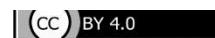


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## THE LAW ENFORCEMENT BY THE PUBLIC AUTHORITIES

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### ON THE DEFINITION OF THE COMPETENCE OF LOCAL SELF-GOVERNMENT IN THE NEW FEDERAL LAW ON LOCAL SELF-GOVERNMENT

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Currently, the issues of defining the competence of local self-government are once again very relevant. This is due to the adoption and partial entry into force of the new Federal Law No. 33-FZ dated March 20, 2025 "On the General Principles of Organizing Local Self-Government in the Unified System of Public Authority" (hereinafter referred to as Federal Law No. 33). The issues of competence of local self-government are defined by Chapter 4 of Federal Law No. 33 in a very contradictory way.

This article discusses the main problems of determining the competence of local self-government in connection with the adoption of the new Federal Law No. 33. The author makes an attempt to trace exactly how the subjects of local government, including issues of local importance, the powers of local governments and their individual types, were reflected in Federal Law No. 33. The article also raises the problems of determining the procedure for the redistribution of powers between local governments and state authorities of the subjects of the Russian Federation, and the exercise by local governments of certain state powers. These problems are presented in a comparison of the provisions of the new Federal Law No. 33 with the old Federal Law No. 131-FZ dated October 6, 2003 "On General Principles of the Organization of Local Self-Government in the Russian Federation" (hereinafter - Federal Law No. 131).

These issues are considered in the article using the formal legal method, methods of comparative legal and historical analysis of federal laws regulating certain elements of the competence of local government, as well as synthesis in the preparation of conclusions and proposals based on this analysis.

Based on the above, the article concludes that the new Federal Law No. 33 covers issues of competence of local self-government and its individual elements much worse than in the old Federal Law No. 131. In the future, Federal Law No. 33 should reflect the definition of the competence of local self-government and return issues of local importance provided for by the Constitution of the Russian Federation and which are the main subjects of local self-government. The mechanism of redistribution of powers between local self-government bodies and state authorities of the subjects of the Russian Federation raises big questions from the point of view of its compliance with the Constitution of the Russian Federation in terms of limiting the independence of the population of the municipality and local self-government authorities to resolve issues of local importance. In addition, Federal Law No. 33 also needs to return the definition of the constitutional concept of certain state powers that can be vested in local governments, as well as individual guarantees of the procedure for their implementation.

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## 1. Introduction.

Currently, the issues of defining the competence of local self-government are once again very relevant. This is due to the adoption and partial entry into force of the new Federal Law No. 33-FZ dated March 20, 2025 "On the General Principles of Organizing Local Self-Government in the Unified System of Public Authority" (hereinafter referred to as Federal Law No. 33). The issues of competence of local self-government are defined by Chapter 4 of Federal Law No. 33 in a very contradictory way.

This article discusses the main problems of determining the competence of local self-government in connection with the adoption of the new Federal Law No. 33. The author makes an attempt to trace exactly how the subjects of jurisdiction of local government, including issues of local importance, the powers of local governments and their individual types, were reflected in Federal Law No. 33. The article also raises the problems of determining the procedure for the redistribution of powers between local governments and state authorities of the subjects of the Russian Federation, and the exercise by local governments of certain state powers. These problems are presented in a comparison of the provisions of the new Federal Law No. 33 with the old Federal Law No. 131-FZ dated October 6, 2003 "On General Principles of the Organization of Local Self-Government in the Russian Federation" (hereinafter - Federal Law No. 131).

These issues are considered in the article using the formal legal method, methods of comparative legal and historical analysis of federal laws regulating certain elements of the competence of local government, as well as synthesis in the preparation of conclusions and proposals based on this analysis.

The issues of defining the competence of local self-government and its individual elements have been widely and deeply studied in the scientific and educational legal literature. The works of such classics of constitutional and administrative law as Lazarev B.M. [1], Avakian S.A. [2], Kutafin O.E. and Sheremet K.F. [3] are devoted to these problems in Soviet times. Major monographs, textbooks, and doctoral dissertations by researchers such as Tikhomirov Yu.A.

[4], Byalkina T.M. are devoted to the problems of determining the competence of local self-government, the subjects of competence, and the powers of local self-government bodies. [5], Kutafin O.E. and Fadeev V.I. [6], Chebotarev G.N. [7], Postovoy N.V. [8, 9], Ovchinnikov I.I. [10], Peshin N.L. [11], Vasiliev V.I. [12], Dityatkovsky M.Yu. [13], as well as candidate's dissertations by Lobova V.A. [14] and Loginov V.P. [15]. Scientific articles by Larichev A.A. [16], Blagov Yu.V. [17], Zvyagolsky A.Yu. and Efrikyan R.A. [18], Karasev A.T. and Yelkina A.V. [19], Yezhukova O.A. [20], Nepomnyashchikh S.S. [21] are also devoted to the study of certain problematic issues of competence of local self-government., Kostikova G.V. [22], Sarykova K.T. [23], Antonova N.V. [24] and Uvarova A.A. [25].

However, these scientific studies were prepared before the adoption and partial entry into force of Federal Law No. 33. In this regard, there are currently no scientific legal works aimed at studying the issues of competence of local self-government in the new Federal Law No. 33 in the legal literature. Therefore, this work is relevant and new.

## 2. On the definition of the competence of local self-government.

First of all, it is necessary to note several important problems related to the definition of concepts revealing the competence of local government in the new Federal Law No. 33. If we turn to the theory of competence, then according to Byalkina T.M. [5, pp. 77-89] and Postovoy N.V. [8, p. 274], the competence of local self-government is understood as the set of subjects of competence and powers of local self-government bodies and officials necessary for the implementation of local self-government functions established by the norms of legislation. Traditionally, the content of competence includes two elements – subjects of competence and authority. Lazarev B.M. adheres to this position [1, pp. 11, 26-33], Kutafin O.E., Sheremet K.F. [3, p. 31], Fadeev V.I. [6, pp. 488-496], etc.

At the same time, in the new Federal Law No. 33, as well as in the old Federal Law No. 131-FZ dated October 6, 2003 "On the General Principles of the Organization of Local Self-Government in the Russian Federation" (hereinafter - Federal Law No. 131), the

general terms "competence of local self-government" or "competence of local self-government bodies" they are not mentioned. In Federal Law No. 33, the term "competence" is used only in relation to certain types of local government bodies: "competence of a representative body of a municipal entity" (Article 16) and "competence of the head of a municipal entity" (Article 20).

In addition, Federal Law No. 33 uses the more general term "Functional foundations of the organization of local self-government" in the title of Chapter 4, which, in our opinion, does not fully reflect the content of the above chapter. A better title for this chapter would be "Fundamentals of determining the competence of local governments."

### **3. On the definition of the subjects of jurisdiction of local self-government.**

The subjects of competence are the first component element of the competence of local self-government. The definition of this concept is also still not contained in federal legislation. According to Byalkina T.M., the subjects of local self-government should be understood as those spheres (areas) of public relations within which subjects of local self-government (primarily local self-government bodies) can make certain decisions and perform other legally significant actions [5, pp. 115-116]. Kutafin O.E. and Fadeev V.I. the subjects of competence of local self-government are understood as the range of issues determined by the Constitution of the Russian Federation, federal laws, laws of subjects of the Russian Federation, charters of municipalities, conditioned by the implementation of local self-government, its tasks and goals, place and role in the exercise of the power of the people, the decision on which is made by the population directly and (or) through elected and other local self-government bodies independently [6, p. 470].

The subjects of jurisdiction of local self-government are disclosed in the old Federal Law No. 131, primarily through issues of local importance under the jurisdiction of municipalities. The definition of this concept is clearly given in Article 2 of Federal Law No. 131, where issues of local importance are understood as issues of direct support for the vital activity of the population of a municipal entity, which, in accordance with the Constitution of the Russian Federation and this Federal Law, are solved

independently by the population and (or) local governments.

At the same time, issues of local importance are not the only subject of local self-government and constitute only one part of the subjects of local self-government, and in practice not always the most significant. In addition to issues of local importance, the subjects of local government also include: 1) certain issues of federal and (or) regional significance on which local self-government bodies of certain municipalities are endowed with separate state powers by federal law and (or) the law of a subject of the Russian Federation; 2) issues not classified as issues of local importance, in which the participation of local self-government bodies in the exercise of state powers not delegated to them in accordance with Article 19 of Federal Law No. 131 is implemented; 3) other issues not classified as the competence of local self-government bodies of other municipalities, state authorities and not excluded from Their competence is governed by federal laws and the laws of the subjects of the Russian Federation. This was not explicitly mentioned in the old Federal Law No. 131, but at least it logically followed from its content.

What does the new Federal Law No. 33 say about the subjects of local government? Practically nothing! Moreover, Federal Law No. 33 does not use the term "subjects of local government" (it was not in the old Federal Law No. 131). Federal Law No. 33 practically abandons the already traditional and constitutional term "issues of local importance."

Paragraph 3 of the explanatory note to the draft federal law provides the following justification for this action. The existence of a structure that presupposes the consolidation in federal legislation of both issues of local importance and the authority to resolve them leads to confusion in the redistribution of powers between local governments and state authorities of a constituent entity of the Russian Federation. Issues of local importance are one of the elements of the competence of local self-government bodies, while, based on the current formulations, they compete in content with the powers enshrined in federal laws. Therefore, the draft law provides for the consolidation of the powers of local governments directly.

It is hardly worth agreeing with this position. Since the term "issues of local importance" is mentioned twice in the Constitution of the Russian Federation (part 1 of Article 130 and part 1 of Article 131): local self-government in the Russian Federation ensures that the population decides independently on issues of local importance. Local governments independently manage municipal property, form, approve and execute the local budget, impose local taxes and fees, and resolve other issues of local importance.

In Federal Law No. 33, this term is used only once and casually when defining the concept of local self-government in Part 1 of Article 1: local self-government is a form of self-organization of citizens recognized and guaranteed by the Constitution of the Russian Federation in order to independently resolve issues of direct support for the vital activity of the population (issues of local importance) within the powers provided for in accordance with the Constitution of the Russian Federation by this Federal Law and other federal laws. And in fact, the constitutional term "issues of local importance" in Federal Law No. 33 is for some reason being replaced by the new incomprehensible term "issues of direct support for the vital activity of the population." Therefore, the lists of issues of local importance, which were as many as four in the old Federal Law No. 131, disappeared from Federal Law No. 33.

In addition, it is absolutely unclear how the constitutional provision that local self-government in the Russian Federation ensures, first of all, the independent decision of the population on issues of local importance should be implemented. So what exactly should the population decide on their own if there is no definition of issues of local importance and their list in Federal Law No. 33? The answer is simple – nothing! In this regard, what kind of civil society can be built and what kind of direct democracy can be implemented? There is no answer to this question.

In the Constitution of the Russian Federation, the concept of "issues of direct provision of vital activity of the population" is not used. In this regard, it seems necessary to replace the words "issues of direct provision of vital activity of the population" with the words "issues of local importance" throughout the text of Federal Law No. 33. Moreover, part 1 of Article 32 of Federal Law No. 33, which comes into force on January

1, 2027, for example, defines a list of powers of local governments to address issues of direct support for the livelihoods of the population, that is, to address issues of local importance. In addition, Federal Law No. 33 requires defining a list of issues of local importance that the municipality's population can address directly. In this regard, we fully support the position of Antonova N.A. that a clear definition of issues of local importance is a necessary condition for determining the place of municipal government in the system of democracy in the Russian Federation, its relationship with state power, and, consequently, a condition for delineating the sphere of law-making at all levels [24, p. 14].

#### **4. On the definition of the powers of local self-government bodies.**

The powers of local self-government bodies in the legal literature are usually understood as a set of rights and obligations of local self-government bodies and officials in the subjects of local self-government. Kutafin O.E. and Fadeev V.I. The powers of local self-government are understood to mean the rights and duties assigned by the norms of legislation to the population, bodies and officials of local self-government, and municipalities as a whole as subjects of legal relations, which are necessary for the implementation of the tasks and functions of local self-government [6, p. 487]. The powers of local self-government bodies are closely related to their subjects of competence. Thus, according to S.A. Avakian, if the definition of the authority's terms of reference provides an answer to the question in which areas of life it is competent in principle, then the rights and obligations characterize the limits of the authority's capabilities in a particular sphere of public relations [2, pp. 21-22].

The powers of local government bodies and officials by N.V. Postov [8, pp. 275-276], T.M. Byalkina [5, pp. 277-278] and other authors are divided into 3 groups, which are reflected both in the old Federal Law No. 131 and in the new Federal Law No. 33:

1) the powers of local self-government bodies to resolve issues of local importance, or the so-called "own mandatory powers" of local self-government bodies, which are recognized by the state and which local self-government bodies are required to exercise (Article 17 of Federal Law No.

131, sectoral federal laws). In Federal Law No. 33, part 1 of Article 32 is devoted to them, in which, for the reasons already mentioned above, these powers are no longer referred to as "the powers of local governments to resolve issues of local importance", but "the powers of local governments to address issues of direct support for the livelihoods of the population." For the reasons mentioned above, the old name of the specified group of powers should be returned to Federal Law No. 33.;

2) certain state powers that local self-government bodies are endowed with or may be endowed with by law (Article 19 of Federal Law No. 131) or the so-called "delegated mandatory powers" of local self-government bodies. It should be noted here that Part 1 of Article 19 of the old Federal Law No. 131 contains an excellent broad and understandable definition of "individual state powers." The powers of local self-government bodies established by federal laws and the laws of the subjects of the Russian Federation on issues not classified as local issues in accordance with this Federal Law are separate state powers delegated to local self-government bodies for implementation. The appearance of this definition in the old Federal Law No. 131 at one time was a major breakthrough in the implementation of guarantees for local self-government from the unlawful granting of powers unrelated to local issues, without a procedure for appropriate allocation. The exclusion of this definition from article 34 of Federal Law No. 33 does not comply with the Constitution of the Russian Federation, which provides for this concept, and may lead to a return to the vicious practice of unlawfully assigning additional powers to local governments that have nothing to do with local issues without the appropriate allocation procedure and without transferring the necessary financial resources. In this regard, it should be returned to Federal Law No. 33.;

3) state powers, in the exercise of which local self-government bodies may participate without observing the procedure for appropriate allocation, as well as powers to resolve other issues not falling within the competence of local self-government bodies of other municipalities, state authorities and not excluded from their competence by federal laws and laws of the subjects of the Russian Federation (Articles 14.1, 15.1, 16.1, 20 of Federal Law No. 131), or the so-called "own optional powers" of local governments,

which are implemented by the specified authorities at their discretion. Whereas in the old Federal Law No. 131, in relation to these optional powers, there was a more or less understandable term "the rights of local governments to resolve issues not classified as issues of local importance." Federal Law No. 33 deals with them in article 37, which comes into force on January 1, 2027, which contains a strange new term "the rights of local governments to exercise powers not attributed to the powers of local governments." How should "powers not attributed to the powers of local governments" be understood here? What kind of powers should they not be attributed to: the powers to resolve issues of local importance? Or to individual state powers that local governments are endowed with by law? This term needs to be explicitly clarified in Federal Law No. 33, taking into account the experience of the old Federal Law No. 131.

#### **5. On the redistribution of powers between local self-government bodies and state authorities of the subjects of the Russian Federation.**

Federal Law No. 33 uses the new term "powers of local governments to address issues of direct support for the livelihoods of the population," which is devoted to a huge article 32, effective January 1, 2027.

The powers of local self-government bodies to address issues of direct support for the vital activity of the population are divided into 3 groups:

1) the powers of local self-government bodies to resolve issues of direct support for the vital activity of the population, which are not subject to redistribution between local self-government bodies and state authorities of a constituent entity of the Russian Federation, consisting of 18 points;

2) the powers of local self-government bodies to resolve issues of direct support for the vital activity of the population, which may be redistributed by the law of the subject of the Russian Federation for implementation by state authorities of the subject of the Russian Federation, from 29 points;

3) the powers redistributed by Federal Law No. 33 for the exercise by state authorities of a constituent entity of the Russian Federation and which may be redistributed by the law of a constituent entity of the Russian Federation for the exercise by local self-government bodies in order to

ensure the vital activity of the population, from 18 points.

Article 32 of Federal Law No. 33 establishes rather confusing rules for the redistribution of powers by the laws of the subjects of the Russian Federation between the state authorities of the subjects of the Russian Federation and local governments. But at the same time, there is a big fundamental question about the compliance of this scheme of redistribution of powers with the Constitution of the Russian Federation.

Let me remind you that according to the resolution of the Constitutional Court of the Russian Federation of November 30, 2000 No. 15-P on the Kursk case, the transfer by local governments to state authorities of the subjects of the Russian Federation from bottom to top of individual powers to resolve issues of local importance, even on the basis of a contract and with their consent is not allowed! This practice was found to contradict Part 1 of Article 130 of the Constitution of the Russian Federation, which establishes that local self-government ensures the independent resolution of local issues by the population. Therefore, the authority to resolve issues of local importance should be exercised only by local governments or the population of the municipality directly. Public authorities are charged with the duty to create the necessary legal, organizational, material, financial and other conditions for the establishment and development of local self-government and to assist the population in exercising the right to local self-government.

The cases provided for in Article 32 of Federal Law No. 33 of the redistribution of powers to resolve issues of local importance from local self-government bodies to state authorities of a constituent entity of the Russian Federation provide for the adoption of a law of the constituent entity of the Russian Federation. At the same time, no one even asks for the consent of local governments for this redistribution! In this we see a clear contradiction to the Constitution of the Russian Federation.

In addition, article 32 of Federal Law No. 33 does not define the principles for including the powers of local governments in a particular list, and the mechanism for forming these lists is unclear and unjustified. At the same time, it is not clear from the provisions of Federal Law No. 33 at all which level of

public authority is initially assigned the powers specified in part 3 of Article 32 of Federal Law No. 33 as its own (for subjects of the Russian Federation or municipalities).

Once again, let's pay attention to the wording of the law: the powers redistributed by Federal Law No. 33 for the exercise by state authorities of a constituent entity of the Russian Federation and which can be redistributed by the law of a constituent entity of the Russian Federation for the exercise by local governments in order to ensure the vital activity of the population. Whose powers are these originally? In fact, are these powers to resolve issues of local importance (as they were under the old Federal Law No. 131), or are they already their own powers of the state authorities of the subjects of the Russian Federation on subjects of joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, which can be redistributed to local governments? Absolutely not clear!

The Constitutional Court of the Russian Federation has repeatedly expressed the need for a clear definition of competence for each level of public authority. Resolutions of the Constitutional Court of the Russian Federation No. 34-P of July 9, 2020 and No. 2-P of March 29, 2011 state that legislative decisions taken must comply with the requirement of formal certainty, which implies a clear, clear and consistent definition of the competence of municipalities, consistent delineation of issues of local importance, the decision of which is entrusted to local governments., and issues of national importance, the solution of which is entrusted to the federal bodies of state power and the bodies of state power of the subjects of the Russian Federation. Otherwise, it would mean that the legislator has the right to assign indefinite powers to local self-government, and local self-government bodies – to implement them in an arbitrary manner, which would lead to a violation of the principle of separation of powers between territorial levels of public authority, would call into question the proper financial and economic provision of local government commensurate with its powers, and as a result would create a threat of non-fulfillment or improper fulfillment by local governments of their

constitutional duties, including ensuring rights and freedoms. a person and a citizen.

These contradictions indicate the need for a radical revision of Article 32 of Federal Law No. 33.

#### **6. On the exercise by local self-government bodies of certain state powers.**

It is unclear why a separate article on the exercise by local governments of certain state powers transferred to them by way of allotment was excluded from Federal Law No. 33. In the old Federal Law No. 131, article 20 was devoted to this. Instead, a separate article 36 was included in Federal Law No. 33, which deals only with the participation of local governments in the exercise of State powers not delegated to them.

The norms of Part 1 of Article 36 of Federal Law No. 33 provide that, in matters of the exercise by local self-government bodies of certain state powers, federal executive authorities and executive authorities of the subjects of the Russian Federation, in cases established by federal laws and laws of the subjects of the Russian Federation, have the right, within their competence, to issue binding regulatory legal acts and monitor their implementation.. This provision is inconsistent with the title of the specified article 36 of Federal Law No. 33, which is devoted to the regulation of other legal relations, since it provides for the participation of local governments in the exercise of state powers that have not been delegated to them.

In addition, Federal Law No. 33 should include the most important guarantee in the exercise by local self-government bodies of certain state powers, established by Part 2 of Article 20 of Federal Law No. 131, according to which the inconsistency of federal laws, laws of constituent entities of the Russian Federation, and other regulatory legal acts of the Russian Federation providing for the allocation of local self-government bodies to separate state bodies is recognized in court. powers, requirements stipulated by Article 19 of this Federal Law, this is the basis for refusing to exercise these powers. The exclusion of these provisions from Federal Law No. 33 will have a negative impact on the protection of the rights of local governments due to violations by public authorities when granting them separate state powers.

#### **7. Conclusions.**

Based on the above, it can be concluded that the new Federal Law No. 33 covers issues of competence of local self-

government and its individual elements much worse than in the old Federal Law No. 131. In the future, Federal Law No. 33 should reflect the definition of the competence of local self-government and return issues of local importance provided for by the Constitution of the Russian Federation and which are the main subjects of local self-government. The mechanism of redistribution of powers between local self-government bodies and state authorities of the subjects of the Russian Federation raises big questions from the point of view of its compliance with the Constitution of the Russian Federation in terms of limiting the independence of the exercise of powers by the population of a municipality and local self-government bodies to resolve issues of local importance. In addition, Federal Law No. 33 also needs to return the definition of the constitutional concept of certain state powers that can be vested in local governments, as well as individual guarantees of the procedure for their implementation.

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