

LOCAL SELF-GOVERNMENT AND TRANSPARENCY: FEATURES OF CONSTITUTIONAL REGULATION

Denis Mikheev¹, Irina Boyarinceva^{2*} and Yuliya Yaichnikova³

¹Prof. Dr., Mari State University, The Russian Federation, law@marsu.ru

²Cand., Senior Lecturer, Mari State University, The Russian Federation, irinanew2@yandex.ru

³Assist. Prof., Mari State University, The Russian Federation, tnmiheeva@marsu.ru

*Corresponding author

Abstract

The article is dealing with the legal analysis of the norms of the Constitution of the Russian Federation, regulating the institution of local self-government, and their further development in the federal, state and municipal legal acts. At the same time one of the objectives is to identify and to study the relationship between regulations and the key principle of local self-government - publicity. The study used a system of general scientific and special methods of legal knowledge: analysis, synthesis, comparative legal, formal legal approaches. General scientific method of analysis was used in the evaluation of the content of the legal rules governing the local government. Formal legal method allowed to make suggestions in the article to supplement the existing array of legal acts with practical recommendations. The study analyzed and assessed the most important articles of the Constitution of the Russian Federation, describing the local government as the basis of the constitutional order, as a form of democracy, as the right of the population to independent decision of local issues. The study revealed the absence in the Constitution a very important norm that citizens have the right to local self-government. It is also established that the Constitution does not contain any indication of the openness and publicity of activities to address local issues. It is found that the essential feature of the right of citizens to local self-government is municipal relationship with the public, duty of the authorities to inform the local community about their work. The principle of transparency of local government includes the concept of openness, publicity and awareness. To resolve the legal gap, the study suggested a change in the Constitution of the Russian Federation, which, according to the author, would provide a more precise legal consolidation of local government - one of the basic democratic institutions in the country. This constitutional innovation would not only contribute to the consolidation of the legal principle of publicity, but its implementation in legal practice.

Keywords: local government, principle of transparency, principle of publicity, the Constitution, citizens, population

1. INTRODUCTION

The institute of local authorities with its settled traditions has found a wide legal formulation and practical implementation in the number of foreign states, where it is developed the system of attracting population to

management at the local level (Mikheev, Mikheeva and Mokoseeva, 2015, p.23). It is based on the principle of transparency of activities of local authorities, access of citizens to information about their work. Only in this case, the conditions for activity of the population at their place of residence are provided, and the involvement of citizens' initiative groups for local issues is becoming the norm for municipal authorities (Babun, 2010, p.97).

The principle of publicity has received the wide discussion in the domestic and foreign literature. So, a number of authors characterize it as a basis of democracy construction (Yakhina, Yaichnikova and Mikheeva, 2015, p. 59). The others emphasize the particular importance of this principle in the dialogue between citizens and local authorities (Kudryavtzev, Mikheeva and Mikheev, 2016, p. 1919). Hyden points to the need for efficient and effective legislation norms (Hyden, 1997, p.p. 3-30). At the same time there is a view of an imperfect legal regulation of interaction between local government and population (Belousov, Gornev and Mikheeva, 2015, p.59). That's why the problem of consolidation of local government institution in the legislative acts of the state is still relevant. In this connection it is important to analyze the Constitution of the Russian Federation from the point of view of legal regulation of local government and transparency as basic principle of the organization of municipal authority. The Constitution creates a legal basis for further development of the legislation, defines his legal vector for many years. This explains the need for researching the constitutional norms from positions of their completeness to ensure the functioning of local government as the level of public authority which is the closest to the population.

The research objective is the complex consideration of local government in connection with its fundamental principle of transparency settled in the Constitution of the Russian Federation. While one of the problems is evaluating the adequacy of the constitutional norms to the current challenges in municipal sphere. The other problem is formulating recommendations about improvement of the constitutional provisions.

2. METHODS

Methodological bias of the research is the complex of methods of scientific study. The study used a system of general scientific and special methods of legal knowledge: analysis, synthesis, comparative legal, formal legal approaches. General scientific method of analysis was used in the evaluation of the content of the legal rules governing the local government. Formal legal method allowed to make suggestions in the article to supplement the existing array of legal acts with practical recommendations. Taken together, these methods can achieve the sated goals and objectives of the research.

3. RESULTS AND DISCUSSION

Formation of modern local government was and remains one of the key problems of the Russian state (Mikheeva, 2002, p.102). Although the local government has not received the definition in the Constitution of the Russian Federation, but more than 20 of its articles contain rules governing the organization and activities of local authorities. N.A. Emeljanov believes that the Constitution of the Russian Federation regulates the legal status of local government quite extensively (Emeljanov, 1997, p p.6, 63). V.A. Baranchikov agrees with this point of view, he considers that neither the constitution of a federal state of past and present did not solve the fundamental question of local democracy organization, as it is done in the current Constitution of the Russian Federation (Baranchikov, 2005, p. 35).

According to the constitutional norms, the local authority acts in several aspects: a) as the constitutional order, b) as a form of democracy, c) as the right of people to independently decision of local problems. The institute for local self-government, according to M. I. Liborakina, is no less important than freedom of speech, conscience, and other foundations of the democratic system (Laborakina, 2003, pp.20, 24). Recognition of local government as one of the elements of the constitutional system includes the decentralization of state control, isolation of local governments in the system of government and its independence. A clear evidence of this is article 12 of the Constitution, which establishes that the local self-government within their powers is independent, and local governments are not included in the system of public authorities. Independence should be considered as a special allocation of the scope of local issues where local governments act at their own discretion and responsibility, answering only to the population of the municipality.

Local government as a form of democracy is fixed in article 3 of the Constitution of the Russian Federation, according to it people exercise their power directly and through bodies of state power and bodies of local self-government. It follows from this provision that local self government is one of the forms of implementation of public power in the state.

Scientists say that self – government is one of the most ancient and universal ways of managing. It is the most natural, satisfying the needs of human society (Lapteva, 1998, p.200), because the aim of self-government is self-organization for resolving issues. This power is exercised on special territories – municipalities, in various forms – directly or through specially formed; it is limited by the object of

management – the issues of life sustenance of the population. This is the peculiarity of the municipal authorities. However, according to S. A. Avakjan, the municipal authority has a number of c

This is the peculiarity of the municipal authorities. However, according to S. A. Avakjan, the municipal authority has a number of characteristic features for state power (Avakjan, 1994, p.47). The similarity of the two levels of government is explained by the fact that the local self-government and state power are two forms of a single authority of the people of the Russian Federation.

The population of the municipality has enough democratic ways to exercise their right to local self-government. The scientists noted that the municipal level of government is characterized by the highest variability of the forms of democracy (Emeshov and Mikheeva, 2008 p.174). They are elections, referendum, public hearings, meetings, etc. They all are done openly and transparently, with the involvement of citizens and other representatives of the local community. We emphasize that this form of democracy as local government is viable only with the participation of the population of the municipality – the main subject of local government. Some forms of direct democracy cannot be implemented if number of citizens specified by law will not take part in them. For example, voting on issues of changing the borders of the municipal formation is considered invalid if it is attended by less than half of the eligible to vote residents of the municipality.

By the way, the opinion of E. B. Sultanov is of interest. He believes that the main (primary) subject of relations regarding local government is a person, because the Constitution of the Russian Federation enshrines the fundamental rights and freedoms of man and citizen, including in the sphere of local self-government (Sultanov, 2009, p.31). This judgment is not without theoretical originality, it needs further scientific understanding, however, we take the opinion of the Constitution of the Russian Federation to the question of the subjects of local self-government. It refers the population, elected and other local authorities to them in the article 130.

Local government bodies hold a specific place in structure of bodies of the state. They are the most approximate to the population and irrespective of a method of acquisition of the status (by elections or position assignment), officials of local government bodies – representatives of local community, inhabitants of the municipality. All population including officials of local government bodies as locals feels results of activities of local government bodies, positively or negatively influencing life support of the municipality.

Thus, the status of local governments lies in the fact that they are formed by the main subject of local self-government – the population of the municipality, they are representatives of this population, have the main purpose of its activities, the needs of the population. They bring negative consequences their activities equally with the population.

The right of citizens to local self-government involves not only the close relationship of local authorities with the subject giving them authority (population), but also the openness, their accessibility for the population, the duty to inform the local community about its activities that is covered by the concept of "publicity". According to the jurists, transparency is the basis of interaction of local authorities with the residents of the municipalities (Mikheeva and Likhoshva, 2016, p. 31). This thesis gives the opportunity to consider the principle of transparency of local self-government as an integral element of the constitutional right of citizens to local self-government. According to O. E. Kutafin and V. I. Fadeev people cannot refuse their right to exercise local self-government, because local government, its implementation by the population is a necessary element of the constitutional organization of the people's power. Its presence is a constitutional requirement (Kutafin and Fadeev, 2008, p.91). According to the constitutional Court of the Russian Federation the appearance of the municipality and the right of citizens to exercise local self-government occurs on the basis of the Constitution and the law but it is not based on the will of the population of the municipality (Decision of the constitutional Court, 2000).

4. CONCLUSION

The Constitution of the Russian Federation does not define the right of citizens to local self-governance and transparency as its most important element. The study shows the need for constitutional adjustments. In order to eliminate the legal gap we have formulated the following addition to the article 130 of the Constitution of the Russian Federation: "Citizens of the Russian Federation have the right to local self-government. Local government is based on the principle of transparency to ensure openness of activity of local self-government bodies and accountability to their population, access of citizens to information on the activities, the possibility of public control over it by the population of the municipality, citizens, and community associations".

Filling the constitutional gap will provide direct legal consolidation of local government as an important democratic institution of the state; it will give constitutional certainty to the principle of transparency, which is based on the institute of democracy.

5. ACKNOWLEDGEMENT

The authors are grateful to the Russian Humanitarian Science Foundation (URL:<http://www.rfh.ru/index.php/ru/>) for the opportunity to conduct this investigation within the grant project "Innovative approaches and mechanisms of realization of publicity in the activities of local authorities" (the contest to support young scientists of 2015, project number № 15-33-01364).

REFERENCE LIST

- Avakjan, S.A. (1994). Status, problems and prospects of local self-government. Local government in Russia: status, problems and prospects. Moscow.
- Baboon, R.V. (2010). Organization of local government. Moscow: KnoRus.
- Baranchikov, V.A. (2005). Legal problems of formation and development of local self-government in the Russian Federation. Moscow.
- Belousov, E.I., Gornev, R.V. and Mikheeva, T.N. (2015). About Participation of Institutes of Civil Society in Public Control over the Activities of Local Authorities. Review of European Studies. Vol. 7, No 8. 2015. DOI:10.5539/res.v7n8p59
- Emeljanov, N.A. (1997). The formation of local self-government in Russia: constitutional norms and realities. Tula.
- Emeshov, V.I. and Mikheeva, T.N. (2008). Problems of formation and activities of representative bodies of local self-government. Monograph. Yoshkar-Ola.
- Hyden, G. (1997). Civil society, social capital, and development: Dissection of a complex discourse. Studies in Comparative International Development, Vol.32 (1), DOI:10/1007/BF02696304
- Kudryavtzev, V.V., Mikheeva, T.N. and Mikheev D.S. (2016). Publicity Problems in Formation of Representative Bodies of Municipalities in the Russian Federation. The Social Sciences, vol. 11 (8).
- Kutafin, O. E. and Fadeev, V.I. (2008). Municipal law of the Russian Federation. Moscow.
- Laborakina, M.I. (2003). Problems and prospects of local self-government: an examination of the reform. Moscow.
- Lapteva, L.E. (1998). The Russian government in the context of legal experience. Local government: modern Russian experience of legislative regulation. Moscow.
- Mikheev, D.S., Mikheeva, T.N. and Mokoseeva, M.A. (2015). On the experience of legal regulation of the principle of local authorities in German law. Review of European Studies. Vol.7, No 8, <http://dx.doi.org/10.5539/res.v7n8p23>.
- Mikheeva, T.N. (2002). About some problems of the institution of municipal services// Public service, vol.4 (18).
- Mikheeva, T.N. and Likhoshva, A.O. (2016) Modern Approaches to Publicity and Independence of Local Government: Experience of American Municipalities: Mediterranean Journal of Social Sciences, Vol.7, No 1. DOI: 10.5901/ mjss.2016.v7n1s1p31
- Sultanov, E.B. (2009). The hierarchy of constitutional principles of local self-government in the Russian Federation. Constitutional and municipal law, vol.5.
- Yakhina, O.V, Yaichnikova, J. S. and Mikheeva, T.N. (2015). Publicity in the Regulation of Municipal Services. Mediterranean Journal of Social Sciences. Vol. 6, No3 S7. DOI:10.5901/mjss.2015.v6n3s7p59
- The decision of the Constitutional Court of the Russian Federation of 30 November 2000 "On the case about the verification of constitutionality of certain provisions of the Charter (fundamental law) of Kursk area in edition of the Law of Kursk region "On amendments and additions in the Charter (fundamental law) of Kursk area". (2000). Collected legislation of the Russian Federation, vol. 5.