were adopted, introducing about 60 different changes. This phenomenon is directly connected with the election of D.A. Medvedev. After the election in 2012 of the President of the Russian Federation, V.V. Putin started another stage of significant changes within the structure of executive authorities (all in all the system of executive authorities faced 42 different changes during the period of 2012-2016). Thus, on average, about 13 federal executive bodies are under reorganization every year (without taking into account the significant changes in 2004).

It is necessary to pay special attention to presidential decrees that introduce the structure of federal authorities. There have been 6 of such "fundamental" decrees – 2004 (No. 314, No. 649), 2007 (No. 1274), 2008 (No. 724), 2012 (No. 636), 2018 (No. 215). These acts do not simply change the structure, but also introduce new mechanisms and principles of interaction and functioning of federal executive authorities.

4.2. Trends in the reorganization of federal executive bodies

One of the goals of transforming the system of federal executive bodies was to clearly allocate functions for the development of public policy and legal regulation, the provision of public services, as well as state control and supervision, between federal ministries, federal agencies and federal services. However, with the adoption of the Decree of the President of the Russian Federation "Issues of the structure of federal executive bodies" of September 24, 2007, No. 1274, such a three-tier system was violated: this decree provided for the creation of state committees - such federal executive bodies, which could combine all the abovementioned functions, and thus violate the logic that had been within the framework of the system of federal executive bodies reform. As a result two federal bodies were created in 2007 in the form of state committees (one responsible for fishing industry, the other – for youth policy). This state committees, however, were transformed into federal agencies after a short period of time. In general, the visual "legal harmony" of the three-tier system was restored, but with detailed study of the powers of the federal executive bodies, numerous facts of vesting of extrinsic powers on ministries, agencies and services that contradict to the idea of the administrative reform may be revealed. There are examples when federal ministry is given an opportunity to carry out control and supervision action.

Another recent trend of the legal regulation of transformation of federal executive bodies is their enlargement by means of merging. So, in accordance with the Decree of the President of the Russian Federation "On Certain Issues of State Administration in the Field of Antimonopoly and Tariff Regulation" of July 21, 2015, No. 373, the Federal Tariff Service was abolished and its powers were transferred to the Federal Antimonopoly Service. Particular attention in such transformations is given to maintaining the personnel potential of the abolished body.

A significant increase in the number of federal ministries occurred in the context of their creation on a territorial basis – the Ministry for North Caucasus, the Ministry for the Development of the Far East, the Ministry of Crimean Affairs - this is another trend in the development of the structure of executive bodies. These ministries were created to concentrate the resources of public administration with the aim of developing specific groups of regions. However, the presence of such ministries is, most likely, temporary and it is assumed that after fulfilling the task of achieving a certain level of social and economic development of specially managed territories, such ministries should be abolished. A vivid example is the Ministry of Crimean Affairs that existed for a comparatively short period (March 31, 2014 - July 15, 2015), and was abolished in connection with the fulfillment of the task of integrating the Republic of Crimea into the Russian Federation. At the same time, the Chairman of the Government DA Medvedev, expressed his position, that the other two remaining territorial ministries should continue to exist, because "they solve very large tasks, designed for decades" and the territories they manage have "a huge number of unresolved problems: social, economic, and even ideological, and it is necessary to coordinate federal structures."

Changes in the structure of federal executive bodies also show the trend of transferring functions from executive authorities to other state bodies or even public-owned corporations. An example of such a reorganization is the transfer of powers of the Federal Service for Financial Markets to the Central Bank, as well as the abolition in 2008 of the Federal Agency for Atomic Energy (Rosatom) and the transfer of his powers to the Public-owned Atomic Energy Corporation "Rosatom".
One of the striking examples illustrating the constant changes in the structure of governmental bodies within one sphere is the sphere of construction - the Ministry of Construction (1994-1997) - the State Committee for Housing and Construction Policy (1997-1998) - the Ministry of the Russian Federation for Land Policy, construction and housing and communal services (1998-1998) - the State Committee of the Russian Federation for Construction, architectural and housing policy (1998-1999) - State Committee of the Russian Federation for Construction and Housing and Communal Services (1999-2004) - Federal Agency for Construction and Housing and Communal Services (2004-2008) - Department of the Ministry of Regional Development (2008-2012; by the way, the Ministry of Regional Development - was later abolished in 2014) - Federal Agency for Construction and Housing and Communal Services (2012-2014) - Ministry of Construction and Housing (2014 - ? ). Thus, changes in the mechanism of state administration of the most important sphere occurred too often, and even in some ways repeatedly returned to the forms of organization that have already been used. And this, unfortunately, is not the only example in the structure of federal executive bodies.

No less significant changes in the structure of federal executive bodies occur on a daily basis: the structure of ministerial headquarters and the organization of territorial representative offices, as well as legal acts that establish the status of federal executive bodies are constantly changing. Such changes are not a subject of wide public discussion and do not receive wide publicity in media, however, such changes often also have a significant impact on the functions, powers and activities of federal executive authorities.

Summing up the abovementioned development tendencies it can be concluded that the structure of the federal executive authorities is characterized by a fairly high rate of transformations taking place despite of the fact that there is a certain level of political stability within the country.

**Conclusion**

The analysis shows that the United States are characterized by a much lower rate of transformation in the structure of the Federal Executive authorities compared to the Russian Federation, due primarily to the difference in the legal mechanism of such transformations. So, in the USA the authority to reorganize the federal agencies is assigned to the Congress and, therefore, any reorganization requires compliance with a complex legislative procedure. The choice of such a complicated mechanism is not accidental, since any changes in the system and structure of Federal Executive bodies (even the most effective and progressive) violate the established order of administration for a certain period of time.

Obviously, public administration must be characterized by long-term goals and a stable apparatus for achieving them. Thus, one of the ways to improve the quality of reforms, reduce the unreasonably high rate of changes, ensure consistent and successive reform in the system and structure of the federal executive authorities is to regulate the executive branch by means of law that would also lead to more effective functioning of the mechanics of checks and balances.