

MUNICIPAL PUBLIC HEARINGS AS A FORM OF PRINCIPLE OF TRANSPARENCY IMPLEMENTATION OF LOCAL SELF-GOVERNMENT

Denis S. Mikheev¹, Tatiana N. Mikheeva^{2*},

¹Prof. Dr., Mari State University, The Russian Federation, Mikheev_ds@mail.ru

²Prof. Dr., Mari State University, The Russian Federation, tnmikheeva @marsu.ru

*Corresponding author

Abstract

The purpose of the research is an analysis of one of the Russian municipal institutions of democracy - public hearings which are held in the municipalities for discussion of drafts of municipal legal acts and identifying public opinion connected with them. In the foreign countries various forms of community participation is also practiced in the life of municipalities. And that's why various councils, groups of citizens are created, with which local authorities carry out the necessary consultations during solution of important problems affecting the interests of the residents. Thus the citizens are involved in making decisions on issues of local importance. Home institution of public hearings is different with better making structure and legal regulation in the comparison with them at the federal and municipal levels. However, certain aspects of the organization and conduct of public hearings are still poorly studied. In the study, several problems with the number and composition of participants in the public hearing, the absence of legal controls in the event of insufficient capacity of the rooms for their conducting have been identified. The question of the legal consequences, made at the public hearing of the recommendations, remains open. In the analysis and assessment of the studied issues proposals on improvement legal acts regulating public hearings and influencing transparency and publicity in a positive way were proved. Thus, the scientific novelty of the findings affects the scope of legal regulation of the public hearings and it also contains practical significance during their preparation, holding, streamline decision.

Keywords: local self-government, transparency, public hearings, citizens, the municipality.

1. INTRODUCTION

For researchers one of the urgent questions still remains realization of participation of municipalities' community in the local self-government. Russian municipal practice shows a tendency to increase activities of citizens in the solution of local issues [Mikheeva, Likhoshva, 2016]. These issues are close and clear to the residents, as they are connected with the life support of municipalities, the creation of comfortable people living in them. It is noted by scientists that local problems cannot be solved successfully without citizens' participation [Mikheev, Dudko, Mikheeva, 2015].

However, municipal democracy is characterized not only by the direct participation of citizens in local affairs and also the possibility of their influence on making other decisions by local authorities. For this purpose transparency provides a basis and it is a key principle in the organization of local government. Transparency and openness of the local activities promote citizen awareness what provides their desire to personal involvement in the affairs of the local community.

In various countries, besides the traditional municipal elections, local referendums, direct participation in local self-government realization, a number of additional instruments exist for activating lives of residents in the territorial groups.

For this purpose the establishment of special councils, groups, committees consisting of municipality's citizens is practiced. For example, in Denmark and Sweden in certain areas of activity of local authorities costumers' councils are created whose opinion should be taken into account in making certain decisions. Scientists believe that such councils are regarded as a school of democracy, and they are additional channel for involvement of the population in the local affairs [Rose, Stahlberg, 2005]. In Ireland for advice on the most important issues of local life and public involvement in the specific decision-making process so-called strategic political committees are created (Strategic Policy Committees). In the structure of such committee representatives of various groups of the population are included, who engaged in the development of proposals for specific areas of municipal activity: housing, environmental protection, transport, culture, etc. [Loughlin, Hendrix, Lindstrom, 2011].

Consultative procedures with the population in making some decision by municipal authorities are provided in some more countries. In Poland such consultations are required in making land-use plans and they must be carried out before the final vote in the municipal council [Swianiewicz, 2005]. In Belgium, such consult with population can be held at the initiative of the local council or at least 10% of the inhabitants of the commune, with voting rights [Plees, 2005].

According to the investigated issue concerning involving residents in the activities of municipalities, foreign practice confidently declares such an important innovation as the introduction, the so-called e-government to the municipal level. For example, more than 90% of local authorities in the United States have their own websites. Despite the poor quality of individual sites, hampering direct communication of citizens with municipal officials, most sites offer quite an extensive amount of information about the municipality, municipal activities, municipal services (Streib, Willoughby, 2002). Direct contact of citizens with local government officials via the Internet is another form of interaction of the population with the local authorities, which expands the opportunities of identifying citizens' opinion, their influence on the issues of life support of the population in these municipalities.

2. RESULTS AND DISCUSSION

Public hearings are the most proven and popular form of Russian citizens' participation in local life. 66000 public hearings were held according to the Ministry of Justice of Russia at the municipal level in 2014 [Information and analytical materials, 2015]. As E.S. Shugrina noted, in different regions population's activity is different, but we can state with confidence that people are interested in that their position has been conveyed to the authorities appropriately [Shugrina, 2016].

The objectives of the public hearings are informing the public and local authorities about the facts, and existing opinions on discussed problem, revelation of public opinion on the draft of some municipal legal acts, providing influence on residents for making decisions of municipal bodies. Municipal practice shows that the public hearings are held in the municipalities several times a year. As a rule, twice a year at public hearings it is introduced: draft of local budget and report on its implementation; all the changes to the charter of the municipality is also accompanied with preliminary discussion at the public hearings; planning of the projects, constructions, rules of land tenure, programs of development of municipalities can also not be accepted by the representative body of the municipality without public hearings.

The procedure of preparation and holding were tested in practice many times. Basic requirements for public hearings are regulated by article 28 of the Federal Law on October 6, 2003 №131-FL "On general principles of local self-government in the Russian Federation" [Federal Law №131-FZ, 2003].

Municipalities adopt their legal acts, concretizing the law. For example, the Regulation on these issues in the urban district "Yoshkar-Ola" was approved by the decision of the Assembly of Deputies on April 19, 2005 [the Regulation on the public hearing, 2005] and the next day, April 20, 2005 it was published in the newspaper "Yoshkar-Ola" and with that immediate informing residents about the importance of the municipal legal act was provided.

However, during the implementation of the legal act, protest was introduced by prosecutor's office of the city Yoshkar-Ola at some its rules on April 21, 2006.

Particularly it was pointed out the lack of questions introduced into public hearings, "the issues of changing one type of permitted use of land plots and objects of capital construction to another form of such use in the absence of approved rules of land use and development" in the list of issues. It should be specified that the

name of federal law established list of mandatory questions, according to which the municipal legal acts cannot be passed by the representative body without any preliminary discussion at a public hearing in the future. Meanwhile, it does not mean that other local issues cannot be discussed at public hearings. At the initiative of the population, head of the municipality or the representative body, other issues of local importance can be introduced for the discussion at public hearing. The protest was satisfied with the decision of urban district's Assembly of deputies. That fact is one of the clearest examples of the implementation of the principle of transparency at the local level. It also shows that in the legal state proper level of freedom should be determined by appropriate system of public relations' protection [Mikheeva, 2013].

Municipalities gradually get experience in providing public hearings. It comes understanding of the necessity of this institution of the municipal democracy, aimed at involvement of the population in decision-making on issues of local importance. According to S.S. Zenina, testing of new forms of interaction between the authorities and society happens here [Zenin, 2009].

In practice, the municipalities show attempts to find compromises to fulfill the legal requirements on the identification of public opinion in cases of the unsettledness of legal organizational matters at public hearings, for example, the case which is connected with insufficient capacity of rooms for their conduct.

Thus, during assigning of public hearings on the project of Master plan of "Yoshkar-Ola City" the urban district, designed for use for many decades, the organizing committee was faced with the problem of identifying the views of not only the residents of the city Yoshkar-Ola, but also 10 settlements belonging to the urban district. Acts of this kind, as the Master Plan, are adopted extremely rarely, but they are global. In the document, the Master plan is defined as the main form of urban building documentation for planning development of the city what determines the urban development strategy and conditions of formation of living environment [Master Plan, 2009]. In accordance with paragraph 1 of Article 9 of the City Planning Code of the Russian Federation, the functionality of the urban area is defined in the Master Plan. The totality of social, economic, environmental, and other factors is also taken into account in order to ensure the steady development of territories, engineering, transport and social infrastructure, to ensure consideration of the interests of citizens and their associations of the Russian Federation, Russian Federation subjects, municipalities [City Planning Code, 2004].

The adoption of the Master Plan affects the interests of many people in the city and rural areas, within the urban district and not independent municipalities, and in accordance with this document, construction of residential areas, gardening and an accomplishment will be carried out, the necessary territory will be given to construction, etc.

Therefore, early informing the population about the project of the Master Plan, providing the opportunity to discuss it by citizens openly is a necessary condition of further introduction for approval of the representative body. Municipalities are obliged to create conditions for the participation of citizens in public hearings on this matter. The decision of the Assembly of Deputies of city district "Yoshkar-Ola City," about appointment of the public hearing on this issue is noteworthy. As it is impossible to gather all interested citizens for discussion of Master plan's project, it appointed a public hearing separately for each territorial units belonging to Borough: in the village Danilovo on April 2, 2009; in the village of Semenovka on April 6., 2009; village Akshubino on April 9, 2009; village Apshak-Beljak on April 14, 2009, etc. [The decision of the Assembly of Deputies, 2009].

Adopted legal act allowed revealing opinion of the urban district's citizens on the important issue of municipality's life for one and half months, to collect and to study the proposals of the population, which created the conditions for the approval of urban district's Master Plan, taking into account the recommendations of the public hearing. In our opinion, such a precedent should find a legal settlement in the Regulations about public hearings of the municipalities in the following norm: "In case of impossibility of conducting public hearings in the same place because of insufficient capacity of room, they can be carried out in individual local areas of municipalities."

The implementation of transparency's principle in the work of local self-governments becoming the norm of municipal activity, the objective reality. Bodies and officials of local authorities show aspiration to develop the most effective forms of cooperation with the population of the municipal communities, recognizing that the creation of accessible informational environment affects the willingness of citizens' participation in solving local issues at last. Public discussion of drafts of municipal legal acts on the problems of local significance is an important stage of local lawmaking. The final publication of legal act depends on this very stage [Belousov, Gornev, Mikheeva, 2015]. The principle of transparency acts as a major legal tool in ensuring the constructive cooperation between municipal authorities with citizens and social formations. Developed mechanisms of public hearings indicate a steady practice of public discussions.

Thus, during 2009, the city district "City of Yoshkar-Ola," public hearings were organized 5 times. They considered such issues of local importance as: introduction of amendments and additions to the Urban District Charter (April 7, 2009), the approval of the report on the implementation of the Urban District budget for 2008 (April 17, 2009), General Plan of the City district "City of Yoshkar-Ola" (from April 2 - May 19, 2009), a comprehensive program of socio-economic development of the City district for 2009-2016 (June 19, 2009), on amendments and additions to the Urban District Charter (November 9, 2009). Similar situation is observed in other Russian municipalities.

However, analysts and practitioners of local government do not explain such demand for public hearings by the activity of citizens and their increased interest in the affairs of the local community. R. Petukhov believes that, despite numerous forms of direct democracy established by the law, in practice, only those are required, that are formally necessary for the occurrence of any legally significant consequences. For example, public hearings are required for making certain municipal legal acts or amendments to existing acts. At the same time, as a rule, the initiators of the will for the relevant procedures are local governments, while the activity of the citizens themselves to initiate forms of municipal democracy remains insufficient [Petukhov, 2016].

Returning to the analysis of the law governing public hearings, one of its serious shortcomings should be noted. It is the lack of legal provisions concerning the minimum number of inhabitants - the participants of public hearings at which they become valid. In such a situation attendance of 2-3 citizens, living in the municipality, allows to hold public hearings and make recommendations regarding their results. Very often, when there is an insufficient turnout of the citizens - participants in public hearings, local authorities living on the territory of the municipality and organizing these hearings register themselves. Formally, there are no violations, as these officials submit their passports while registering that confirm their residence. Like any resident the municipal official has the right to participate in resolving issues of his municipality. But we suppose that this situation is legally vulnerable, the conflict of interests is clearly visible. The duty of these officials is just bringing and clarification the information about upcoming public hearings to the people, creating conditions for their presence (broad awareness, defining convenient day of the week and time of day for public hearings, etc.) In this case, employees of local governments, in pursuit of the corporate interest, covering the "esprit de corps" increasingly alienate themselves from the population. This aspect gives the public hearings formal character and negatively affects the citizens' involvement in local issues.

Scientists have repeatedly drawn attention to the need for a legislative solution of the problem concerning the number of participants in public hearings. Thus, the E.A. Neznamova believes that federal law should include a provision for the participation of a significant number of residents in a public hearing [Neznamova, 2009].

We believe that there is no need overburden Federal Law with clarified small details. It would be more correct to reflect them in the provisions of the public hearings passed in each municipality. Thus it is necessary to focus on total number of residents, the type of municipality (Borough, municipal district, settlement). For the first two types of optimal quorum with not less than 40 residents are seen in the settlements and it can be limited to 20 people, under the age of 16 years.

In this case, public hearings will be most closely approaching to its name, providing transparency and publicity, demonstrating the manner of interaction of local governments with the residents of the local community.

3. CONCLUSION

In the Russian legislation certain conditions for the implementation of their initiatives on local issues by residents, identification of their opinion on the most important areas of activity of municipalities were created. The most proven form of municipal democracy is a public hearing. However, during the investigation of a number of legal gaps, which have a negative impact on people's participation in public hearings, was indicated. For improvement of the institution of municipal democracy, several amendments to the normative legal acts of different levels are offered.

1. Public hearings are recognized valid if in their work residents who have reached the age of 16, with the minimum number of 20 persons - for settlements and 40 persons- for urban and municipal districts participated.
2. If there is no room, having sufficient space to accommodate all those wishing to participate in the public hearing in the municipality, a public hearing can be held by a separate local municipality.

It is certainly that excessive regulation of the procedure of public hearings can lead to unwanted

bureaucratization of the relevant procedures [Sergeev, 2006]. However, absence of gaps in the legislation does not promote successful practical implementation of municipal public hearings. Moreover, legal unregulation effects on the attitude of the population of municipalities to this institution of direct democracy negatively. From the point of view of theoretical and legal aspects it is easy to see the violation of the key principle of the organization of local self-governance - transparency in the similar situation. Replenishment of the legal vacuum will contribute to greater transparency of processes and will create maximum transparency in public-legal relations occurring at the local level [Kudryavtsev, Mikheeva, 2015].

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