

LEGAL FRAMEWORK OF TERRITORIAL PUBLIC SELF-GOVERNMENT

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The subject. The article examines legal framework for organization and activities of territorial public self-government as well as means of state support of territorial public self-government.

The purpose of the article is to confirm or disprove hypothesis that the issue of providing legislative framework for the structure of territorial public self-government requires quick solution.

The research was carried out with the main scientific methods (analysis, induction and deduction), special (statistical) method as well as the method of interpretation of legal acts. The main results and scope of their application. The author makes some suggestions aimed at improving legislation covering organizational form of legal entity – territorial public self-government, and at providing self-support to territorial public self-government, and ensuring legality of meetings of territorial public self-government participants.

The issues of increasing legitimacy of decisions made by public authorities are very urgent today. One way of creating public trust in government agencies and in local self-government agencies, as it is closest to the people, is different forms of citizen participation in local decision-making. Territorial public self-government is considered as an effective method which gives a chance to reach every citizen.

Conclusions. The research met the following scientific results. The issue of providing legislative framework for the structure of territorial public self-government requires quick solution. There are grounds for including the powers to provide state support to the organization and development of local self-government in the constituent entities of the Russian Federation to the powers of public authorities of the constituent entities of the Russian Federation. Pt. 11 of Art. 27 of Federal law 131-FZ stipulating the right of municipal formation to determine the terms and procedure for allocating the necessary funds out of the local budget to territorial public self-government requires some changes. The practical need to impose the obligation on bodies of the Ministry of Internal Affairs of Russia, carrying out registration of citizens at their place of residence, to prepare and provide lists of residents of the territory of territorial public self-government to citizens and local self-government is revealed.

1. Introduction

With the changes taking place in society, the priorities of its development determined by the authorities change from year to year. The demands of society today require compliance with the principle of openness of power, ensuring cooperation and achieving conditions of trust between the population and management entities. Faced with a number of entirely new challenges in a globalized world, governments at all levels realize that they will not be able to pursue and effectively implement policies if their citizens do not understand and support them, and that citizens are motivated to participate, they must feel that their voices matter and can influence the situation [1, p. 97, 99]. Today, the authors agree that public participation can contribute to the flow of political processes by increasing the legitimacy of the decision-making process than to reduce social conflicts. Numerous studies have shown that whether the public makes a decision or not depends on whether it sees the decision-making process as fair [2, p. 2]. All over the world today the issues of involving citizens in public administration, as well as the development of mechanisms to accomplish this task are recognized as of high importance [3, p. 19]. Discusses the effectiveness of a particular form of participation of citizens in solving local challenges, and formulates recommendations on their use depending on the task, for example, the collection of diverse arguments, or providing a decisive influence on the draft decisions [4, p. 3].

These processes are also fair for Russia. Among the measures of state policy to achieve the national development goals envisaged in the Main activities of the Government of the Russian Federation for the period up to 2024, approved by the Government of the Russian Federation at the end of September 2018, are provided for:

- increasing the participation of citizens in the development of proposals, discussion and decision-making;
- expanding the practice of public control, etc.

The closest to the people power is local, to the forms of participation in the implementation of

which the Federal law of 06.10.2003 № 131-FZ "On General principles of the organization of local self-government in the Russian Federation" (hereinafter – the Federal law № 131-FZ) refers to territorial public self-government (hereinafter also – TOS).

TOS, according to paragraph 1 part 1 of article 27 of the Federal law No. 131-FZ, is self-organization of citizens in the place of their residence in part of the territory of the settlement, the intracity territory of the city of Federal value, the city district, the intracity area, and also in the settlements located in the inter-settlement territory (or in part of their territory) for independent and under the responsibility of implementation of own initiatives concerning local value.

TOS, in essence, – the most mobile and operational form of self-organization of citizens, because:

- 1) TOS as close as possible to the residents;
- 2) the possibilities of TOS are much wider than other self-governing systems;
- 3) the number of the population with which the TOS bodies work is disproportionately smaller than in the municipality, so there is an opportunity to work with specific people using an individual approach [5, p. 52].

According to the first Deputy head of the faction "United Russia" Viktor Borisovich Kidyaev today in Russia are working more than 30 thousand TOS in 79 regions. Thus, in 2016 a total of 56 subjects covered the TOS movement. More than 16 thousand TOS work in cities, 14 thousand TOS are created in villages [6].

The Ministry of justice of Russia notes that the Institute of TOS is distributed throughout the country very unevenly, but in General tends to the regions of the Central, Volga and southern Federal districts with a high population density. The most developed movement of TOS received in the republics of Bashkortostan, Buryatia and Mari El, in the Krasnodar region, in the Arkhangelsk, Belgorod, Voronezh, Kirov and Tambov regions. The absolute record is the Krasnodar region, which has 6,0 thousand TOS...[7, p. 8].

Taking into account the growing interest in TOS in the country, some aspects of its organization and activities have already become the subject of

research by different authors. In particular, the authors O. E. Averyanova, E. V. Bezvikonnaya, L. A. Burilova, N. In. Voroshilov, R. Yu Gorlachev, K. A. Ivanov, A. Y. Protasov, Yu. V. Ratkova, O. M., Roy, A. Strelnikov, M. V. Sushko, N. And. Tolstonogov, A. N. Czekalinski, E. S. Shugrina, V. A. Sipachev explored the problems of TOS development in some regions, the interaction of TOS with the local authorities.

Theoretical approaches to the definition of TOS focused work N. And. Zheltouhova, E. V. Razdyakonov, N. I. Solovieva, A. F. Fatkullina, K. A. Khaustova.

The issues of TOS as legal entities were studied by the authors K. A. Ivanova, Yu. S. Koroleva, L. D. Morozova, E. S. Shugrina and others.

Given the great social importance of the legal institution under consideration, an important task is to create conditions for its full development, which is impossible without building a well-established regulatory framework. In this connection, it seems necessary to identify the problems of legal regulation and formulate proposals for their solution.

2. On registration of the TOS as a legal entity

According to the paragraph of the second part 5 of article 27 of the Federal law No. 131-FZ territorial public self-government according to its Charter can be legal entity and is subject to state registration in the organizational and legal form of the non-profit organization.

In this case, its activities are regulated by Federal laws of 12.01.1996 № 7-FZ "On non-profit organizations", of 19.05.1995 № 82-FZ "On public associations", of 08.08.2001 № 129-FZ "On state registration of legal entities and individual entrepreneurs".

The status of a legal entity provides significant opportunities for conducting economic activities. However, the problem that exists today is a complex registration procedure. For this purpose, it is necessary to collect at least one third of the residents of the territory with their passport data certified by notaries, which creates significant difficulties for TOS activists. In addition, there is the presence of complicated reporting for TOS [8, p. 2] and other problems.

The question of determining the

organizational and legal form of the TOS should be removed by introducing the relevant law and its subsequent consideration by the legislative (representative) body of state power of the Russian Federation.

According to V. B. Kidyaev, posted on the official website of the National Association of territorial public self-government on March 4, 2019, the organizations of territorial public self-government will receive a special legal status in Russia, similar to the status of socially oriented non-profit organizations. The relevant draft law will be submitted to the State Duma in the near future [6].

This issue is very important today for the Russian civil society, where the bulk of the TOS does not have the status of a legal entity, the acquisition of which, as rightly noted by N. A. Tolstonogova, R. Yu. Gorlachev, M. V. Sushko, is necessary for the most mature public authorities and indicates their transition to a new level [9, p. 149].

3. About the legal basis of rendering the state support of TOS by public authorities of the region

The main issues regulating the organization and activities of the TOS are fixed in the Federal law № 131-FZ. At the same time the specified regulatory legal act does not exhaust legal regulation of questions of TOS. At the regional level, it includes constitutions (statutes) of the constituent entities of the Russian Federation, laws of the constituent entities of the Russian Federation, acts of state authorities of the constituent entities of the Russian Federation. The constitutions (statutes) of the constituent entities of the Russian Federation generally contain General rules on the implementation of TOS in a particular region. For example, article 57 of the Charter of the Novosibirsk region is devoted to the forms of direct implementation of local self-government by the population and participation of the population in the implementation of local self-government. According to part 1 of the specified article the population directly participates in implementation of local government at the local referendum, municipal elections, meetings and gatherings of citizens, through TOS, and also in other forms which are not contradicting the Federal and regional legislation.

In some constituent entities of the Russian Federation adopted the laws, developing the Federal rules on the TOS, and determining the shape of their support. In the Novosibirsk region, the TOS received legislative consolidation in 2001, when the Law of the Novosibirsk region of 13.06.2001 № 157-OZ "On territorial public self-government in the Novosibirsk region" was adopted. Subsequently, the law of the region lost its force.

In General, the legislative regulation of TOS activities in the subjects of the Russian Federation is rather limited, since Federal law No. 131-FZ does not establish a specific right of the subjects of the Russian Federation to regulate the activities of the entities in question. As a rule, the public authorities of the Russian Federation shall adopt acts providing for the provision of financial and other support to the TOS. In the Novosibirsk region adopted a Resolution of the Government of the Novosibirsk region from 15.12.2015 № 449-p "On approval of the state program "Development of institutions of regional policy of the Novosibirsk region for 2016-2021" (this program, successfully implemented until January 1, 2019, from January 1, 2019 included as a subprogram in the state program of the Novosibirsk region "Development of institutions of regional policy and civil society in the Novosibirsk region", approved by The Government of the Novosibirsk region from 26.12.2018 № 570-p).

As a legal basis for the implementation of one of the activities of the state program, approved by the government Of the Novosibirsk region № 449-p, namely, for the implementation of financial support of municipal programs for the development of TOS, adopted a resolution of the Governor of the Novosibirsk region from 01.02.2018 № 21 "On measures to create conditions for the development of territorial public self-government in municipalities of the Novosibirsk region".

Issues of TOS development in the Novosibirsk region, as well as in other regions, are of a General nature and affect the legal regulation, primarily at the Federal level. In this regard, the fundamental problem that arises among law enforcement officers, persons responsible for the

development of proposals for the provision of specific measures of state support to the TOS, and which is discussed in the scientific literature [10, p. 29], is the problem of the powers of public authorities of the subject of the Russian Federation.

The Constitution of the Russian Federation in accordance with Article 72 on joint conducting the Russian Federation and the constituent entities of the Russian Federation includes the establishment of common principles of organization of the system of bodies of state power and local self-government.

Article 26.3 the Federal law of 06.10.1999 No. 184-FZ "On the General principles of the organization of legislative (representative) and Executive bodies of state power of subjects of the Russian Federation" (further the Federal law – No. 184-FZ) defines that financing of powers of public authorities of the subject of the Russian Federation at the expense of the budget of the region can be performed only on the questions provided in point 2 of the specified article does not provide the right of support of TOS. This rule creates obstacles in the justification of projects related to the provision of financial assistance to the TOS. Also, there is no corresponding mention of the implementation of powers to support the activities of TOS by public authorities of the subjects of the Russian Federation in article 6 "Powers of public authorities of the subjects of the Russian Federation in the field of local self-government" of Federal law No. 131-FZ.

However, according to Article 1 of the Federal law No. 184-FZ, public authorities of the subject of the Russian Federation promote development of local government in the territory of the subject of Russia, therefore, have the right to give any support to TOS. This rule allows the regions to provide funds from their budgets for the development of TOS.

The problem of financing of TOS by the subject of the Russian Federation can and should be solved. One of the ways to solve it can be called the inclusion of rules on the support of TOS in article 6 of the Federal law № 131-FZ: it is proposed to add part 1 of article 6 of the Federal law № 131-FZ paragraph 6 as follows:

"legal regulation of questions of rendering the state support of the organization and development of local government in subjects of the

Russian Federation;»,

and also to add point 2 of article 26.3 of the Federal law No. 184-FZ with the subparagraph 83, having stated it in the following edition:

"providing state support to the organization and development of local self-government in the subjects of the Russian Federation".

It should be noted that the adoption of the resolution of the Governor of the Novosibirsk region from 01.02.2018 № 21 "On measures to create conditions for the development of territorial public self-government in municipalities of the Novosibirsk region" also solved the following problem:

Article 27 of Federal law No. 131-FZ provides that citizens shall self-organize at their place of residence in a part of the settlement territory, the inner city territory of the city of Federal significance, the urban district, the inner city district, as well as in settlements located on the inter-settlement territory (or in part of their territory). Local governments of these types of municipalities are authorized to adopt the procedures for registration of TOS charters and for their direct registration.

In this connection the question arises: do the local self-government bodies of municipal districts the right to adopt in its territory the municipal program of development of TOS and to be recipients of subsidies from the regional budget to support the TOS on their site?

Despite the described rules of article 27 of the Federal law № 131-FZ, the provision of the above subsidies from the budget of the region to the budget of the municipal district can be considered legitimate, since in part 11 of article 27 of the Federal law № 131-FZ, providing for the right of the municipality to adopt the procedure for allocating the necessary funds from the local budget, the type of the municipality is not specified. Besides, point 3 of part 1 of article 44 of the Federal law No. 131-FZ "the Charter of municipality shall define forms, the order and guarantees of participation of the population in the solution of questions of local value, including by formation of bodies of territorial public self-government" also has direct action concerning municipalities of any types.

In order to remove the described doubts, it is proposed to make appropriate clarifications to part 11 of Article 27 of the Federal law No. 131-FZ, listing in it all types of municipalities, including municipal districts.

To provide methodological support to local governments, to provide them with an algorithm of actions to obtain and implement the subsidies provided from the budget of the Novosibirsk region to support the TOS, the Ministry of regional policy of the Novosibirsk region, the Council of municipalities of the Novosibirsk region, the Prosecutor's Office of the Novosibirsk region developed model municipal legal acts, as well as guidelines for their adoption [11].

Another issue directly related to the above was the question of whether the budget of the municipal district should be directed to the initiatives of the TOS to address issues of local importance of the settlement or the municipal district? The right seems to be the answer at the decision of questions of local value of settlements included in the municipal district, coincident (maximum overlapping) questions of local value of municipal area.

This follows from the provisions:

1) TOS is created in the settlement; the main activities of TOS are defined by the Charter of TOS (part 1, point 2 of part 9 of article 27 of the Federal law No. 131-FZ) which is registered by local government of the settlement in the order established in this municipality;

2) the funds of the budget of the municipal district, as a General rule, given its scarcity, should be directed to solving issues of local importance of the municipal district.

It should be recognized that this issue is among the controversial, requires its decision at the Federal level by making the above-mentioned changes to the Federal law № 131-FZ, providing for the possibility of providing financial support to the TOS, created within the boundaries of the municipal district, for the implementation of initiatives to address issues of local importance of settlements that are part of the municipal district, as well as for the implementation of initiatives to address issues of local importance of the municipal district.

Various aspects of the legal regulation of the

organization, activities, support for TOS, carried out at different levels of public authority, have been discussed for a long time. In 2007, the author Yu. Ratkova criticized the norms of Federal legislation, allowing to regulate certain issues of the TOS sphere at the municipal level: "On the one hand, citizens are given freedom for self-organization, freedom to create a public structure, and on the other – the obligation to be guided by a local normative legal act, which creates a local (not Federal!) power, which will determine the conditions of the TOS, dictate the rules and forms of relations, etc." [12, p. 101]. In many ways, this criticism is justified, including because the level of specialists who develop the relevant municipal normative legal acts, and the low quality of the acts themselves have created an occasion for discussion at the Federal level on the development and approval of the Federal normative legal act, in particular, the model Charter of the TOS. The purpose of such a proposal is to verify and unify this document, eliminating legal incidents and obvious mistakes made at the municipal level.

O. M. Roy also speaks about the obvious financial dependence of the TOS on local authorities: "As a rule, most public organizations are either self-supporting or work on grants. Organizations representing TOS do not fall into any of the categories. They are completely dependent on the budget and carry out their functions strictly in accordance with the regulations that the Executive municipal authorities define for them. There was a short period in the development of TOS when they received grants, but now this source is almost exhausted." [13, p. 104]. According to the author E. V. Bezikonnaya TOS is the only channel of interaction with the municipal authorities, bringing to its attention the problems of development of small territories, districts, neighborhoods, streets, and yards. "First of all, this is due to the "security", according to the local authorities, the TOS as a mechanism of civil participation, limited by the boundaries of the territory and the range of issues to be solved. Often, this argument becomes decisive in building a strategy of interaction between the authorities and the local community, leading to the integration of the TOS in direct dependence on local

governments." [14, p. 106]. At the same time, the appointment of TOS is participation in the solution of issues of local importance, which belong to the exclusive competence of local governments. Because of this, TOS cannot be completely independent. In the relations of TOS, local self-government bodies and other subjects of public relations, a balance must be observed, since "...the development of TOS is ineffective without the support of local self-government bodies." [9, p. 148].

4. On ensuring the eligibility of participants the TOS

Another problem related to the organization of TOS is the application of part 6 of article 27 of Federal law No. 131-FZ, which requires the participation of at least one third of the inhabitants of the territory concerned who have reached the age of 16 in order to determine the competence of the Assembly. The practice of application of this rule has revealed the problem of uncertainty in the questions of who is considered "residents" of the relevant territory, as well as how to determine the total number of inhabitants of such territories. Given that the registration of citizens at their place of residence are currently engaged in the Ministry of internal Affairs of Russia, the local authorities, where the first appeal of the initiative group, there are difficulties with the provision of such information, as well as with the legality of providing such information.

In order to resolve the problem of obtaining lists of residents of the territory in which it is planned to create a TOS in accordance with article 27 of the Federal law № 131-FZ, it is proposed to impose the obligation to prepare and provide relevant information to citizens and local authorities (to verify the competence of the Assembly, the conference of citizens engaged in territorial public self-government) on the bodies of the Ministry of internal Affairs of Russia, currently carrying out registration of citizens at their place of residence. Make changes to the Federal law No. 131-FZ, and also the Order of the Ministry of internal Affairs of Russia of 05.06.2017 No. 355 "About the approval of Model regulations on territorial authority of the Ministry of internal Affairs of the Russian Federation at the regional level". It is also necessary to develop and consolidate the procedure for providing the above information.

Among the issues discussed is the legality of the inclusion of foreign citizens in these lists of residents of the territory in which the creation of the TOS is planned. Currently, there are no restrictions established by the law on the inclusion of these persons in the General lists. Consider the question often rises, when it comes to registration of TPS bodies as legal entities. E. S. Shugrina, R. V. Petukhov, I. E. Kabanova wrote: "it should be noted that Federal law allows for the participation of foreigners in the establishment and functioning of non-profit organizations, which include bodies of territorial public self-government, so all the reservations contained in municipal legal acts, are reduced to the fact that in the territorial public self-government involved foreign citizens, if it is provided by international treaties or Federal laws, and look ineffective and contested. Such restrictions on citizens' rights should not be imposed at the municipal level, but at the Federal level; currently, there are no such restrictions at the Federal level." [7, p. 154-155].

Today, in the age of high technology, during the widespread use of resources of the information and telecommunication network "Internet" is put forward a proposal to hold meetings or conferences through video chats, video conferencing: "the Problem of eligibility (quorum) meetings or conferences can be solved by using video chats, video conferencing. This will increase the number of residents involved in the discussion and decision - making of local issues." [15, p. 26]. The implementation of this initiative is premature, as it will cause difficulties in ensuring the equal right to participate in the event. Today the majority of public men – persons of a retirement age, and not each of them possesses necessary skills of the user of the personal computer. In addition, as noted by the foreign author Claudia Chwalisz, despite the emergence of new digital tools, the need for personal participation does not disappear.

The involvement of citizens in the process of public decision-making, which requires them to form a balanced compromise and a comprehensive assessment of the problem, due to direct communication, generating the creation of social relations, difficult to form on the Internet [16].

5. Conclusion

The process of enforcement of Federal and regional and municipal regulations based on them has revealed some difficulties that require further resolution at the Federal level, namely::

- requires a speedy settlement of the question of establishing the legal form of TOS, because of a legal entity provide a regular activity, having a professional basis;

- there is a need for the establishment of powers of bodies of state power of subjects of the Russian Federation for state support of the organization and the development of local government in constituent entities of the Russian Federation;

- it seems necessary to clarify in part 11 of article 27 of the Federal law No. 131-FZ, providing for the right of the municipal district to adopt the procedure for allocating the necessary funds from the local budget to territorial public authorities established on its territory;

- in order to overcome the problem of obtaining lists of residents of the territory in which it is planned to create a TOS, it is necessary to impose the obligation to prepare and provide relevant information to citizens and local authorities on the bodies of the Ministry of internal Affairs of Russia, currently carrying out registration of citizens at their place of residence.

Given the growing interest in this form of participation of citizens in the implementation of local self-government, there was a need to resolve the problems in the shortest possible time.

⁴ Экспертное заключение о законодательном обеспечении организации и осуществления территориального обще-

ственного самоуправления в Российской Федерации, цит. по: [6, с. 154–155].

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