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### DELINEATION OF COMPETENCE BETWEEN PUBLIC AUTHORITIES IN THE FIELD OF LEGAL REGULATION OF INSTITUTIONS OF MUNICIPAL DEMOCRACY

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The subject of the article is the issues determining the level of legal regulation of instruments of direct municipal democracy.

The purpose of the article is to analyze the judicial practice, especially of the Constitutional Court of the Russian Federation, related to the problems of differentiation of normative competence in the field of municipal democracy between the Federal, regional and municipal levels of government.

The methodology of the study includes systematic approach, formal logical method, interpretation of judicial decisions of Russian Constitutional Court. The issues of determining the level of legal regulation of instruments of direct municipal democracy – elections, referendum, recall of an elected person, voting on changes in the boundaries of the municipality and the transformation of the municipality – are analyzed through the prism of judicial practice.

The main results and scope of their application. The Constitutional Court of the Russian Federation has developed many common positions that can be applied in determining the parameters of rule-making on issues of direct democracy. The Constitutional Court of the Russian Federation confirms the broad competence of the constituent entities of the Russian Federation in the regulation of municipal elections. However, the expansion of the normative competence of the constituent entities of the Federation does not always lead to the democratization of the subject of municipal regulation. The federal and regional public authorities must take into account the interests of municipalities in carrying out the legal regulation of a constituent entities' matter, and leave them the possibility of legal regulation, including the implementation of direct democracy at the local level. The territorial foundations of local self-government, formation of municipal entities, on the one hand, and the administrative-territorial division of constituent entities of the Russian Federation on the other, have independent significance, its own legal content and belong to different spheres: the first belongs to joint conducting by Russia and its constituent entities, the second belongs to the exclusive jurisdiction of the constituent entities of the Russian Federation.

Conclusions. The conclusions formulated by the Constitutional Court of the Russian Federation in relation to the distribution of legal regulation between the levels of power, the definition of the parameters of municipal rule-making on issues of direct democracy are summarized and commented.

## 1. Introduction.

The provisions of Federal and regional legislation that delimit the rule-making competence between the levels of public authority and determine the law-making capabilities of municipalities are not always unambiguously understood and applied by the subjects of legal practice [1-4], which entails litigation. This is due to many reasons, primarily the inaccuracy of the legislative material and its gaps, uncertainty, conflicts, constant changes and additions. At the same time, judicial practice, especially of the constitutional Court of the Russian Federation, equips law enforcement officers with positions that can be "beacons" in the legal sea [5, p. 119, 6-8].

Noting the critical role of the courts in the implementation of the principle of constitutionality of delimitation of competencies between the state authorities of the Russian Federation and subjects of the Russian Federation, O. E. Kutafin emphasized that justice "is an important legal mechanism for finding and maintaining a balance of interests, compliance, rulemaking and enforcement...constitutional legal principles and Supreme values of society and the state" [9, p. 518]. According to J. I. Hovsepyan, the analysis of the practice of Federal constitutional justice shows that the constitutional Court of the Russian Federation in its legal positions seeks to interpret the constitutional subjects of the subjects of Federal relations, aimed at identifying the constitutional understanding of the legislative competence of the state authorities of the subjects of the Russian Federation, and at the same time to ensure a balance of interests of the Federation and the subjects of the Russian Federation [10, p.29]. It should be added that the system of Federal relations involves local governments as part of a unified system of public power.

## 2. General approaches to the delimitation of competence between the state authorities of the Russian Federation and the subjects of the Russian Federation in the practice of the Constitutional Court of the Russian Federation.

The constitutional Court of the Russian Federation has developed many common positions that can be applied in determining the parameters of rule-making on issues of direct democracy [11; 12]. So, for example, at check of constitutionality of the Forest code of the Russian Federation, the Court confirmed the authority of the Federal legislator to carry out legislative regulation of questions on subjects of joint competence of the Russian Federation and its subjects, to define the corresponding specific powers and competence of public authorities of the Russian Federation and public authorities of its subjects.

Of particular importance is the legal position of the Constitutional Court of the Russian Federation concerning the delimitation of powers between levels of state power to regulate and protect human and civil rights and freedoms. The Constitution refers to the subjects of jurisdiction of the Russian Federation regulation and protection of human and civil rights and freedoms (paragraph "b" of Article 71), and to joint jurisdiction - only the protection of these rights and freedoms (paragraph "b" part 1 of Article 72). The constitutional Court clarified that the protection of human and civil rights and freedoms can be carried out by establishing additional legal provisions aimed at protecting a right, which is not a regulation of human and civil rights and freedoms in the sense of paragraph "b" of Article 71, since it is secondary and derived from the basic. It can be concluded that the norms of regional laws regulating the rights of citizens to exercise direct power at the local level are also derived from Federal norms and are established in order to protect these rights.

Regarding the possibility of restriction of the rights and freedoms of citizens, the Court stated that the Federal legislator is obliged to ensure the implementation of principles of restriction of the rights of citizens and in cases when it provides the legislative authorities of RF constituent entities the authority specifying conditions of implementation of citizen's constitutional rights. According to the position of the constitutional Court, contained in part 3 of art. 55 Constitution trades abroad guarantee of rights and freedoms human and citizen obliges Federal legislator, providing opportunity

participation actors trades abroad in concretization conditions passive electoral rights, to set limits powers their legislative organs. If the legislator of the subject of the Russian Federation goes beyond the powers delegated to him, clearly defined by the Federal law, then he violates part 3 of Article 55 of the Constitution of the Russian Federation. The Constitutional Court of the Russian Federation repeatedly recognized unconstitutionality of provisions of laws of subjects of the Russian Federation violating the principle of equality of citizens and limiting their rights and freedoms. In the Ruling of February 3, 2000, the Constitutional Court pointed to the inadmissibility of establishing by the laws of the subjects of the Russian Federation grounds for limiting or conditions for the implementation of constitutional rights of citizens.

Among the most important legal positions of the constitutional Court of the Russian Federation concerning differentiation of legislative competence between the Russian Federation and its subjects - about possibility of advancing in relation to Federal lawmaking of subjects of the Russian Federation concerning joint conducting of Federation and subjects of the Russian Federation [10, Art. 31]. The court pointed out that "the absence of a relevant Federal law on joint management in itself does not prevent the "legislative body of the subject of the Russian Federation" to adopt its own normative act, which follows from the meaning of Articles 72, 76 (part 2) and 77 (part 2). 1) the Constitution of the Russian Federation and follows from the nature of joint competence". Thus after the edition of the Federal law the act of the subject of the Russian Federation has to be brought into compliance with it. Developing further its position, the Court limits the rule-making of subjects of the Russian Federation on issues of joint jurisdiction noted that "the recognition of subjects of the Russian Federation the right to carry out anticipatory legal regulation in subjects of joint competence does not give them automatic authority to address the full issues, which is of universal significance for the legislator in subjects of the Russian Federation and Federal legislator, and therefore subject to regulation by Federal law." This position is essential for

municipal rulemaking, as it does not allow unreasonably intrude into the subject of their regulation, without the indication of the Federal legislator. The constitutional Court also articulated the position in respect of rule-making entities to joint jurisdiction: the subjects of the Federation in the sphere of joint jurisdiction is not entitled to regulate the basic provisions, the basic institutions of industry legislation, which the Constitution of the Russian Federation within the scope of joint jurisdiction - otherwise an invasion in the scope of authority (jurisdiction) of the Federal legislator.

The decision of the constitutional Court of the Russian Federation of 11 April 2000 stated that the Federal nature of the relationship between the Russian Federation and its subjects implies the inadmissibility of arbitrary appropriation by the state authorities of the Russian Federation the scope of powers of joint jurisdiction, i.e. without taking into account interests of subjects of the Russian Federation and places of its authorities in the system of public authority.

### **3. Judicial practice on delimitation of normative competence in the field of municipal elections.**

Questions of determining the limits of legal regulation of municipal elections often arise before the body of constitutional justice. Thus the Constitutional Court of the Russian Federation confirms wide competence of subjects of the Russian Federation in regulation of this Institute.

However, the extension of the normative competence of subjects of the Federation leads to the democratization of the subject of municipal regulation, which clearly evidenced for example by the establishment laws of subjects of the Russian Federation only one electoral system proportional for the municipal elections. In particular, when checking the constitutionality of the Law of the Chelyabinsk region "on municipal elections in the Chelyabinsk region", the Constitutional Court of the Russian Federation specified that the regional legislator, when regulating the types of electoral systems in which the composition of representative bodies of municipalities is formed, must correlate this regulation with the constitutional nature of local

self-government, preventing distortion of the will of voters, elections to representative bodies of settlements with a small population and a small number of deputies held on the basis of a proportional electoral system. In the absence of proper Federal guarantees of the truth of the will of voters, their establishment is the duty of the subjects of the Russian Federation.

The Constitutional Court of the Russian Federation, checking the constitutionality of the laws of the subjects of the Russian Federation on elections to local governments of municipalities, pointed out that " the Federal legal regulation of municipal elections, ensuring the implementation of the Federal principles of the electoral system in the Russian Federation, does not directly determine the order of recognition elected candidate for, - the establishment of such rules refers to the authority of constituent entities of the Russian Federation, the implementation of which they should proceed from the legal position of the constitutional Court of the Russian Federation stipulating that the legislator of a subject of the Russian Federation, imposing a specific electoral procedure shall - with the features of the appropriate subject of legal regulation - to provide necessary additional guarantees of electoral rights of citizens and in any event may not reduce the level of Federal guarantees of electoral rights that are enforceable in the Russian Federation on the basis of the Constitution and in accordance with the principles and norms of international law" . The court noted that the issues resolved at the level of subject of the Russian Federation, is the establishment of a procedure (methodology) of the allocation of seats within the list of candidates for elections to representative bodies of municipal formations, if the part of Deputy mandates or the mandates are distributed among lists of candidates in proportion to the number of votes obtained by each list of candidates.

At the same time, practice shows that the regional authorities do not always cope with the obligation to guarantee the electoral rights of citizens in local elections. In particular, after changes in Federal legislation in 2014 and 2015, the subjects of the Russian Federation by their laws abolished direct elections of heads of urban

districts, including the law of the Irkutsk region of December 26, 2014 No. 170-OZ And the law of the Irkutsk region of February 19, 2015 No. 4-OZ. A group of deputies of the State Duma of the Russian Federation on the basis of the reference of deputies of Legislative Assembly of the Irkutsk region and the Governor of the Irkutsk region appealed to the constitutional Court of the Russian Federation with inquiry about constitutionality of certain provisions of the Federal law "On General principles of organization of local self-government in the Russian Federation" and the Law of Irkutsk region dated 30 May 2014 No. 54-OZ "On some issues of formation of local self-government of municipal formations of the Irkutsk region". Thus applicants proceeded from the fact that: 1) on the basis of part 2 of Art. 130, part 1 of Art. 131 Constitution in Federal legislation was enshrined legal mechanism, according to which structure organs local self-government is determined by Charter municipal education, adopted representative body municipal education; 2) regulation subject trades abroad issues organizations local self-government should not lead to deprivation population, incumbent directly or through organs local self-government, rights determine structure organs local self-government; 3) select the most appropriate for a particular municipality, the version of the structure of local governments that meets the requirements of Federal law No. 131-FZ, must be a municipality, but not bodies of state power of a subject of the Russian Federation.

Having considered this appeal, the Constitutional Court recognized the specified provisions not contradicting the Constitution of the Russian Federation in that their constitutional and legal interpretation which contains in the Resolution of December 1, 2015 No. 30-P . The Court pointed out that, based on the provisions of Articles 72, 76 of the Constitution of the Russian Federation, "the Federal legislator... he has the right to choose optimal, in his opinion, ways of formation of local self-government bodies and to carry out differentiation of the powers relating to establishment of the General principles of the organization of local self-government between public authorities of the Russian Federation and

bodies of subjects of the Russian Federation". Referring to the principle of legal equality of municipalities, the Court stressed its importance as a limiter for the regional legislator, which, when introducing differences in the models of local self-government organization for specific municipalities, must be "explained" by means of formalized legally and socially justified criteria that must meet a number of requirements of a positive-substantive and negative-restrictive nature. According to N. A. Tarabana, "the ruling of the Constitutional Court in its spirit focuses rather on a narrow, restrictive approach to the perception of the regulatory powers of the regional legislator" [6]. In the exercise of legislative regulation of organization of local self-government subjects of the Russian Federation should take into account: 1) influencing the implementation of the local government regional features associated with the characteristic of the subject of Russia geographical location, population and the resettlement of residents, ratio of urban and rural population, historically developed structure of national economy etc.; 2) the role of public-territorial units in the comprehensive socio-economic development of subjects of the Russian Federation; 3) spatial characteristics, the degree of concentration of population, material and financial resources, the degree of relation implemented in the area (level) public functions and tasks with questions relating to the conduct subject of the Russian Federation; 4) the nature and extent of participation of bodies from a particular municipality or municipalities in the exercise of the functions of the welfare state in a specific territory; 5) the presence of objects of state importance in the relevant territory; 6) the level of social and legal activity and self-organization of the population, the actual practice of local self-government [6, p. 48]. In our opinion, these positions formulated by the Constitutional Court can be extended to all issues of local importance, which are regulated by the laws of the subjects of the Russian Federation, including the institutions of municipal democracy.

The Constitutional Court of the Russian Federation stressed the need for concerted, with the municipalities of decisions on the basis of

broad political dialogue and readiness to compromise: based on a Federal law regulating the effects of constituent entities of the Russian Federation on the organization of local government must comply with is fixed directly to part 1 of Article 131 of the Constitution, demanding the unconditional participation of the population in determining the structure of local governments. From the Decision "stemmed points connected with the establishment of the procedure for submitting the relevant draft laws of the Federation of representative bodies of municipal entities to testify in a certain period of a bill that the detection of differences in demand makes conciliation of parliamentary procedure" [13, p. 48].

At the same time, a number of scientists expressed a sharply critical opinion regarding the limits of legal regulation of the Federal and regional legislator and the arguments of the constitutional Court of the Russian Federation. Commenting on the Court's decision, they reasonably believe that "the contested legislative provisions legally and actually transferred to the jurisdiction of the subjects of the Russian Federation (and not the Federal legislator) the solution of key issues of the most important importance for municipalities and the municipal community. However, due to objective reasons, the subjects of the Russian Federation will not be able to provide municipalities with the level of organizational and material guarantees that can be provided by the Russian Federation as a whole", "in fact ... relations between regional and local authorities are based not so much on legal principles as on personal relations between the head of the region and the head of the city. These circumstances the constitutional Court of the Russian Federation for unclear reasons ignored [14, p. 62-63].

It is necessary to pay attention that the competence disputes connected with legal regulation of municipal elections and earlier were a subject of consideration in the constitutional Court of the Russian Federation.

Back in 1996, the RF President and The head of the Komi Republic sent requests to the RF Court to verify the constitutionality of certain provisions of the Federal law of August 28, 1995 in force at that time. "On General principles of organization of local self-government in the Russian Federation" believes

that the timing of elections of representative bodies and officials of local self-government refers to the General principles of organization of local self-government, the establishment of which is under the joint jurisdiction of the Russian Federation and its subjects and, therefore, the question should not be addressed in Federal law. According to The head of the Komi Republic, according to Articles 73 and 76 (part 4) of the Constitution of the Russian Federation, it is the competence of the subjects of the Federation. The President of the Russian Federation believed that the regulation of the question of the timing of elections of representative bodies and officials of local self-government is within the scope of authority of local self-government, the independence of which is guaranteed by the Constitution, therefore the definition in Federal law violates the rights of local self-government and in contravention of Articles 12, 130, 131 and 133 of the Constitution. The conduct of elections and the exercise by citizens of the right to participate in local self-government should be ensured by the subjects of the Russian Federation themselves, having adopted the relevant laws.

In the decision on the given case the constitutional Court, referring to item "v" of Art. 71 and para. "b" of part 1 of Art. 72 of the Constitution concerning regulation and protection of the rights of citizens, made a conclusion: questions of establishment of limit term of elections, and also limit term of preservation of powers of the appointed heads of local administrations (heads of local government) can be solved by the Federal law. "...the challenged provisions of the Law do not reglamentary the procedure for holding elections to bodies of local self-government and do not establish the very system of local self-government that fall within the competence of subjects of the Russian Federation and local self-government", therefore, the challenged statutes do not violate the powers of public authorities of subjects of the R f and local self-government pertaining to the subject matter within their jurisdiction. And in subsequent decisions, the constitutional Court of the Russian Federation stressed that the definition of the structure of local self-government bodies is a

matter of local importance, and local issues, including regulatory regulation, can and should be decided by local self-government bodies or the population directly, and not by public authorities .

The constitutional Court has repeatedly noted that "the Constitution of the Russian Federation expressly authorized Federal and regional legislators to establish the organizational and legal basis for the exercise of municipal power as one of the levels of public power of the people." Given that the Charter of the municipality establishes the structure of local self-government, it can be argued that the limits of statutory and other municipal legal regulation are established by Federal laws and the laws of the subjects of the Russian Federation. It follows from the position of the constitutional Court that unless otherwise stipulated by the Federal law, the relevant provision of the law applies to any changes in the Charter, including those relating to the powers of the representative body of the municipality. "Such regulation does not go beyond the law-making powers of the Federal legislator and is aimed at ensuring the constitutional rights of citizens exercised through the institution of an elected official of local self-government, at achieving the stability of municipal power, the balance of powers of the representative body of the municipality and the elected official of local self-government, at implementing the principles of legal certainty and maintaining mutual trust between citizens and local self-government bodies."

The importance of the position of the constitutional Court of the Russian Federation: "From the Federal nature of the relationship between the state authorities of the Russian Federation and bodies of state power of its subjects implies the inadmissibility of arbitrary appropriation by the state authorities of the Russian Federation the scope of powers of joint jurisdiction, i.e. without taking into account interests of subjects of the Russian Federation and places of its authorities in the system of public authorities" . In our opinion, this position should extend to the municipal level: Federal and regional state authorities, carrying out legal regulation of a subject of doing (and many local issues should be treated as reference items common to all levels of government, which delineates the powers and the degree of participation of the

municipal authorities in their implementation are different), should consider the interests of municipalities and to leave them the possibility of legal regulation, including the implementation of direct democracy at the local level.

A considerable number of disputes concerning the possibility of self-determination by municipalities of the type of electoral system used in the election of deputies, considered not only by the Constitutional Court of the Russian Federation, but also by courts of General jurisdiction. So, the Bryansk regional court refused recognition invalid item 3 of Art. 4 of the Law of the Bryansk region of June 26, 2008. No. 53-3 "about types of electoral systems and conditions of their application at carrying out municipal elections in the Bryansk region" fixing provision that if the Charter of municipal formation for day of decision-making on appointment of elections the type of the electoral system applied according to the regional law at elections of deputies of representative body of the municipal area, city district is not established, the proportional electoral system is applied. The court did not establish the excess of powers of the legislative (representative) body of state power of the Bryansk region, its interference in the normative competence of the Bryansk city Council of people's deputies. The judicial Board on administrative cases of the Supreme Court of the Russian Federation upheld the decision of the regional court, pointing out that the Charter of the municipality in accordance with the types of electoral systems established by the law of the subject of the Russian Federation determines the electoral system that is used during municipal elections in this municipality. "The Federal legislator allows the possibility of holding elections to the representative bodies of municipal districts and municipal districts on the basis of not only proportional, but also mixed electoral system. At the same time, the municipality has the right to choose the most preferable type of electoral system. Provisions of para. 3 of Art. 4 of the law of the Bryansk region do not limit the electoral rights of citizens of the Russian Federation to participate in elections in representative bodies of the municipal area, city district. The provisions of this paragraph will apply only if the Charter of the

municipality on the day of the decision on the appointment of elections does not establish the type of electoral system used in elections." With this argument, the court confirmed its conclusion that the law of the Bryansk region was adopted by the legislator of the subject of the Russian Federation within the normative competence and does not contradict acts of greater legal force.

The Constitutional Court of the Russian Federation in business about check of constitutionality of provisions of Federal law No. 131-FZ and the Law of Chelyabinsk region "About municipal elections in the Chelyabinsk region" for the use in the municipal elections of different types of electoral systems, including proportional, Recalling its previously expressed position, pointed to the political expediency, which caused, in his opinion, the choice of a particular type of electoral system and enshrined in law the relevant electoral procedures. This choice "depends on the specific socio-political conditions and features of the social development of the country at a particular historical stage". At the same time, the Court reiterated that "the legislative regulation of the types of electoral systems within which the composition of representative bodies of municipalities is formed should be correlated with the constitutional nature of local self-government as the level of public power closest to the population". Thus the Court allowed application and in settlements (city and rural) proportional electoral system, and irrespective of number of deputies of representative body though specified that the Federal legislator didn't establish "the necessary guarantees directed on elimination of risk of distortion of will of the voters expressed on elections held on the basis of proportional electoral system to representative bodies of settlements with the small population and small number of deputies". Thus, a situation was created that allowed the subjects of the Russian Federation not to reckon with the interests of the population of municipalities, not to leave them the opportunity to independently choose the type of electoral system in local elections. The constitutional Court found the provisions of the regional law providing for the use of a proportional electoral system with closed lists of candidates for elections to representative bodies of local self-government of rural settlements,

regardless of the population and the number of deputies, to be inconsistent with the Constitution of the Russian Federation.

#### **4. Judicial practice on delimitation of competence in the field of legal regulation of recall of an elected person.**

The constitutional Court of the Russian Federation has formulated a wide range of positions related to the delimitation of competence between public authorities of different levels in the field of legal regulation of the recall of an elected person. In particular, the Court stated several positions in the decision on checking the constitutionality of a number of provisions of the laws of the subjects of the Russian Federation concerning the grounds and procedure for such a recall, including: 1) the provisions that an elected official of local self-government may be recalled as a result of loss of trust of voters, as not establishing specific grounds for loss of trust; 2) provisions that do not provide for mandatory notification of the elected official about the upcoming meeting of the initiative group and request explanations from the recalled person; 3) provisions that fix the conditions for making a proposal to the representative body of local self-government to hold a vote on the recall of an elected official of local self-government, as not providing for the collection of signatures of a sufficient number of voters in support of voting; 4) provisions establishing the procedure for consideration of the representative body of local self-government the issue of appointment of voting on recall of an elected official of local self-government, as containing no indication of the need for confirmation of the proposed grounds for review factual and not providing for the compulsory notification of the person of the time and place of the meeting of the representative body of local self-government, etc .

In Article 24 of the Federal law of 6 October 2003 No. 131-FZ "On General principles of organization of local government in the Russian Federation" (hereinafter – Federal law № 131-FZ) recorded, not in Advisory and binding form that the Charter of the municipality establish the

grounds for recall of a Deputy, member of elected body of local self-government, elected official of local self-government and the procedure for the review of these entities. The procedure for voting on the recall of these persons is established by Federal law and the law of the subject of the Russian Federation adopted in accordance with it for holding a local referendum, taking into account the features provided for by Federal law No. 131-FZ. Let us draw attention to the ambiguity of the wording "recall procedure" and "recall voting procedure". The first is regulated by the Charter of the municipality, the second-by Federal and regional laws. As we can see, the subject of statutory regulation is not clearly defined, therefore, the independence of local self-government in this matter is not guaranteed.

In the present case, the Constitutional Court turned to the analysis of the provisions of municipal charters, in which there was an indication that the opinion of officials of local self-government is based on the application of the relevant law of the RF subject. The court pointed out that the provisions of the laws of the subjects of the Russian Federation are in normative unity with the relevant provisions of the statutes of municipalities. At the same time, "regional laws may not prevent municipalities from independently deciding what grounds and procedure for the recall of local government officials should be provided by the Charter of the municipality. The autonomy of municipalities in the legal regulation of the Institute of opinion implies the opportunity to either establish directly in the Charter revocation procedures, including additional guarantees of the rights of its participants, or references to governing the procedure of the law of the Russian Federation to be used in the opinion in the municipality. Moreover, such laws should exclude the interference of state bodies, as well as election commissions of the subjects of the Russian Federation in the recall process, since otherwise it would be a violation of the constitutional principles of local self-government." In addition, the Court noted that "the absence of a law of a subject of the Russian Federation about recall of an elected official of local government cannot be an obstacle for introduction of this Institute in the Charter of the municipality and determine the order of implementation of opinion".



Independence municipal regulation of the institution of recall of an elected person, the constitutional Court limited the indication of the inadmissibility of the distortion of the meaning of the election and purpose of each of the forms of direct democracy, the commitment of municipalities in the introduction of recall in the Charter to proceed from requirements that are identical at the state and municipal level of public authority to prevent the imposition of a lightweight revocation procedures, which can lead to abuse of its use. In order to avoid unjustified recall, the Charter of the municipality or the law of the subject of the Russian Federation (in the case of settlement of the Institute of recall) should establish a sufficiently high rate of collection of signatures in support of the beginning of the recall procedure - at least the number of signatures required for the nomination

In relation to regional legislators the Court made the following observation: the norm of the law allowing for the expansion interpretation, does not contain guarantees of inadmissibility of subjective assessment of activities of the elective person, and the overall negative assessment of his activity without justification, subject to verification of the facts, not the Constitution, as thus arbitrarily questioned the election results, culminating in the election of the official concerned, which in turn leads to a violation of the constitutional requirements of independence of local self-government.

In the present case judge N. V. Vitruk was expressed by the dissenting opinion: "the Right of recall of an elected official of local self-government as a form of social responsibility can not be determined by the Federal law "On General principles of organization of local self-government in the Russian Federation", his existence does not depend on, recognizes or does not recognize Federal law to officials of local government. There was little need for the Federal legislator to specify, rather, to complement the open list of forms of direct expression of citizens in exercising local self-government... Review of officials of local self-government is a private matter in the system of local government organization, and it is unlikely he refers to the "principles of organization of state

power and local self-government" (Article 72, point "n" parts 1, constitutions of the Russian Federation). Not the Federal legislator, as well as not the legislator of the subject of the Russian Federation grant to the population of urban and rural settlements the right to local self-government, including the right to recall the official of local self-government. Such right, and, consequently, and regulation of the bases and an order of such revocation in charters of municipalities is immanent to local self-government which is directly guaranteed by the Constitution of the Russian Federation (Articles 12, 130-133)".

#### **5. Judicial practice on differentiation of competence in the field of legal regulation of local referendum.**

With regard to the local referendum in terms of determining the limits of self-regulation by municipalities of its subject, the Constitutional Court of the Russian Federation has also formulated a number of legal positions.

In the case of contestation of provisions of Federal law No. 131-FZ, fixing the list of questions of local value of city district and not requiring a list of question of the definition of the structure of local governments, which according to the applicant, prevents the citizens to decide the structure of local governments by local referendum, the Court stated that "the classification of the Federal law "On General principles of organization of local self-government in the Russian Federation" the adoption of the Charter of the municipal formation (and thus – to the exclusive competence of the representative body of the municipality (part 10 of Article 35 and part 1 of Article 44) means that these issues of local importance may not be the subject of a local referendum, except in cases related to the creation of newly formed municipalities." "The Constitution of the Russian Federation, the Court noted, directly authorizes the Federal legislator and legislators of the subjects of the Russian Federation to determine the organizational and legal forms of realization of the right of citizens to participate in local self-government. The court stressed that the question of the structure of local self-government bodies - in the system of current legal regulation-can be solved

only by the representative body of the municipality when adopting the Charter of the municipality or making changes and additions to it. Deviation from this rule is allowed in the cases established by the Federal law "on General principles of organization of local self-government in the Russian Federation".

In the Court's view, the impossibility of holding a local referendum on the issue of determining the structure of local governments of city districts is not due to the provisions of Article 16 of Federal law No. 131-FZ, and the fact that in the system of applicable legal regulation of the decision of this question, as well as some other local issues, including those referred to in paragraph 8 of Article 12 of the Federal law "On basic guarantees of electoral rights and the right to participate in referendum of citizens of the Russian Federation», should be carried out by local governments in accordance with the powers granted to them. Thus, the Court outlined the limits of municipal legal regulation-the powers granted to municipalities. Thus, the autonomy of municipal regulation is limited by the Constitution of the Russian Federation and laws.

In the Court's view, the impossibility of holding a local referendum on the issue of determining the structure of local governments of city districts is not due to the provisions of Article 16 of Federal law No. 131-FZ, and the fact that in the system of applicable legal regulation of the decision of this question, as well as some other local issues, including those referred to in paragraph 8 of Article 12 of the Federal law "On basic guarantees of electoral rights and the right to participate in referendum of citizens of the Russian Federation», should be carried out by local governments in accordance with the powers granted to them. Thus, the Court outlined the limits of municipal legal regulation-the powers granted to municipalities. Thus, the autonomy of municipal regulation is limited by the Constitution of the Russian Federation and laws.

However, the Court did not exclude the powers of the federal legislator to establish a different procedure for the self-determination of the population structure of local governments, including suggesting an alternative way of resolving

the question of the representative body of the municipality or local referendum, as envisaged, for example, the Federal law of 28 August 1995 No. 154-FZ "On General principles of organization of local self-government in the Russian Federation".

The Constitutional Court considered the case on the complaint against the provisions of Federal law No. 131 precluding the possibility of holding a local referendum on the inclusion of the territories of the municipal district in the boundaries of the created national Park . The court pointed out that the meaning of the Constitution of the Russian Federation implies the exclusive prerogative of the legislator to determine the powers of local self-government in the field of specially protected natural areas. At the same time, "from the right to participate in the referendum, as it is established by part 2 of art. 32 Constitution trades abroad, also should not, that this right can be implemented without accounting conducted Constitution (Articles 71, 72, 73 and 76) delimitation hyphenated waging and powers between bodies state power Russian Federation and bodies state power constituents trades abroad.

The constitutional Court formulated the legal position according to which the definition of the specific conditions and procedure for holding a local referendum is carried out in accordance with the constitutional delimitation of jurisdictional subjects and powers between different levels of public authority because it does not apply to joint jurisdiction of the Russian Federation and its subjects, refers to subjects of the Russian Federation and local self-government that stems from the meaning of the provisions of paragraph "h" of part 1 of Article 72, 73 and 130 of the Constitution . The prohibitions established by the Federal legislator to submit a number of issues to a local referendum do not mean an invasion of the competence of the subject of the Russian Federation, which is confirmed by the previously formulated position of the constitutional Court of the Russian Federation. The Resolution of the constitutional Court of the Russian Federation of June 10, 1998 expresses the legal position that the institution of a referendum should not be used to oppose the will of the population of the subject of the Russian Federation to the will of the Federal legislator; the Federal

legislator has the right and is obliged to provide necessary legal, including judicial, guarantees of conformity of the decisions accepted on a referendum of the subject of the Russian Federation to the Constitution of the Russian Federation and the Federal law. Since the Federal legislator gives the subjects of the Russian Federation the right to adopt laws on local referendum, the above guarantees in respect of decisions taken at a local referendum can also be contained and are contained in the Federal law.

#### **6. Judicial practice on differentiation of competence in the field of legal regulation of the account of opinion of the population concerning territorial bases of local government.**

The constitutional Court has formulated a number of positions concerning the legal regulation of taking into account the opinion of the population of municipalities, including voting on the issues of changing the boundaries of the municipality, the transformation of the municipality, in the context of the delimitation of normative competence between levels of government.

The territorial foundations of local self-government, formation of municipal formations, on the one hand, and the administrative-territorial device of subjects of the Russian Federation on the other, being related, have independent significance, has its own legal content, belong to different spheres of reference: the first joint conducting Russia and its subjects, the second to the exclusive jurisdiction of the constituent entities of the Russian Federation. This, as pointed out by the Constitutional Court in its decision of 10 July 2003 No. 289-O, implies that, without adequate legislative support of legal status of municipal formations the order of formation, abolition, and other changes in their system should be regulated by the legislation of subject of the Russian Federation on local government. The legal regulation of its administrative-territorial structure established by the subject of the Russian Federation, including the issues of formation, unification, transformation, abolition of administrative-territorial and territorial units,

cannot, however, replace the legal regulation of the territorial organization of local self-government; in any case, it should not imply or allow changing the boundaries of the territories in which local self-government is carried out, in order to reorganize the territorial structure of the state power of the subject of the Russian Federation and thereby lead to blocking the constitutional requirement that the opinion of the population should be taken into account when carrying out territorial transformations, entailing a change in the spatial limits of the implementation of municipal power and the right of citizens to local self-government.

The Constitutional Court of the Russian Federation in a number of decisions formulated the following legal positions. The constitutional requirement that the taking into account the views of the population at change of borders of territories in which local self-government refers to the elements of the constitutional-legal status of local government and is one of the essential guarantees of rights of citizens on the independent decision of questions of local value. Taking into account the opinion of the population in certain constitutional and legal situations can be carried out by the decision of the population at a local referendum, the results of which are binding; in other cases, the opinion of the population can be identified using various forms of both direct and indirect (through representative bodies) will of citizens; in cases of change of borders of territories in connection with the abolition of municipal entities where local self-government, the most adequate form of taking into account the views of the population, in the sense of Article 130 (2) of the Constitution, is a referendum; when solving the issues of reorganization of municipalities of powers of local self-government, by definition, forms taking into account the views of the population and identification of public opinion by collecting signatures or written statements comply with the Constitutional Court revealed the constitutional criteria for resolving such issues and do not contradict the Constitution of the Russian Federation.

The Constitutional Court challenged the provision of the law allowing to change the boundaries of the municipality on the basis of the decision of its representative body, without the

direct will of the population on this issue, which, according to the applicants, does not exclude the adoption of such decisions contrary to the interests of the local community. In the decision the Court stated that the Constitution of the Russian Federation directly does not define what should be considered the population at change of borders of territories in which local self-government. "In exercising its regulatory powers in this area, the legislator has sufficient discretion in the choice of a particular mechanism the will of the local community regarding its territorial organization, in particular it may establish a differentiated manner taking into account the views of the population in relation to the objectively different in their socio-legal nature and consequences of change of borders of territories in which local self-government. However, the legislator may not act arbitrarily and is bound by the need to ensure the identification of reliable opinion of the population on the relevant issues and bring it to the attention of the public authority authorized to make a decision on changing the boundaries of municipalities. In any case, it should proceed from the fact that territorial changes that directly affect the interests of the majority of the population of the territory in which local self-government is carried out require the direct expression of the will of the population of the territory concerned." According to part 1 of art. 12 change of borders of municipal formation is carried out by the law of the subject of the Russian Federation at the initiative of the population, local governments, public authorities of the subject of the Russian Federation, Federal public authorities according to the Federal law No. 131-FZ. The Federal legislator had the right to give the representative body of the municipality the authority to speak on behalf of the population, including when deciding on changing the boundaries of the municipality. "The provision of part 4 of Article 12 of the Federal law "On General principles of organization of local self-government in the Russian Federation" in its meaning and purpose in the system of legal regulation is one of the General principles of organization of local self-government, stipulated by the said Federal law, which in turn requires establishing the procedure specified in the laws of

constituent entities of the Russian Federation and (or) normative legal acts of local self-government, including municipal charters, the effective mechanism of realization of the specified powers."

### **7. Judicial practice on differentiation of competence in the field of legal regulation of gatherings (meetings) of citizens.**

With regard to gatherings and assemblies of citizens when considering the question of compliance with the Constitution of the Russian Federation provisions of Federal law No. 131-FZ, allowing the gathering of citizens as a representative body of the municipality and the adoption of decisions on local issues only in settlements with a certain number of residents who have the 72 of the Constitution of the Russian Federation, which relates the establishment of General principles of local self-government to the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, assuming the need to adopt Federal laws on these issues and in accordance with them - the laws of the subjects of the Russian Federation (part 2 of Article 76). "Thereby the Constitution of the Russian Federation directly authorizes the Federal legislator and legislators of subjects of the Russian Federation on definition of organizational and legal forms of realization by citizens of the right to local self-government agreeing with its constitutional and legal mission and considering features of the organization and implementation of the municipal power as one of levels of the public power of the people most approached to the population". The court pointed out that the Federal legislative regulation is aimed at ensuring a balanced use of the institutions of direct and representative democracy by citizens in the implementation of local self-government, takes into account the real possibilities of direct solution of local issues by the population in small settlements, does not go beyond the discretionary powers of the Federal legislator.

Checking the constitutionality of the Law of the Tver region "About meetings (descents) of citizens in the Tver region", the constitutional Court noted that the regional legislator, "providing the possibility of referring to the competence of the Assembly (gatherings) of citizens, the election of

elders who are representatives of territorial public self-government as self-organization of citizens at their place of residence, not mandatory, leaving the choice of regulation in the statutes of municipalities to their own local communities . Article 27.1, introduced in 2018 in Federal law No. 131-FZ, differently regulates the procedure for appointing the headman of a rural locality, but the question of whether or not to appoint the headman of a rural locality by the representative body of the municipality, which includes this rural locality, is decided at the discretion of the municipality: "for the organization of interaction between local governments and residents of a rural locality in addressing issues of local importance in a rural locality located in the settlement, in the municipal district, urban district or in the inter-settlement territory, the headman of the rural settlement can be appointed" (part 1 of Article 27.1). Thus the law of the subject of the Russian Federation establishes the name of a position of the headman of the rural settlement, and also additional powers, guarantees of activity and other questions of its status according to provisions of the Federal law. Municipal regulatory legal regulation is carried out by the Charter and regulations approved by the representative body (p. 5 h. 6 of Article 27.1).

## 8. Conclusions.

Summing up the above, we note that in the legal regulation of the organization of local self-government in General, and the institutions of municipal democracy in particular, the Federal legislator has a priority role. Although the issues under consideration are the subject of joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, the Federal legislator concentrates powers in the field of rulemaking, some of which he at his discretion assigns to the subjects of the Federation, as well as local governments, and can change them, and unilaterally. The judicial practice of the constitutional Court of the Russian Federation follows the path of recognizing the constitutionality of broad Federal regulation on issues of joint jurisdiction of the Russian

Federation and its subjects, including forms of direct democracy at the local level. At the same time, the Federal legislator limited the possibility of rulemaking of the subjects of the Russian Federation in this area. The constitutional Court upheld the legality of Federal legislative intervention in the regulation of subjects of the Russian Federation. Such centralization in legal regulation entails the possibility of the Federal legislator to regulate the institutions of municipal democracy to the extent that he deems necessary. Consequently, "there are no restrictions for the Federal legislator, if he deems it necessary to adopt an exhaustive legal norm on a specific issue" [15, p. 153]. This approach of the legislator, of course, limits the autonomy of local government, immensely restricts its rule-making authority especially in matters that are inherent to the local government –the proximity of the population to power, the real possibility for dialogue, local community authorities, interaction with her, for the manifestation of creativity and civil initiatives. The state government should not forget that from the point of view of its constitutional and legal status of local self-government is an integral part of a mechanism of state administration, under which local authorities on the basis of cooperation and coordinated operation with Federal and regional public authorities are involved in the constitutional limits to the implementation on the corresponding territory of the functions of democratic, legal and social state.

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