

To the problem of improving normative legal basis of organization of local self-government in Russia

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The subject. The crisis of local self-government actualizes the problem of effectiveness of legal regulation of the issues of its organization.

The purpose of the paper is evaluation of the effectiveness of the regulatory framework for the organization of local government.

The methodology of research includes systematic analysis, formal legal method, interpretation of legislation

The results and scope of application. The crisis of local self-government actualizes the problem of effectiveness of legal regulation of the issues of its organization. Evaluation of the effectiveness of the regulatory framework for the organization of local government is reduced to two questions: what are the limits of state legal regulation and what are the beginning of the division of powers on the organization of local government between the Russian Federation and the subjects of the Russian Federation.

Recognizing the optimal legislative approach to the definition of the limits of state regulation, which assumes the creation at the federal level of a full-fledged legal mechanism for the implementation of local self-government, subject to its combination with the beginning of municipal self-regulation, the author criticizes the legislative approach to delineating the powers to organize local self-government between the Federation and the subjects of the Federation.

Conclusion. Due to the legislative formula, according to which the scope of regional powers depends on the discretion of the federal legislator, the local self-government turned out to be "hostage" to the emerging federal relations

Key words: local self-government, self-regulation, federalism, municipal reform, redistribution of powers

Информация о статье:

Дата поступления – 09 июля 2017 г.

Дата принятия в печать – 10 июля 2017 г.

Дата онлайн-размещения – 30 сентября 2017 г.

Article info:

Received – 2017 July 09

Accepted – 2017 July 10

Available online - 2017 September 30

1. Formulation of the problem.

The aim of formation of the stable regulatory framework of organization of local self-government has not been achieved.

There were three federal laws on organization of local government: the Law of 1991 № 1550-1 «On Local Self-Government in the RSFSR», adopted in the development of the Law of the USSR on April 4, 1990 "On general principles of local self-government and the local economy in the USSR ", the second one is the Federal law of August 28, 1995 № 154-FZ "On general principles of local self-government in the Russian Federation", adopted on the basis and in development of the Constitution of the Russian Federation, the third one is the Federal Law on October 6, 2003 № 131-FZ "On general principles of local self government in the Russian Federation" (hereinafter - Law № 131-FZ). Moreover, today we can safely say it *is actually* the fourth law on local self-government. Every new law on local self-government promised to correct the errors of the previous one, inspired great hopes for the real development of self-management processes at the local level and due to this the democratic transformation of the Russian state in general. The only exception is the last, "fourth", one which gave no hope related

to the development of local government. A crisis state of local self-government actualizes the problem of effectiveness of regulatory of legal regulation of its organization [1, 2].

The discussion topic stated in the article explores not be seen as a call for the adoption of a new law on the organization of local self-government. The central question is how, using the experience and staying within the positivist paradigm, to prevent the rapid change of legislation and to create conditions for stabilization of the legal basis of the organization of local government.

The problems of formation of the legal base can be eventually reduced to two issue. The first one is associated with multilevel public power system and flowing from it organizational isolation of local government, and can be formulated as follows: what are the limits of the state legal regulation of relations on organization of local government. The federal principle of state structure puts us in front of the second question: what are the grounds of delineation of powers in the sphere of local self-government between the Russian Federation and the subjects of the Russian Federation?

These grounds can be found in Art. 72 of the Constitution, according to which establishment of the general principles of organization of state power bodies and local self-government system in the Russian Federation is the issue of the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation.

2. The limits of state legal regulation of relations on the organization of local self-government.

According to the traditional science of constitutional and municipal law, local self-government combines *self-management* and *self-regulation*. Self-regulation at the local level [3] provides interest in participation of the population (community) in public life, as well as a full account of needs and interests of citizens in the implementation of public-power functions, dealing with matters of direct life support [4].

However, organizational isolation of the local government does not imply a rejection of the state legal regulation of issues of its organization [5]. Argumentation is not limited to the thesis of the law as a priority of public regulation. At the same time this argument, contrary to popular belief, is linked to the financial dependence of local self-government from the state: existing in the Russian super-centralized mechanism for the accumulation and allocation of public financial resources used by the state as a tool to retain power in their hands, is the result (not the cause!) of prevailing ideas about the peculiarities of structural relationships used in the system of public authorities.

In addition, the law which unifies order of defining issues of organization of local government performs a guarantee function. It guarantees legislative implementation of the constitutional model of local self-government in the aggregate of its territorial, organizational structure, competency, economic components, it creates the necessary guarantees for its actual implementation, for the realization of citizens' right to local self-government [6].

Thus, the first raised question is not a question of renouncing the state legal and regulatory framework, but the question of relationship between government regulation and local self-regulation.

Art. 72 of the Russian Constitution allows to define different limits of state regulation of municipal life, depending on: the choice of a "necessity" of all possible semantic combinations.

The depth of legal regulation of legislative practice was defined differently. Law № 154-FZ - stated narrow limits of state law-making, which can be defined as the consolidation of the general principles reinforcing the commitment of constitutional ideal of local self-government. Inefficiency of a stroke soon became apparent. The efforts of the Constitutional Court of the Russian Federation to protect fragile local self-government from regional "interventions" were clearly inadequate. A legal and regulatory framework, enshrining the full implementation of the legal framework of local government, was needed. In accordance with the request indicated the current Law № 131-FL extends the limits of state lawmaking (increasing depth adjustment) [7].

Thus, the current interpretation of the Art. 72 Constitution of Russia requires detailed - both in terms of breadth and depth in the sense of - state normative legal regulation of municipal life. Such an approach allows to create optimal conditions for the realization of the constitutional model of local government (centralized regulation principle in the enforcement decentralization) [8].

However, the use of such opportunities requires rejection of romantic expectations and illusions accompanying the idea of self-regulation.

Normative legal acts of municipalities are of by-law character, accepted in accordance with and on the basis of the Russian Constitution, normative legal acts of the federal and regional legislation taking into account various factors influencing local politics, which provides a more efficient organization of the municipal authority in a particular locality. In this regard, it is quite acceptable for municipalities to retain the right to choose a self-governing model (its separate elements). The wider is the proposed by the state variance models organization of local government (its elements) for considering them as much as possible the number of influencing factors, the fuller each of these models is disclosed, the more effective is the choice implemented by municipalities [9].

The limits of rule-making powers are determined by clearly specified *functional parameters* of local self-government. Hence the subject of municipal rulemaking are not any local issues, but only those that are aimed at creating conditions for the effective organization and functioning of local self-government.

3. Issue of the division of powers, by establishing common principles of the organization of local government between the Federation and the Russian Federation subjects.

The different legal formula for the division of powers is enshrined in the current Law № 131-FZ. Adhering to the installation on the most comprehensive federal legislative regulation of the issues of organization of local self-government, the legislator leaves for the subjects of the Russian Federation the right to legal regulation of organization of local government in cases expressly provided by law (Art. 6).

However, this formula was originally designed to restrict the ability of regional influence on the local government, it was untenable. If the transition period (2003 - 2009) the Federation endowed regions of wide exclusive (and not indisputable) [16] authority but required to comply with the established by Law № 131-FZ single order for all. As a result of the reform of 2014-2015 the powers of subjects of the Russian Federation on the organization of the municipal government were significantly expanded: they have the right to determine the main parameters of the organizational structure of the, the right to redistribute local issues in their favor.

Giving to subjects of the Russian Federation the right to legislate on a wide range of issues of organization of municipal authorities cannot be regarded as a strengthening of the principle of federalism [17, 18].

Firstly, the degree of development of federative implications is not directly related to the volume of legislative powers of the subjects of the Federation. Executive federalism is not a new modern political reality. Secondly, the powers of the subjects of the Federation are not of lawmaking nature. These are powers of executive nature undertaken on dispositive basis.

It is impossible not to take into account the fact that the expansion of powers of subjects of the Federation is in no way connected with the necessity of taking into account regional specificities. Granted authorities of the subjects of the Federation are the questions that do not depend on geographic, cultural and historical characteristics of the region .

The practice of using the legal formula for the division of powers in the organization of local self-government hides the special nature of relations between the Russian Federation and the Russian Federation. Local self-government has appeared to be a bargaining chip in these relations.

The expansion of regional powers in conditions of the immutability of the legal formula for determining the volume of the right accessories such powers of the Federation is one of the convenient tools of manipulation of ambitions of the subjects of the Federation and, at the same time, ensuring their accountability to the Center. Powers of the Federation in each particular historical moment are dependent its relations with the regions, as far as they correspond to the vision of a federal regional policy, contributing to the self-preservation of the federal political elite. This position generally satisfies the subjects of the Federation, acquired in exchange for political loyalty to the Center the possibility of budget financing of initiated projects and their right to sovereignty (imaginary in nature) on its territory. *With those long and up to* as long as the Federation - including the use of fiscal, organizational levers - provides accountability to the Center regional authority, subjects of the Federation "have the right" to expect a favorable attitude.

At the same time, entrusting the subjects of the Federation powers in the area of organization of local government to advance the predictable result of their implementation, the Russian Federation has completed the process of building a super-centralized system of public power, thus simulating their own efforts to develop local self-government by improving the legal framework for its organization. The subjects of the Federation were not initially interested in a strong local self-government, they do not acquire such an interest today.

In other words, the current legislative formula of the order of the division of powers on the organization of local government between the Russian Federation and the subjects of the Russian Federation has not only not protected local selfgovernment from the regional power of pressure, but has not created a solid foundation of the development of federalism. The only thing it was really capable of - to ensure over-centralization of the system of public power in the Russian Federation, while maintaining visibility both of federalism and local self-government.

The approach to division of powers shows a simulative character of the state policy in relation to federalism in and the local self-government and carries a significant threat to the Russian state. It is hardly possible to talk about threats for the territorial integrity, although it should not be completely denied: The ability of the Center to maintain a balance in relations with the regions is largely dependent on its ability to ensure the preservation of the environment (especially financial), in which they were built into the system of authorities.

A serious and real threat to the Russian statehood is brought by damaging effects of a centralized system of public power, manifested most clearly at the level of local self-government, reducing its meaning to the lower level of government responsible for the implementation of a certain set of functions.

In these circumstances, the state is entrusted with the primary task of legal regulation of relations in the sphere of local self-government must be reminded: the local self-government can become a real stronghold of the Russian statehood, including its support in relations with the regions.

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<p>Библиографическое описание статьи Баженова О.И. К проблеме совершенствования нормативной правовой основы организации местного самоуправления в России / О.И. Баженова // Правоприменение. – 2017. Т. 1, № 3. – С. 108-116. – DOI: 10.24147/2542-1514.2017.1(3).108-116.</p>	<p>Bibliographic description Bazhenova O.I. To the problem of improving normative legal basis of organization of local self-government in Russia. <i>Pravoprimerenie = Law Enforcement Review</i>, 2017, vol. 1, no. 3, pp. 108-116.– DOI: 10.24147/2542-1514.2017.1(3).108-116. (In Russ.).</p>