

## MUNICIPAL DEMOCRACY: DEVELOPMENT TRENDS IN THE MATERIALS OF LAW ENFORCEMENT PRACTICE

Ekaterina S. Shugrina<sup>1,2</sup>

<sup>1</sup> Kutafin Moscow State Law University (MSAL), Moscow, Russia

<sup>2</sup> Russian Presidential Academy of National Economy and Public Administration (RANEPA), Moscow, Russia

### Article info

Received –

2019 July 20

Accepted –

2019 August 20

Available online –

2019 November 01

### Keywords

Community participation in governance, municipal democracy, direct democracy, public discussions, implementation of national projects

The article analyzes the trends of community participation in the implementation of local self-government.

The purpose of the paper is to confirm or disprove hypothesis that the involvement of the population in the implementation of local self-government determines the genuine implementation of municipal legal acts and contributes to finding effective solutions to local issues. The research was carried out with use of main scientific methods (analysis, induction and deduction), special (statistical) method as well as the method of interpretation of the legal acts.

The main results and scope of their application. The same form of direct democracy is mentioned in different Russian laws by different words often. The concept and requirements for the same forms, the limits of their application, the implementation procedures are described in different ways. There is a significant shift in emphasis in the use of various forms of direct democracy at the municipal level. In reality, the ability of local residents to exercise local self-government is significantly reduced. The involvement of the population is increasingly declared as an additional investment tool. The analysis of law enforcement practice shows the emergence of new forms of participation of citizens in the implementation of local self-government, which either do not have proper legal regulation, or it is fragmentary, carried out mainly by bylaws. The majority principle was the basis of decision-making in Russia for a long time, including the Soviet period, i.e. the decision was made on the basis of the opinion of the majority or qualified majority; the minority obeyed the majority. It has become urgent to develop new legal structures to identify and take into account the opinion of the minority in recent years.

Conclusions. The involvement of the population in the implementation of local self-government is a criterion that the norms provided for in the texts of normative legal acts are really beginning to be implemented, the population is increasingly beginning to use them. If citizens lack legal instruments, they initiate their development and adoption in the form of relevant regulatory legal acts or other legal documents. The institutions of power and civil society do not replace each other, but promote mutual harmonious development aimed at improving the quality of life of citizens.

## 1. Introduction.

Traditional to the science of constitutional or municipal law is the idea of municipal democracy as forms of the implementation of local self-government by the population or forms of participation of the population in its implementation. At the same time, at the municipal level, forms used to address issues of national importance may also be implemented.

The latter became particularly clear with the signing in 2018 of the May decrees of the President of the Russian Federation, the adoption of national projects aimed at improving the quality of life.

There are two polar trends. On the one hand, local self-government is closely connected with the place of residence of citizens. It is no coincidence that it is called "local", from the word "place". We live in cities and towns, villages and villages, therefore, any changes associated with local self-government are reflected in the comfort of people living. It is at the municipal level that national projects are being implemented, local self-government is actually the point of assembly of those decisions that are made at the regional and federal levels. It is the local level is actually coordinating the activities of federal x structures, for example, projects for safer roads Transport Ministry and the Ministry of Construction of a comfortable urban environment. The implementation of the May decrees of the President is impossible without the municipal level, since the quality of life of people is closely connected with their place of residence, i.e. with local government.

On the other hand, the example of the national project "Housing and Urban Environment" clearly shows that the issues of land improvement, which have always been considered as a matter of local importance, are tightly included in the federal agenda. There is a certain mixing of powers at different levels of public authority. In the context of the forms of municipal democracy is manifested that it is not always easy to separate, to solve some problems it is used : to address the issues of local or national importance.

All levels of government participate in the implementation of national projects, although the main responsibility for their implementation rests with the members of the Government of the Russian Federation, the governor's corps. Formally, local self-government bodies are not included in the implementation of national projects, however, recently they began to talk more often about the need to include them in the design offices created in the constituent entities of the Russian Federation for specific national projects.

A project office is a management tool in conditions of limited resources (temporary, etc.), used to obtain a qualitative new result. This tool is borrowed from the corporate governance sphere and introduced into the public administration sphere several years ago. The rules for project activities for federal government bodies were approved by Decree of the Government of the Russian Federation dated October 31, 2018 No. 1288 (as amended on January 3, 2019) "On the Organization of Project Activities in the Government of the Russian Federation".

One of the features of project activities in the context of the issue under study is that the structures created as part of the project activity receive the right to adopt documents that have all the attributes of normative acts; These documents are not accepted by authorities in the traditional sense. Obviously, this significantly saves the time of development, coordination and adoption of all necessary decisions. On the other hand, system-forming decisions must be made on the basis of the law and in its execution. This is particularly important in an environment where decisions made by project offices, leading to a significant change in the content of the constitutional values, which include democracy, municipal and local government. The third feature is related to the fact that, within the framework of the project office, key decisions are made by a rather limited number of people who are mainly representatives and executive bodies. As part of the traditional decision-making method based on the "law - by-laws" mechanism, key decisions are made by government bodies that are officially representatives of the population, express their interest and receive their legitimization directly

or indirectly from the population through elections or other mechanisms.

Features of the distribution of tools familiar to the corporate governance sphere in the public sphere deserve a separate comprehensive study. Fortunately, individual works begin to appear [1–5].

## 2. Involving the population in local self-government

But back to municipal democracy. In the past few years, the term **“involving the population in the implementation of local self-government”** has fairly firmly entered into legal life. So, in attracting the population becomes one of the criteria for selecting the best municipal practices, projects submitted, for example, to competitions of the Ministry of Construction of Russia, All-Russian Council of Local Self-Government (hereinafter referred to as the VSMS). Surprisingly, the involvement of the population speaks and in the regulations, for example, on the support is, local self-government.

In the Concept of openness of federal executive bodies defines the principle of civil society involvement by which it is proposed to understand the possibility of participation of citizens of the Russian Federation, public associations and the business community in the development and implementation of management decisions in order to take into account their views and priorities, as well as create a system of constant information and dialogue.

Not looking at it, that Ermin "community engagement" is yet not legal, there is no legal definition. It is very indicative that the Ministry of Justice of Russia chose not to use this term in the documents of the All-Russian contest "Best Municipal Practice".

In the Federal Law of 06.10.2003 No. 131-ФЗ "On the General Principles of the Organization of Local Self-Government in the Russian Federation" (hereinafter referred to as the Federal Law No. 131-ФЗ), other terms are used - "implementation by the population of local self-government" or "participation of the population in the implementation of local self-government". The first term is understood as the totality of

imperative forms (elections, referendum, recall, etc.), and the second - dispositive or recommendatory (public hearings, meetings, etc.).

So what is citizen engagement? Some say that the introduced new concept, which allows you to get away from the terms with specific legal content, others believe that this term is reflected in actually evolving relationship [6]. Let's try to figure it out.

Firstly, the term "population involvement" is used in the development and replication of *new technologies or forms* of citizen participation in local self-government, which are still unknown to the current legislation. An example is the technology of public finance (crowdfunding) [7]. In 2018, a draft Federal Law No. 419090-7 "On Alternative Ways to Attract Investments (Crowdfunding)" was submitted to the State Duma.

Secondly, "community involvement" means *an increase in the social activity of citizens*. It is no accident that this indicator is used as one of the criteria for identifying, selecting and replicating the best municipal practices. Some organizations are even trying to measure this indicator; local governments post relevant reports on their websites.

Thirdly, "population engagement" refers to *openness and transparency of the activities of government bodies*. It is no coincidence that population involvement is mentioned in the context of anti-corruption mechanisms [9]. Local governments are also actively using this aspect, for example, when creating helplines. [10].

With this understanding of it is closely connected another direction of interaction between government and society - *social control*. The involvement of the population is also associated with an increase in the control functions of the population over the activities of government bodies. In this context, the involvement of the population is a kind of measure of the balance between the activities of government and development of civil society institutions.

Fourth, "community involvement" means *an increase in the number of people involved* in a particular activity; engagement is a measure of mass. It is interesting that this term in the documents appeared at the federal level in the

context of the revival of mass physical culture and involvement of the population in systematic physical training and sports.

Currently, it is this aspect of the term “engagement” that appears in several national projects as targets. For example, the number of students involved in the activities of public associations based on educational organizations of general education, secondary and higher professional education should be increased from 1.8 to 8.8 million.

Fifthly, the involvement of the population is considered in the context of *attracting the population to participate* in the implementation of local self-government, its inclusion in certain procedures. Sometimes for this it is necessary to provide for the participation of the population as a mandatory stage in making managerial decisions.

For example, they began to use more actively the norms of industry legislation, which provide for the mandatory identification and consideration of the opinions of citizens when resolving certain issues. So, according to part 12 of Article 22 of Federal Law dated December 29, 2012 No. 273-FZ (as amended on December 25, 2018) “On Education in the Russian Federation”, a decision on the reorganization or liquidation of a municipal educational institution located in a rural settlement is not allowed without taking into account the opinions of the inhabitants of this rural settlement. Forms of revealing and taking into account the opinions of residents can be different (surveys of residents, gatherings, etc.). In any case, the identification and consideration of the opinions of residents is an obligatory stage of decision making; its absence entails the recognition of the final decision as unlawful.

The passport of the subprogramme “Promoting the development of municipal services, territorial public self-government and other forms of local self-government in the Republic of Karelia” for 2014-2020 states that “local administrations do not perceive the population as a real resource for development, cannot organize the involvement of the population in resolving issues socio-economic development of their territories. As a result, local self-government is replaced by municipal government, which limits to a minimum the ability

of active citizens to directly participate in resolving issues of local importance. Accordingly, local governments limit their resources (human, property and financial) and reduce the ability to implement the tasks assigned to them. In turn, the population also does not actively support the initiatives of local authorities due to disbelief in their ability to achieve real improvements. “Local people are often won by random people who do not know how to manage settlements and who aggravate the social and economic crisis in the settlements with their actions or inaction”.

Such an understanding of community involvement as a *criterion of efficiency* of activity of authorities, the indicator and the confidence of the population used in the documents is not only public authorities, but also of the body of local government.

New emphasis to the term “public engagement” have been assigned in connection with the embodiment of her priority project “Creating a comfortable urban environment”. At a meeting of the Council under the President of Russian Federation on development of local self-government, held on August 5, 2017, this issue was discussed in some detail and concluded a number of orders. The list of instructions of the President of the Russian Federation did not mention the involvement of the population, but the development of a mechanism for assessing the degree of *involvement of citizens and public organizations* in the implementation of measures provided for by the priority project “Formation of a comfortable urban environment”, and the effectiveness of such involvement.

### 3. National projects and democracy.

With the approval of national projects, a new impetus has been given to the use of various forms of direct democracy.

The national project Housing and Urban Environment has two indicators related to community participation:

- the creation of a mechanism for direct participation of citizens in the formation of a comfortable urban environment, an increase in the share of citizens participating in resolving issues of urban development, up to 30 percent;

- the proportion of citizens who took part in resolving issues of the development of the urban environment of the total number of citizens over the age of 14 living in municipalities on whose territory projects to create a comfortable urban environment are being implemented, from 5 to 25%.

The project manager is the Minister of Construction and Housing, the curator of the project - Deputy Prime Minister, who coordinates activities for development of territories, federalism and, topically, of self-government. Therefore, it is of some interest to analyze what the Ministry of Construction of Russia already understands by creating mechanisms for the direct participation of citizens and their involvement in the formation and development of a comfortable urban environment.

In 2018, the Ministry of Construction of Russia began to hold a competition of the best projects for creating a comfortable urban environment in small towns and historical settlements. "Small cities" with up to 100,000 people inclusive, as well as historical settlements of federal and regional significance, with the exception of administrative centers and cities of federal significance, can participate in the competition. To take part in the competition, the municipality must submit for consideration of the Tender Committee a project for creating a comfortable urban environment, including a set of measures to improve one or more interconnected common areas (squares, embankments, streets, pedestrian zones, squares, parks and other territories).

General terms and conditions approved by the competition Decision of RF Government dated 3.7.2018 number 237 (as amended on 11.02.2019.) "On Approval of the Regulations of the Russian Federation of state support funds from the federal budget to the budgets of subjects to encourage municipalities - the winners of the All-Russian competition for the best creation of a comfortable urban projects environment"; This document provides the establishment of the federal competition commission. One of the criteria for evaluating competitive applications is the degree and variety of forms of participation and

involvement of citizens and the public at all stages of the project (paragraph 19 of the Rules).

The application form for participation in the All-Russian contest of the best projects for creating a comfortable urban environment, technical requirements for its design and the composition of the information included in it, the protocol of the meeting of the Federal Competitive Commission for the organization and holding of the All-Russian contest of the best projects for creating a comfortable urban environment of March 21, 2019 was approved No. 1. This form provides for the submission and Info for a public discussion of the project, including: n Receiving proposals for the selection of public property ; n Receiving proposals for the selection of the works planned for implementation in the framework of the project on selected public spaces; the number and brief description of the activities carried out in accordance with the questionnaire ; of writing the proposed citizens and public involvement in the phases of the event, indicating the forms of participation (including using electronic proposals reception system) .

To post answers to the above questions, the same document approved an electronic questionnaire, which deserves additional analysis.

For example, by means of informing and collecting proposals for the selection of public territories, we mean methods of informing and collecting proposals according to the target model for organizing public participation available at: [http://www.minstroyrf.ru/upload/iblock/225/tselev\\_aya-model.pdf](http://www.minstroyrf.ru/upload/iblock/225/tselev_aya-model.pdf). Acquaintance with the target model shows that it offers the following ways to work with individual user groups, organizing project seminars, organizing project workshops (workshops), conducting public discussions, conducting design games with adults and children, etc.

It is striking that the district and one of the forms of public participation in local government in this list has not got (perhaps with the exception of public hearings, which were the result of e synchronize a familiar form , as a public hearing, which was originally contained in the legislation on local government , with urban planning legislation). Perhaps, these new forms have their place in the order of Article 33 of the Federal Law № 131-FZ.

However, it should be remembered that based on the results of using such forms, a decision is made on the distribution of funds for the improvement of public spaces; Features of the procedure for the implementation of these forms are practically not regulated, or are regulated by by-laws. It turns out that instead of using the forms provided for by the current legislation, it is proposed to use new forms that are convenient for urbanists. There is a certain degree of misleading residents.

Despite such obvious shortcomings in legal regulation, the target model provides for the involvement of the population at different stages of project creation and implementation: organizing public discussion at the stage of developing documentation for the project, organizing public participation in the project, organizing public participation in the opening and evaluation of the implemented project. In this vein, the forms of participation of the population in the implementation and local self-government are not considered in the current legislation on local self-government.

The methodology for evaluating the application for participation in the All-Russian contest of the best projects for creating a comfortable urban environment, including the evaluation procedure, includes all the above criteria. However, there is a new and - involved n a nce expert of the communities and in the preparation of the project. Obviously, for projects related to the development, improvement or other changes in the territory (even if it comes to yard areas, public spaces), the involvement of specialists is of great importance. But is this a measure of community involvement?

An analysis of law enforcement practice shows that at the municipal level, forms of direct democracy are used quite actively and regularly. The annual monitoring of the main forms of civic activities until 2014 was carried out by the Ministry of Regional Development of Russia, and since 2015, the Ministry of Justice of Russia; in addition, summary information on individual forms is available on the CEC of Russia website. An analysis of these monitoring shows that at the municipal level, various forms of direct democracy are quite confidently used (see Table 1).

**Table 1. Summary of the number of different forms of civic engagement**

<i>Form of civic engagement</i>	2015	2016	2017	2018
Local referendum	955 local referenda	1555 local referenda in 10 constituent entities of the Russian Federation	1187 local referenda in 10 constituent entities of the Russian Federation	1600 municipalities of 10 constituent entities of the Russian Federation
Voting on changes in the territorial organization of local self-government	30 votings	In 6 constituent entities of the Russian Federation	In 3 constituent entities of the Russian Federation	No information

Окончание табл.

Form of civic engagement	2015	2016	2017	2018
Gatherings	1 urban and 85 rural settlements	1 urban and 83 rural settlements in 21 RF constituent entities	1 urban and 73 rural settlements in 16 RF constituent entities	1 urban and 69 rural settlements in 15 RF constituent entities
Public hearings and public discussions	85,1 thousand	95,6 thousand	103,4 thousand	92.6 thousand public hearings and 53.9 th. public discussions
Meetings	91,5 thousand.	85,9 thousand.	72,9 thousand	64,3 thousand
Conferences	2,2 thousand.	5,5 thousand.	3 thousand	3 thousand
Polls	3,9 thousand	5,1 thousand.	4,5 thousand	8,7 thousand
Territorial self-administrtaion	24,7 thousand TSA	27,6 thousand TSA in 76 constituent entities of the Russian Federation, incl. about 2.5 thousand NPOs	30,1 thousand TSA in 76 constituent entities of the Russian Federation, incl. about 2.4 thousand NPOs	Almost 32 thousand TSA in 81 constituent entities
Rural elders	About 30 thousand	in 24.1 thousand rural settlements within 42 RF constituent entities	in 31.2 thousand rural settlements within 52 RF constituent entities	in 29 thousand rural settlements within 65 RF constituent entities
Lawmaking initiative	172 initiatives accepted	No information	No information	more than 900 are introduced, less than 800 reviewed and about 400 initiatives implemented

Data are available at: URL: <https://minjust.ru/ru/press/news/monitoring-razvitiya-sistemy-mestnogo-samoupravleniya>; <https://minjust.ru/razvitie-federativnyh-otnosheniy-i-mestnogo-samoupravleniya/doklad-o-sostoyanii-i-osnovnyh>.

#### 4. Current trends in the development of municipal democracy.

The study of law enforcement practice, decisions of state authorities and local self-government, materials of court decisions allows us to highlight several trends emerging in the field of municipal democracy.

4.1. An analysis of the current legislation shows that **the same form of direct democracy is spoken in different laws**, moreover, the concept and requirements for forms, the extent of their application, and implementation procedures differ.

For example, very often in federal legislation the terms “public hearings”, “public hearings”, “public discussions” are used as similar or even synonyms; should be highlighted such laws, as the Town Planning Code of the Russian Federation (Article 5.1); Federal Law No. 131-FZ (Article 28); Federal Law of July 21, 2014 No. 212-FZ (as amended on December 27, 2018) "On the Basics of Public Control in the Russian Federation" (Article 25).

A certain confusion is observed with the types of appeals of citizens; in practice, questions arise whether it is possible to extend the Federal

Law of May 2, 2006 No. 59-FZ (as amended on December 27, 2018) “On the Procedure for Considering Appeals of Citizens of the Russian Federation” to orders or petitions.

In practice, they do not always understand the difference between gatherings (especially if the number of residents with suffrage exceeds 100 people), meetings and conferences of citizens. The situation is aggravated by the fact that meetings and conferences are not only an element of the local government system, but also a system of territorial public self-government. In addition, recently there have been intensified attempts to disseminate mass stock legislation to meetings.

It is significant that on the website of the CEC of Russia local referenda and voting on changes in the boundaries of the municipality, the transformation of the municipality are taken into account in one column, although they are carried out in different cases on the basis of different laws and have different consequences. A similar approach can be seen in the Ministry of Justice of Russia (for example, in the annual monitoring of the state of local self-government, information on voting on changing the boundaries of the municipality, transformation of the municipality is given in the

same section as local referenda). At the same time this form, as the review of elected officials, is accounted for separately, even though the Federal Law № 131-FZ, and voting to recall elected officials and vote on changing the borders of the municipal formation, transformation of the municipality referred to in the same Section 24.

All this leads to the fact that firstly, the law enforcement agencies are confused in that, what law applied to specific relationships in the consideration of disputes; secondly, in practice there are examples that one form is replaced by another.

4. 2. There is a significant *shift in emphasis in the use of various forms of direct democracy at the municipal level*. The manifestations of this are as follows.

Firstly, at various venues in words a lot is said about the need to increase the involvement of the population; in fact, the ability of local residents to exercise local self-government is significantly reduced.

For example, in 2015, Federal Law No. 131-ФЗ was amended to provide for the possibility of electing the head of the municipality as the representative body of the municipality from among the candidates represented by the competition commission based on the results of the competition. According to the Ministry of Justice of Russia as of March 1, 2018, this method was applied to 6018 chapters (27.8%). The total number of representative bodies formed by delegation has also increased.

Another example is the replacement of such form, as a vote for change in the territorial bases of local government, on the decision of the representative body (the vote of all residents is replaced by the representative body of the decision). This was the case, for example, in relation to parts 3 and 7.2 of Article 13 of Federal Law No. 131-FZ. With the adoption of m law on municipalities, this trend has accelerated.

Another example of this trend is the increase in the number of municipal districts transformed into municipal districts. In this case, two-tier local government is replaced by one-tier one, local self-government bodies in former settlements are abolished (residents automatically

lose the opportunity to participate in municipal elections of their deputies, heads of municipalities). After some time, it comes to the realization that the territory cannot remain "unattended", therefore in the localities (often those territories where the abolished local governments were located, although this is not necessary), territorial public authorities began to be created en masse self-government, the institute of rural elders became very popular. In the spring of 2018, the Federal Law No. 131-FZ even added a new article 27.1, which regulates the features of the appointment of village headmen. In other words, instead of municipal elections to local government bodies, they began to use their substitutes - TOS bodies, village headmen of a completely different nature (for example, Federal Law No. 131-FZ explicitly states that TOS bodies are non-profit organizations). Table 1 provides data on the actual increase in the number of TOSs and rural elders. These examples, of course, speak of an increase in civic activism, on the other hand - for residents this is sometimes a necessary measure in conditions when "the government has left them." In this sense, civil society institutions make up for the temporary vacuum associated with the lack of institutions of power in a particular territory.

Secondly, the involvement of the population is increasingly seen as an additional investment tool. For example, in the passport of the priority project "Formation of a comfortable urban environment" it is expressly stated that the adoption (updating of the existing) new modern improvement rules that comply with federal methodological recommendations and the adoption of municipal improvement programs taking into account the opinions of citizens and territorial public self-government will launch the mechanism of financial and (or) labor participation of citizens and organizations in the implementation of measures beautification.

Currently, there are three known mechanisms for attracting public funds to finance specific projects related to the development of the territory: self-taxation of citizens; initiative budgeting; public finance (crowdfunding) [9-11]. The mentioned mechanisms can act as independent tools for collecting funds necessary for the implementation of a project, or are institutionalized

through programs to support local initiatives and implemented in two areas: 1) within the framework of the World Bank program; 2) in the framework of the federal target program for sustainable development of rural territories [12, p. 115].

*Crowdfunding* (translated from English. - public financing) is a new instrument for attracting investment for Russia [7]. Crowdfunding is a way of collective financing of projects in which money for creating a new product comes from its end users. Crowdfunding gives a chance to closely study and expand the audience, find out its needs and test the idea. Representatives of the municipal community are still looking at this tool, but there are examples of the fact that it is used. For example, funds were raised for the construction of a village club in Maly Turysh (Sverdlovsk Region); for the construction of three bakeries for 15 villages in Red Baki (Nizhny Novgorod region); at traffic lights installation Kirovo-Chepetsk (Kirovskaya region), and others. In these projects, the actually collected funds are 1.1-1.7 times higher than the originally requested.

*Initiative budgeting* is the Russian version of participatory budgeting widely known abroad (from eng. Participate - to participate), citizen participation in budget decisions, which appeared in the late 1980s in Brazil. The most famous practices of proactive budgeting in Russia are: the World Bank Local Initiative Support Program, participatory budgeting (the European University together with the Civil Initiatives Committee), the "People's Budget" and the "People's Initiative" in various regions of the Russian Federation. Distinctive features of this practice are: participation of citizens in the selection of priority projects, in the implementation and monitoring of projects, co-financing not only from the public, but also from business [13, p. 4-8; 14].

Quite in detail, these institutions in the context of Russian and foreign specifics are studied in the monograph by S.M. Mironova, which offers to distinguish between initiative budgeting, participatory budgeting, the national budget, and programs to support local initiatives. Most of them are in their infancy and are not normatively fixed. The most developed of them in practice and used the longest is the program of support for local

initiatives (PPMI), which began to operate in Russia in 2007 with the support of the World Bank [12, p. 22].

The most familiar mechanism for local governments to attract money from the population is *self-imposition of citizens*. According to Article 56 of the Federal Law No. 131-ФЗ, means of self-taxation of citizens are one-time payments of citizens made to address specific issues of local importance. Issues of their introduction and use are resolved at a local referendum or gathering [15; 16]. A feature of self-taxation is that regional, municipal legal acts provide for co-financing of local initiatives. For example, in the Republic of Tatarstan, means of self-taxation of citizens are co-financed from the republican budget in the ratio of 1: 4; in the Kirov region - 1: 1.5; Perm Territory - 1: 5. According to the Ministry of Finance of Russia, in the framework of self-taxation in 2017, 240 million rubles were collected.

The obvious advantage of all three mechanisms is that the residents themselves determine the priorities for the use of financial resources, are more willing to participate in projects that are funded by themselves.

The risks include the following: the population is actually dealing with those issues that local governments should decide. In other words, there is a transfer of responsibility from government to civil society institutions. In a sense, institutions of power are being replaced by institutions of civil society. To prevent this from happening, a strong and capable (in the broadest possible sense) system of local government should correspond to a strong civil society.

This aspect is fairly regularly examined by courts in different contexts. The most widespread are:

- due to the need for a researcher of the activities of the TPS bodies and those decisions that are made regarding the implementation of economic activities in the interests of its residents (for more details, see below);

- making decisions on co-financing projects or programs for gasification of the territory; Citizens believe that the costs that the authorities should bear are passed on to them.

Thirdly, on the activities of public involvement in local government, the adoption of a priority project for the formation of a comfortable urban environment has intensified and discussion about, ***what is the territorial self-government : the institution of authority or civil society***. In the list of RF President's orders by results of meeting I of the Presidential Council of the Russian Federation on development of local self-government, which took place on August 5, 2017 there is a clause stating that the Russian government has submitted a proposal to amend the legislation of the Russian Federation, the changes include the provision of territorial self-government measures support provided for socially oriented non-profit organizations of public service providers. In fulfillment of the order, the Government prepared a number of draft laws. If in the original version of the bill, the Ministry of Justice of Russia tried to identify TPS bodies and socially-oriented NPOs (amendments were proposed to article 27 of Federal Law No. 131-FZ), then later it proposed a separate legal form for territorial public self-government (draft article 123.29 of the Civil Code RF). At an enlarged meeting of the board of the National Association of Territorial Public Self-Government, which took place on July 22, 19, 19, a new version of the CBT bill was proposed, which once again attempts to change the nature of CBT (for example, provides a mechanism for writing an entry / exit application in CBT).

The history of the development of local self-government in Russia shows that territorial public self-government was seen more as a lower level of power than an upper level of civil society. The bodies of territorial public self-government for a rather long period of time were built into or affiliated with the system of authorities. Bodies of territorial public self-government has always regarded as appropriate by representatives of the respective territory, media and spokesmen for the views of all Residential them within it citizens (and not only those who wrote the application for membership in the CBT) - This is the essential difference between territorial self-government from the usual NGO.

4.3. An analysis of law enforcement practice shows the ***emergence of new forms of***

***citizen participation in the implementation of local self-government, which either do not yet have proper legal regulation, or it is fragmented , carried out mainly by-laws.***

The formal legal basis for expanding the forms of participation of the population in local self-government is contained in Article 33 of Federal Law No. 131-FZ. Part 1 of this article states that citizens have the right to participate in the implementation of local self-government in other forms that do not contradict the Constitution of the Russian Federation, federal laws, laws of constituent entities of the Russian Federation. An analysis of law enforcement practice shows that certain restrictions must be introduced in this article, and a ban is set on inventing forms whose use is, for example, the basis for the distribution of funding.

Three key niches can be singled out in which new forms of citizen participation arise most frequently: digitalization; fundraising and proactive budgeting; creating a comfortable living environment and changing public spaces.

An obvious new niche associated with creating new forms of citizen participation is digitalization. The relationship between local authorities and the population is carried out through various portals, crowdfunding platforms, etc. Often the legal regulation of relevant relations is also late and fragmented.

New fundraising mechanisms were discussed above. As part of the creation of new means of distribution tools can be an example, began to appear the court case , which actually examines the camping concept grants to support local initiatives of citizens living in rural areas. The term “grant” at both the conceptual and institutional levels is not sufficiently incorporated into the Russian legal reality.

However, the largest number of new forms is offered through the Ministry of Construction of Russia. For example, a document is posted on the website of the Ministry of Construction of Russia that contains a description of the Target Model for organizing public participation, as well as involving business and citizens in the implementation of urban environment improvement projects. This Target Model, in particular, refers to the participatory design mechanism, which includes mechanisms for

coordination and discussion of projects, design involving residents, local communities, activists, officials, local businesses, investors and experts to determine the goals and objectives of the development of the territory and joint decision making, conflict resolution and improving the effectiveness of the project. The authors of this model offer the following tools: conducting focus groups, working with individual user groups, organizing project seminars, organizing project workshops (workshops), conducting public discussions, conducting design games with adults and children, organizing project workshops with schoolchildren and students, school projects (drawings, essays, wishes, layouts), questionnaires, surveys, interviews, mapping, assessing the operation of the territory. Even a superficial acquaintance with the list of these tools shows that they do not have proper legal regulation.

The term "participatory design" is a tracing-paper from a foreign analogue [18] and is actively used by architects, urbanists. Recommendations on the organization of public participation in the implementation of integrated urban development projects were prepared by N. Snigireva and posted on the website of the Ministry of Construction of Russia in the section of documents with the symbols of the ministry.

Order of the Ministry of Construction of Russia dated 04.06.2017 No. 691 / pr (as amended on 12/21/2017) approved methodological recommendations for the preparation of state programs of the constituent entities of the Russian Federation and municipal programs for the formation of a modern urban environment in the framework of the priority project "Formation of a comfortable urban environment" for 2018 - 2022". this order also feature all of the above forms of public involvement this adds a new form -.. it is a rating vote on the basis of preferential voting shall be taken proe you, who subsequently used in the preparation of applications for funding under the project on a comfortable urban environment.

The rating voting is described in more detail in the letter of the Ministry of Construction and Housing and Communal Services of the Russian Federation dated December 26, 2018 No. 51886-БЯ / 06 "On recommendations on the organization of

rating voting during the implementation of the federal project" Formation of a comfortable urban environment " [39]. With this letter, the Ministry of Construction and Housing and Communal Services of the Russian Federation sends recommendations on certain issues of the organization of rating voting, including with a view to the possible inclusion of the relevant provisions in the regulatory legal acts of the constituent entities of the Russian Federation regulating the procedure for its implementation, recommendations on the preparation of documents necessary for the organization and conducting rating voting, and also requests to ensure the organization of accounting of events for conducting rating of the second vote and the sending by the constituent entities of the Russian Federation to the Ministry of Construction of Russia 2 times a month (on the 15th and 30th day), from January 15 to April 15, 2019, of the corresponding report in the context of the municipalities in whose territory a rating vote will be held , in the attached form. It turns out some kind of "recommended imperative" provided for at the by-law level.

On the portal of the project "Comfortable urban environment and housing and communal complex" in the section of documents having the nature of "methods and explanations", an amazing document is posted - a draft resolution of the head of the municipality" On the procedure for organizing and conducting open voting on public territories of the municipality. In fact, the Russian Ministry of Construction recommends that the heads of municipalities adopt such a municipal legal act.

Currently, this document contains only three pages, although a few months ago, the draft "Order for organizing and conducting an open voting procedure on the public territories of the municipality N , subject to priority beautification in 2018 in accordance with the state the program (subprogram) of the subject of the Russian Federation for 2018 - 2022". This document was a short version of the electoral law, envisaged the creation of public election commissions, a specific voting procedure, including the production of ballots with their subsequent sealing and storage. In order to take part in such a public vote, one had to present a passport, the citizen's personal data was transferred to a special voting sheet. The document,

which the heads proposed to take as the basis of their real decisions, said that citizens of the Russian Federation who have reached the age of 14 years and have a residence in the territory of the municipality are included in the voting list. The aforementioned not only seems to mislead citizens by substituting the usual voting procedure for another, but also bringing the heads of municipalities beyond the authority to reduce the age of legal capacity to 14 years (civil law is the exclusive federal jurisdiction clause “o” of article 71 of the Constitution of the Russian Federation), violation of the law on the protection of personal data. In other words, federal government bodies provide a “bear service” to local governments. The question of who will answer in the case of the prosecutor's office or any other check is a rhetorical one. Unfortunately, there are examples of the fact that the chapters voluntarily / forcibly accept documents based on such recommendations; the adoption of such documents is a condition for the allocation of funding. According to the Union of Right Forces Consultant Plus, documents have been adopted in approximately 300 municipalities stating that citizens aged 14 and over take part in the vote.

It turns out that public authorities, using foreign experience, practically “from the wheels” develop the minimum regulatory framework for creating new tools for involving the population. And the legal consequences are very significant - the allocation of funding, the implementation of activities to improve the territory (including the demolition of facilities, the construction of new ones).

In addition, the creation of a mechanism for direct participation of citizens in the formation of a comfortable urban environment, an increase in the share of citizens participating in solving issues of urban development, up to 30% is one of the target indicators for the implementation of the national project “Housing and Urban Environment”. In this regard, a completely logical question arises: what forms and mechanisms will be taken into account - provided for in the law or introduced by by-laws? Or others?

4.4. For a long time, including during the Soviet period, in Russia the basis of the decision

was the principle of the majority, i.e. the decision was made on the basis of the opinion of the majority or a qualified majority; the minority was subordinate to the majority. Recently, ***it has become urgent to develop new legal structures to identify and take into account the opinion of the minority.***

This problem has become manifested in camping in completely different situations that arise with the development of territories as the territories of comfortable accommodation. These issues are closely related to urban planning, land, environmental legislation, legislation on local self-government. On a small scale this was a known problem in the past (for the construction of the city shopping and entertainment center, large parking on-site is a green zone, possible, necessary, and for the residents of the surrounding area is clearly a major problem and an unpleasant neighborhood. Experts even coined the term “environmental referenda”, with the help of which residents are trying to resolve the issue of banning the construction of certain facilities [19]).

Now the scale has changed significantly, new categories of cases have begun to appear. Existing forms of revealing and taking into account the opinion of the population are oriented towards the majority opinion. For example, urban planning, environmental legislation provides, in some cases, for coordination of projects with local authorities. Given the intensification of the processes of transformation of municipalities into urban districts, the territory of the municipality is becoming quite large. In this case, the opinion of the inhabitants of a particular settlement, a former rural settlement, becomes insignificant and is lost.

On the problem of accounting and minority opinions are closely adjacent one another. With the development of Digitalization, the emergence of new technologies for working with big data, the opinion of experts with special competencies for summarizing and analyzing these big data is becoming increasingly important. In this case, the opposite process takes place - the opinion of the minority (the opinion of a narrow group of highly qualified experts) is actually decisive in making the decision and replaces the opinion of the majority - residents of the corresponding territory.

## REFERENCES

1. Sukhanov E.A. On Private and Public Interests in Development of Corporate Law. *Zhurnal rossiiskogo prava = Journal of Russian Law*, 2013, no. 1, pp. 5–9. (In Russ.).
2. Chirkin V.E. Public and Private Interests of Legal Persons Performing Public Functions. *Zhurnal rossiiskogo prava = Journal of Russian Law*, 2013, no. 1, pp. 9–16. (In Russ.).
3. Shugrina E.S., Petukhov R.V. Territory Management: Search for a Balance of Private and Public Interests. *Munitsipal'noe imushchestvo: pravo, ekonomika, upravlenie = Municipal property: law, economics, management*, 2018, no. 1, pp. 9–16. (In Russ.).
4. Antonov Y.V. E-democracy as a politico-legal mechanism for aligning private and public interests. *Rossiiskaya yustitsiya = Russian Justitia*, 2017, no. 12, pp. 38–41. (In Russ.).
5. Kabanova I.E. The principle of balance of private and public interests in the doctrine and law enforcement practice. *Vlast' Zakona*, 2016, no. 2, pp. 74–84. (In Russ.).
6. Shugrina E.S. Involvement of the population in the implementation of local self-government: substitution of institutions of power or development of civil society, in: Chebotarev G.N. (ed.). *Konstitutsionalizatsiya obshchestvennogo uchastiya grazhdan v upravlenii delami gosudarstva*, proceedings of the International scientific and practical conference, Tyumen, October 19–20, 2018. Tyumen, 2019, pp. 80–91. (In Russ.).
7. Chesnokov A.V. Crowdfunding as a Mechanism of Financing of Projects Important for Local Communities. *Munitsipal'noe imushchestvo: pravo, ekonomika, upravlenie = Municipal property: law, economics, management*, 2018, no. 4, pp. 37–40. (In Russ.).
8. Samodurova E.V. Peculiarities of Application of Direct Local Self-Government Forms at Solution of Urban Development and Land Use Issues. *Munitsipal'noe imushchestvo: pravo, ekonomika, upravlenie = Municipal property: law, economics, management*, 2017, no. 2, pp. 16–20. (In Russ.).
9. Kireeva E.Yu., Nudnenko L.A., Ovchinnikov I.I., Shugrina E.S. Transformation of the constitutional foundations of local self-government in the Russian Federation, in: Batsits I.N. (ed.). *Konstitutsiya 1993 goda: vyzov Rossii i obraz budushchego*. Moscow, RANEP Publ., 2018, pp. 91–99. (In Russ.).
10. Shugrina E.S. Local budgets as a financial basis for exercising of powers of local self-government authorities. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and Municipal Law*, 2018, no. 11, pp. 67–74. (In Russ.).
11. Shugrina E.S. Economic basis of local self-government: legal analysis. *Pravoprименение = Law Enforcement Review*, 2018, vol. 2, no. 3, pp. 89–109. DOI: 10.24147/2542-1514.2018.2(3).89-109. (In Russ.).
12. Mironova S.M. *Participation of citizens in the financial activities of municipalities as a principle of financial law*. Moscow, YurLitinform Publ., 2018. 224 p. (In Russ.).
13. Vagin V.V., Timokhina E.A., Gavrilova N.V., Shapovalova N.A., Fenin A.Yu., Antsyferova I.S. *25 questions about initiative budgeting*. Moscow, T8 Publishing technologies, 2017. 46 p. (In Russ.).
14. Vagin V.V., Gavrilova N.V., Shapovalova N.A. Participatory Budgeting in Russia: Best Practices and Current Trends in Development. *Finansovyi zhurnal = Financial Journal*, 2015, no. 4 (26), pp. 94–103. (In Russ.).
15. Levina V.V. Issues and Specifics of Application of the Citizen's Self-Assessment. *Munitsipal'noe imushchestvo: pravo, ekonomika, upravlenie = Municipal property: law, economics, management*, 2016, no. 3, pp. 20–23. (In Russ.).
16. Rusanov A.A. Self-Taxation Practice in the Perm Region. *Munitsipal'noe imushchestvo: pravo, ekonomika, upravlenie = Municipal property: law, economics, management*, 2017, no. 1, pp. 24–28. (In Russ.).
17. Shugrina E.S., Ivanova K.A. *On the state of territorial public self-government in the Russian Federation, to the 30th anniversary of the first Russian CBT*, Special report. Moscow, Prospekt Publ., 2018. 160 p. (In Russ.).
18. Sanoff H. *Democratic Design: Participation Case Studies in Urban and Small Town Environments*. VDM, 2010. 161 p.
19. Vorob'ev D. Environmental referenda in Russia. *Otechestvennye zapiski*, 2005, no. 6, pp. no. 123–129. (In Russ.).
20. Khabibrakhmanova E. Regional Practices of Citizens' Involvement in Local Self-Government. *Ekonomika i upravlenie = Economics and Management*, 2016, no. 5 (133), pp. 61–68. (In Russ.).

## INFORMATION ABOUT AUTHOR

**Ekaterina S. Shugrina** – Doctor of Law, Professor;

<sup>1</sup> Professor, Department of Constitutional and Municipal Law; <sup>2</sup> leading researcher, Center for local self-government

<sup>1</sup> *Kutafin Moscow State Law University (MSAL)*

<sup>2</sup> *Russian Presidential Academy of National Economy and Public Administration (RANEPA)*

<sup>1</sup> 9, Sadovaya-Kudrinskaya ul., Moscow, 127434, Russia

<sup>2</sup> off. 1602, 82, Vernadskogo pr., Moscow, 119571, Russia

e-mail: eshugrina@yandex.ru

RSCI SPIN-code: 4120-8693

#### **BIBLIOGRAPHIC DESCRIPTION**

Shugrina E.S. Municipal democracy: development trends in the materials of law enforcement practice. *Pravoprimenie = Law Enforcement Review*, 2019, vol. 3, no. 3, pp. 108–124. DOI: 10.24147/2542-1514.2019.3(3).108-124. (In Russ.).