

**M.M. SPERANSKY AS FOUNDER  
THE PRINCIPLE OF DIVISION OF THE AUTHORITIES IN RUSSIA  
(HISTORICAL AND LEGAL ANALYSIS)**

*Ainur Gilmullin, Eduard Krasnov  
adickkrasnov@yandex.ru  
Kazan Federal University*

**Abstract.** This article is dedicated to the outstanding Russian statesman Mikhail Mikhailovich Speransky and his legal views. The paper focuses on the consideration of the principle of division of the authorities in the papers of Speransky. Of course, being the cornerstone of the rule of law, the principle of division of the authorities is of great practical importance for the modern Russian state. Mikhail Speransky, being one of the founders of the selection of this principle in Russian science, left a deep imprint on science. Considering the classical three-tier structure of principle division, the scientist and statesman Speransky worked out in detail the interaction mechanism of one governmental bodies with others. Unfortunately, most of his progressive ideas have not found a response in the circles of state power, however, they have not lost their relevance and value to this day. The value of Speransky's ideas was also in the scientist's desire to create a truly effective model of the rule of law. As an outstanding reformer, Speransky gave great importance to the role of civil society for the rule of law. The article also attempts to reveal the scientist's views from the point of view of modern knowledge of the rule of law and its principles.

**Key words:** rule of law, civil society, principles of the rule of law, principle of division of the authorities, system of checks and balances.

**INTRODUCTION.** The history of the formation and development of the domestic state and law has known many truly outstanding names, due to the indifference and works of which, Russia can truly be proud and is one of the most developed and advanced countries in the world today. In particular, we are talking about such great minds of our time as: N.M. Karamzin, G.R. Derzhavin, M.M. Speransky, P.D. Kiselev, S.A. Muromtsev, et al. At the same time, the name of Mikhail Mikhailovich Speransky, as one of the brightest and most talented figures in the national theory of state and law, constitutionalism, and philosophy of law at the end of the XVIII - beginning of the XIX centuries worthily takes the place of the founder of domestic jurisprudence.

Speransky can really be considered as a person who has completely made himself. From early childhood he was distinguished by deep erudition, passionate love for reading and thinking, independence and firmness of his character, and high administrative abilities. The periods of service in the office of the Prosecutor General, acquaintance with Bruckner and the encyclopaedists' works inspired Speransky and laid the foundation for his political outlook on liberal ideas and served as a determinant in further reform processes that took place at the beginning of the early XIXth century. He rightfully enjoyed great confidence in both the emperor Alexander I and the European political leaders. Thus, in 1808, when Speransky was part of the delegation at the meeting with Napoleon, the latter noted and called him "the only bright head in Russia" and even asked Alexander I: "Would you, sir, like to exchange this man for any kingdom?", and the king of Prussia granted Speransky the order of the Red Eagle of the first degree [1].

The range of scientific interests of Speransky included spiritual and philosophical, political and legal topics, among which jurisprudence occupied a separate essential place of his scientific heritage. In particular, the list of works and notes of Speransky included nearly thousands of different manuscripts on the problems and prospects in the field of law, including: "On the Original Laws of the State", "Another Thing about Freedom and Slavery", "Review of Historical Information about the Code of Laws", "Guide to the Knowledge of Laws", "On the System of Laws in General", "On the Law in General", "On the Personal Law", "On the Civil Laws", "On the System of Property Laws", "On the Property", "Draft Criminal Code of the Russian Empire of 1813" and of course "Code of Laws of the Russian Empire".

**METHODS.** In their content, these works were purely liberal-democratic, pragmatic-oriented, and were aimed primarily at: introduction of the elements of the rule of law, constitutionalism and parliamentarism, development of civil society institutions, protection of personal integrity and property [2], fair justice. At the same time, to create an effective, legal state and to develop the entire system of state bodies, Speransky, adopting the experience of Western European countries, insists on introducing a system of division of the authorities, and emphasizes that "It is impossible to base the rule on the law, if one sovereign power will create the law and execute it". It is worth emphasizing that the attention paid by Speransky to the Western European scholars was not accidental. The concept of the rule of law was developed in the German legal science, which either was reduced to the formula of "bureaucracy ordered by the law" (such a formulation can be traced in the works of K.T. Welker and R.G.F. Gneist) or to the subordination of executive and legislative powers, when the first is subject to the second within the framework of the constitutional monarchy [3].

According to the Plan of State Transformation of Russia, developed by Speransky in just nine months [4], the goal of modernizing the state system was "aimed at vesting the autocratic government in all, so to speak, external forms of law, leaving the essence of the same power and the same space of autocracy based on bourgeois ideas [5] and principles", while maintaining the supreme power of the monarch. According to Speransky, the state should have three branches of government, one of which "operates in the formation of the law, the other - in execution, and the third - in the judicial part". Legislative power should be exercised by the State Duma; the governmental authority is entrusted to

the ministers and the government, and the judicial authority is entrusted to the Senate and the judicial system. However, in his writings Speransky also singled out the fourth branch of authority, which is enclosed in the emperor's person. He calls this power the sovereign and provides a comprehensive range of action for it: "...in legal form, no law can be effective unless it is approved by a sovereign power. In executive form, all charters and institutions perceive force and action from the approval of the sovereign power. In judicial form, the preservation of justice and the approval of judges by the election of those intended, belong to the sovereign power. The sovereign power lies in the emperor's person in all space".

**RESULTS AND DISCUSSION.** In addition, each of the three authorities was supposed to be a specific, transparent structure at all government levels: from volost to higher authorities. Thus, it was assumed that at the volost level, a volost council should be convened once every three years and elected by all owners of real estate, state peasants, regardless of class estate, whose powers included: election of representatives (deputies) to the district дума, election of the chairman of the дума, approval of the budget and other administrative and managerial issues within the volost.

Further, according to the graduation, it was a representative body of the okrug - the okrug дума, whose authority also included electing its chairman, chief secretary, solving issues at the okrug (city) level and electing deputies to the gubernial дума, which, according to Speransky, elected its chairman, gubernial council and court, as well as was the elector of deputies to the highest representative body of the state - the State Дума. The State Дума, on a par with the Senate, stood out as one of the highest state bodies of the empire, the key role in whose work was to be in the emperor's hands. It was with the approbation and the emperor's Order that the Chairman of the State Дума was appointed, the emperor had the right to dissolve and appoint new elections to the Дума, and only the emperor had the imperative right of legislative initiative. At the same time, the law acquired its force only after discussion and approval by the deputies of the "legislative institution". That is how Mikhail Mikhailovich Speransky called the State Дума.

Speaking about the place and role of the monarch, as well as the executive power, according to the "Plan" and the North American and Western European practice, their power (albeit not entirely positive, due to their revolutionary orientation), should have been limited to the Constitution and thus the reformer intended to soften the revolutionary sentiment by giving a form to the constitutional monarchy.

Due to the constitutional limitation of the imperial authority to act directly, in accordance with the principle of division of the authorities, Speransky, besides the triad of state powers (the State Дума, the Cabinet of Ministers, the Senate) [6], also singles another supreme body whose members were personally appointed by the monarch and who is aimed at consolidating all branches of power - the State Council, in which the emperor should have been the chairman.

**SUMMARY.** Thus, summarizing all the above, it arises a certain analogy with the modern Russian state system, based on historical and legal analysis, when there is a strong independent authority in the President's person, who is the guarantor of human and civil rights over three independent branches of government and, in accordance with the procedure established by the Constitution of the Russian Federation, takes measures to protect Russia's sovereignty, its independence and state integrity, ensures a coordinated function and interaction of public authorities, as well as [7] is crucial for many aspects of the development of the Russian state and society. One can also trace this development in the fact that Speransky also derived the principle of appointing the employees of the judicial system. Truth be told, the author's possibility of identifying the interaction mechanism between each branch of government, and not only the emperor's influence, would be even more relevant and important.

Also, it is necessary to emphasize the fact that in modern understanding the principle of division of the authorities should be supplemented with a system of checks [8] and balances, which implies a special mutual control system of one bodies by others [9]. It seems that only in this case it would be appropriate to talk about the possibility of practical implementation of this principle, because it is impossible to achieve the effective work of state bodies without a proper system of control of one branch of power over another. In addition, without creating a mutual control system, it is highly likely that one of the branches of government will abuse the law, while violating its underlying fundamental principles, such as justice and legality. At the same time, there should be a certain legal connection between the various branches of governmental bodies, primarily the creation and implementation of the interaction system between them. However, carrying out various functions, the state authorities pursue one common goal - to achieve real functioning of legal norms in the state, due to which it will be possible to build a rational interaction model between the society and the state. Legal norms will be valid only if the legal acts are systematized and arranged in a certain hierarchy. Moreover, some foreign scholars are convinced that the "legislation is the main source of law" [10]. At one time, Speransky had brilliantly achieved this goal. In his writings, Speransky identifies the governmental bodies, distributing them according to their functional affiliation. However, unfortunately, his model has not received practical implementation. At the same time, it is worth noting that, in his views, Speransky has also tried to identify the problem of interaction between the governmental bodies and the people. In his opinion, it should be observed a certain balance in this respect, allowing to combine the "benefits of the upper class" with the "benefits of the people" [11]. Speaking about the modern principle of division of the state and society, it should be noted that it is traced with a red thread in the papers of Mikhail Mikhailovich Speransky. In his work "On the Original Laws of the State", he cites the thesis that the strength of a state has several components, one of which is the people's respect. At the same time, provision of the rights and freedoms of the citizens, as well as the opportunity to show their respect, can be achieved only through a special tool: "This means cannot simply be an expression of a common will, because those who would express this will, in a minute, forgetting this, would cease to obey it, and, therefore, this means would remain without end" [11]. Thus, the author emphasizes the need for state bodies that would help ensure the legal status of an individual, expressed primarily in certain rights and

freedoms that give access to various benefits. Thus, Speransky argues about the objective necessity of the existence of state bodies. According to Speransky, the government is united and divided only by functional features. It is government agencies that should have clearly defined functions. This can be noted by looking at the scientist's papers where he identifies both external and internal manifestation. The external manifestation means the presence of a large number of legal acts coming from various bodies of state power and thus being a means for deterring one body from another. From the point of view of internal manifestation, the very structure of the state bodies should differ from each other. "...If the forces of government and the forces of the people are the same in their source, then they are very different in their properties. The forces entrusted by the people to the government were united into one mass in its hands. Troops were made up of physical forces, money was made up of the people's wealth, and honor was made of respect. On the contrary, the forces left with the people remained scattered" [11]. Speransky also justifies the need for a civil society as a stratum between the governmental bodies and the society. "It's impossible to imagine that all the people would use itself, to protect the limits between it and the government, then of course there should be a special class of people, which, being between the throne and the people, would be quite enlightened to know the exact limits of power, rather independent so as not to be afraid of it, and so much connected with the benefits of the people, so that it will never find its benefits to be changed. This will be the living guards that the people will put in its place within the limits of the state forces" [11]. In 1809-1810, despite the contradiction that existed in the society at that time (class division and serfdom), Speransky prepared a plan and goals for the legislative policy of the empire, where the first role went to the drafting of the Civil Code based on an increase of the rule of law [12]. In the Manifesto on the formation of the State Council, the priority task of the reformed Council declared a discussion of the draft of the Civil Code of the Russian Empire and emphasized that "it is very important for the good of <...> subjects to protect their property with good civil laws" [13]. The draft Civil Code, which is based on the bourgeois-democratic principles with a private-law orientation, provoked an extremely contradictory reaction, both among the nobility elite and among the representatives of the highest administration.

**Conclusions.** Making a conclusion, it can be noted with complete confidence that the entire state and political line of the Great Reformer, M.M. Speransky, both the state-legal structure of the empire based on the principle of division of the authorities, and the systematization of Russian legislation, are an inevitable desire to build an effective rule of law and civil society founded (albeit in the bud) on the private law principles in Russia: "Through the extraction of our laws from the old chaos and the greater opportunity to re-educate the minds, to introduce people to the legal environment, to expand its concepts of law and legality and, thus, to increase its susceptibility to the highest circle of ideas and to greater participation in the measures being undertaken for it". Also, it is necessary to emphasize the fact that "the reforms of M.M. Speransky have already corresponded to the policy of "social state" to some extent, even if this term has not been yet introduced into scientific circulation.

**Acknowledgements.** The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

### References

1. Friendly Letters of Count M. M. Speransky to G. Masalsky, Written from 1798 to 1819, with Historical Explanations Compiled by K. P. Masalsky, and Some Works of the First Youth of Count M. M. Speransky. St. Petersburg, 1962. P. 4-113.
2. Rae, John. Life of Adam Smith. — New York City: Macmillan Publishers, 1895.
3. *Welcker K.T.* Die letzten Gründe von Recht, Staat und Strafe. Giesen, 1813. S. 25, 71 u.a.; *Mohl R.* Die Polizeiwissenschaft nach den Grundsätzen des Rechtsstaates. Bd.1—2. Tübingen, 1832—1833.
4. Kassikhina V.E. M.M. Speransky, His Role in the Development and Formation of the Russian State and Law // State and Law in the XXI Century. — 2017. — 2. — P. 4-13.
5. Montesquieu, De l'esprit des lois, I, 1–2.
6. State Charter of the Russian Empire // Schilder, N. K. Emperor Alexander the First. His Life and Reign / N. K. Schilder. — St. Petersburg, 1905. — V. IV. — P. 499-526.
7. The Constitution of the Russian Federation (adopted by popular vote on December 12, 1993) (taking into account the amendments introduced by the Laws of the Russian Federation on Amendments to the Constitution of the Russian Federation No. 6-FKZ dated December 30, 2008, No. 7-FKZ dated December 30, 2008, No. 2-FKZ dated February 5, 2014, No. 11-FKZ dated July 21, 2014).
8. Locke J. Two Treatises of Government // The works. — London, 1751. — V. II. — P. 103–238.
9. A.R. Gilmullin. On the Impact of Legal Doctrine on the Principles of Organization and Activity of the Mechanism of the Russian State / World of Jurisprudence. — 2017. — No. 3. P. 18-53.
10. Bluntschli Johann Kaspar. The theory of state // Batoche Books, 2000. — 491 p.
11. Speransky M.M. Legal Works. Educational and Practical Manual. - M.: Zertsalo, 2008. - P. 281-284.
12. I. V. Ryzhitskaya. Codification Projects of Emperor Alexander I as an Integral Part of his Political Reforms / Power, Society, Army. — 2013. — P. 130-139.
13. Formation of the State Council // Russian Legislation in the 10th – 20th Centuries. V. 6. M., 1988. P. 61.
14. Gilmullin Ainur, Krasnov Eduard, LEGAL DOCTRINE AS A SCIENTIFIC-THEORETICAL SYSTEM OF THE STATE OF LAW//NATIONAL ACADEMY OF MANAGERIAL STAFF OF CULTURE AND ARTS HERALD. - 2017. - Vol., Is.4. - P.329-332.