

PROTECTION OF THE ECONOMIC BASIS OF LOCAL SELF-GOVERNMENT IN THE DECISIONS OF THE CONSTITUTIONAL COURT OF RUSSIA

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The subject. The article is devoted to the analysis of decisions of the Constitutional Court of Russia concerning the economic basis of local government in Russia in order to demonstrate the special role of its legal positions in ensuring and protecting the economic foundations of local self-government in the Russian Federation. The subject of the article is legal acts and decisions of the Constitutional Court of Russia devoted to the economic foundations of local self-government in Russian Federation.

The aim of the article is to confirm or disprove the following hypothesis. As it seems from the practice of the Constitutional Court of Russia, the existing system of implementing the regulatory framework of the economic basis of municipalities in Russia is unsatisfactory, while the Constitutional Court of Russia, through the development of its legal positions, smoothes out the negative aspects and sets up legislative and executive authorities to create the necessary conditions for the development of local government and to ensure its economic and organizational independence.

The methodology. The authors apply general scientific methods of comparative, logical and statistical research, as well as analysis of Russian law enforcement and judicial practice in the field of local self-government.

The main results, scope of application. Despite the provisions of the European Charter of Local Government on the right of local governments to possess sufficient own financial resources, the reality shows a very deplorable picture of the formation of the regulatory framework of the economy of municipalities in Russia. The existence of very heterogeneous judicial practice, primarily arbitration, makes the situation worse. In this regard, a special role in protecting the economic foundations of local government is assigned to the Constitutional Court of Russia.

Conclusion. The issues of legal regulation of the economic basis of local government need increased attention of the state and urgently require a deliberate change, primarily in the form of developing a federal state policy, taking into account the practice already developed by the Constitutional Court of Russia. It is the highest federal body of constitutional justice that often acts as the last bastion of protecting the economic potential of local government.

1. Introduction

The amendments to the Constitution of the Russian Federation initiated by the President of the Russian Federation raised the issues of constitutional and legal regulation of both social issues of ensuring human rights and issues of organizing public power [1, p.115]. The proposed amendments to the Constitution raised issues of constitutional-legal regulation of local self-government, in particular the proposed changes in articles 131-133 of the Constitution.

These changes recognized by the constitutional Court of the Russian Federation from 16.03.2020 No. 1-Z corresponding to the bases of the constitutional system of the Russian Federation, in particular in conclusion, given that the alleged change in the Basic law may not be regarded as failing to meet the chapters 1 and 2 of the Constitution and are not contrary to the constitutional nature of local self-government [2, p. 6].

In this study, we would like to focus on the legal regulation and protection of the economic foundations of local self-government, since, in our opinion, they are one of the main guarantees of the existence of a constitutional institution of local self-government in the Russian Federation, designed to most effectively solve issues in the interests of the population living on the relevant territory.

Article 9 of the European Charter of local self-government stipulates that local authorities are entitled, within national economic policy, to adequate financial resources of their own, which they may dispose freely in exercising their powers, while the financial resources of local authorities shall be commensurate with the responsibilities provided for by the Constitution or by law. This provision is also supported by the norms of articles 130 and 132 of the Constitution of the Russian

Federation, which establish the right of local self-government entities to independence of their economic base.

In addition to the Basic law, we can find issues of the economic base of municipalities in other acts of legislation on local self-government, both General and special, but they all have one thing in common: they are aimed at implementing the fundamental principles of municipal power, which by its nature is the power of the local community itself (resolution of the constitutional Court of the Russian Federation of April 2, 2002 No. 7-P, rulings of the constitutional Court of the Russian Federation of April 10, 2002 No. 92-O, of March 6, 2008 No. 214-O-P, etc.).

However, despite the abundance of regulations affecting certain aspects of the economic base of local self-government, the actual practice of the existence of municipal authorities shows the lack of their economic independence and self-sufficiency [3, p.90, 91]. Thus, according to the report of the all-Russian Congress of municipalities "on the state of local self-government, prospects for its development and proposals for improving the organization of local self-government in the Russian Federation in 2018", the total amount of local budget revenues in 2018 amounted to 4245.7 billion rubles. at the same time, 65% (2745.6 billion rubles) of local budget revenues are inter — budget transfers, while only 29% (1231.4 billion rubles) are tax revenues, and 6% (268.7 billion rubles) are non — tax revenues. These figures only confirm the existence of serious problems in the field of ensuring the economic basis of local self-government, which are the result not only of "erroneous" managerial economic decisions [4, p. 33], but also of extremely unstable regulatory practice of local self-government, multiplied by heterogeneous judicial practice. In these circumstances, a heightened burden in securing direct action of the Constitution of the Russian Federation,

assured the very existence of local self-government in Russia brings the Russian constitutional Court, which during its existence irrespective of changes of the Federal legislation on local self-government has repeatedly stood on the side of municipal authorities in the framework of its competence has formed legal positions are mandatory for all legislative, judicial and Executive-administrative authorities [5, p. 20-24].

In this regard, the designation of the named positions of the Supreme body of constitutional control, promote constitutional guarantees of local self-government, seems to be relevant not only for scientific community but also for the population of municipalities, experts, state bodies of power, are obliged to recognize and guarantee local self-government throughout the territory of the Russian Federation [6, p. 59, 60].

2. Methodology

The results of this research were achieved by applying General scientific methods in the framework of comparative, logical and statistical research, as well as by analyzing law enforcement and judicial practice in the field of local government.

When forming conclusions it was used the analysis of scientific literature on the stated problems, develop best practices municipalities in formation of economic base, as well as the experience of the authors gained during the implementation in the local authorities, the implementation of educational activities in the courses of raising qualifications of municipal servants of the Ural, Siberian and far Eastern regions of the Russian Federation.

3. Modern concept of legal regulation of the economic basis of local self-government in Russia

In accordance with article 49 of Federal law No. 131-FZ of 06.10.2003 "on General principles of local self-government organization" (hereinafter referred to as Federal law 131 - FZ), the economic basis of local self-government consists of property owned by municipalities, funds from local budgets, and property rights of municipalities.

The first thing that strikes the eye when evaluating the provisions of this Chapter is the fact that the Federal legislator defines the concept of the economic basis of local self-government in the mentioned article of the law much more broadly than in the previous laws on local self-government of 1991 and 1995 . On the other hand, when determining the content of the economic foundations of local self-government, the legislator no longer connects them directly with the interests of the population of the municipality, as it was previously, but reveals it through the establishment by the same law of a list of issues of local significance, the powers of local self-government bodies and their officials, as well as state powers delegated to the municipality [3, p.89].

Thus, Federal law 131-FZ radically redirected the target economic basis of local self-government from the implementation of the interests of the population to the functions of local self-government to ensure issues of local significance and delegated state powers to local authorities. This, of course, could not but affect the judicial practice of the constitutional Court of the Russian Federation.

4. Municipal property

The Constitution of the Russian Federation defines in its norms that private, state, municipal and other forms of property are recognized and protected in the Russian Federation in the same way (part 2 of article 8). At the same time, based on article 55 (part 3) of the Constitution of the Russian Federation in

conjunction with its articles 8, 34, 35, 130, 132 and 133, not only the right of private property, but also the right of municipalities can be restricted only by Federal law, if this is necessary to protect constitutional values and if such restriction is proportionate (resolution of the constitutional Court of the Russian Federation of November 22, 2000, no.14-P).

Article 50 of Federal law 131-FZ defines the types of municipal property that can be owned by any municipality, regardless of its type. However, it should be noted that the specified list of property is not limited only to the solution of local issues, the exercise of certain state powers, etc., but also allows you to include in the composition of municipal property other property intended for the exercise by local authorities of the powers assigned to them by the legislation of the Russian Federation [7, p. 4, 5]. For example, the provisions of Federal law 131-FZ grant local self-government bodies the right to resolve issues that are not within the competence of other legal entities, but only at the expense of their own municipal budget revenues.

In this regard, it is obvious that article 50 of Federal law 131-FZ cannot be considered as defining a closed list of types of municipal property, which does not allow the presence in municipal property of other property that has the same purpose as the property named in this article.

At the same time, in order to exclude from municipal ownership property that does not correspond to the functions of local self-government, the above-mentioned article of Federal law 131-FZ determines that in cases when municipalities have the right to own property that does not meet the requirements, it is subject to re-profiling (changing the purpose of the property) or alienation. It should be noted that the law enforcement practice of this provision of

Federal law 131-FZ was extremely ambiguous and led to an unprecedented withdrawal of municipal property from the property of municipalities since the early 1990s [8].

Initially, this was facilitated by the adoption by the Federal authorities of Federal law No. 122-FZ of 22 August 2004. This legal act provided that "property in municipal ownership that may be in Federal ownership or the property of subjects of the Russian Federation is subject to gratuitous transfer to Federal ownership or the property of subjects of the Russian Federation in the cases specified by the law". As a result of the application of Federal law No. 122-FZ of August 22, 2004, state authorities very actively seized municipal property for their own benefit on a gratuitous basis, under the pretext that it could not be used in the future by municipal authorities [9, p. 10-19, 20-29, 127-148].

This process was partially suspended, but, unfortunately, it was not terminated until the end, with the adoption of the ruling of the constitutional Court of the Russian Federation dated December 07, 2006 No. 542-O. In particular, the constitutional court of the Russian Federation pointed to the need of the will of the local authority at the disposal of his property by Federal or regional authorities, the obligatory presence of concerted action between local authorities and relevant state authorities of the Russian Federation and subjects of the Russian Federation and non-government authorities independently and unilaterally make decisions about the transfer of municipal property in the property, ignoring the will of the local authorities.

Another blow to the property of municipalities was caused by the adoption of Federal law No. 159-FZ of July 22, 2008. The result of the application of this Law, especially in the initial period of time, was a mass appeal of entrepreneurs to local authorities for the acquisition of leased municipal property. It is

clear that these "claims" were rejected in many cases by the municipal authorities, which led to numerous legal disputes in arbitration courts. Named by the courts when considering disputes were guided primarily by the position of the Supreme arbitration court of the Russian Federation, outlined in the information letter of the Presidium of the Supreme arbitration court of the Russian Federation dated 05.11.2009 No. 134, which now abolished the SAC priority in the disputed relations gave the businessmen renting the municipal property.

As in the previous case, the constitutional Court of the Russian Federation carried out a massive wave of seizure of municipal property, ensuring the protection of the constitutional guarantees of the municipality for the management of its own property, stating in its decision No. 22-P of December 20, 2010 that the provisions of the Federal law of July 22, 2008 No. 159-FZ does not provide for the possibility of compulsory alienation from municipal property of objects that, although leased to small and medium-sized businesses, are necessary for municipalities to resolve issues of local significance and meet the requirements of legislation on the composition of municipal property. However, the already launched flywheel of arbitration proceedings in these cases did not soon accept such a tough position of the Supreme body of constitutional control and stopped the "repressive policy" against the property of local authorities [10, p. 29].

5. Local budgets

One of the most significant problems of local self-government development in Russia is the insufficient level of its financial support, caused by high differentiation in the socio-economic development of the territory [11, p.78-81]. In accordance with article 6 of

the Budget code of the Russian Federation, the local budget refers to the form of formation and expenditure of funds intended for financial support of the tasks and functions of local government.

It is impossible not to recall repeatedly expressed by the Constitutional Court of the Russian Federation the legal position that local budget does not exist in isolation but is an integral part of the financial system of the Russian Federation and in case of insufficiency of own profitable sources at municipalities there is a duty of public authorities to implement in order to balance local budgets of an appropriate budget control, through the use of established budgetary legislation, legal mechanisms (decision of the constitutional Court of the Russian Federation of 17 June 2004 № 12-P; decisions of the constitutional Court of the Russian Federation dated April 12, 2005 No. 142-O, June 13, 2006 No. 194-O, November 2, 2006 No. 540-O and October 10, 2013 No. 1591-O).

Thus, the lack of financial resources of municipal budgets should be eliminated by higher levels of the budget system of the Russian Federation by providing appropriate assistance (inter-budget transfers) to the municipality for the most effective solution of local government issues and delegated state powers [12, p.18]. It appears that this approach is due to the declared in not yet approved the final version of part 3 of Article 133 of the Constitution of the Russian Federation the norm providing for the unity of the local governments and public authorities in a single system of public authorities in the Russian Federation, without prejudice to the provisions of article 12 of the Constitution of the Russian Federation to join the local authorities in the system of bodies of state power. The position of the constitutional Court of the Russian Federation, stated in the opinion of 16.03.2020 No. 1-Z.

The position of the constitutional Court of the Russian Federation, as set out in its decision No. 33-P of July 18, 2018, is very indicative of the obligation of state authorities not only to provide opportunities for the full formation of the local budget, but also to provide direct support for its formation, if necessary. It is expressed in General as follows: "the volume and composition of the budget for a specific financial year should correlate with the powers established by legislation on local self-government. If this does not happen, then equalizing the level of minimum budget security and, ultimately, socio-economic development of municipalities is part of the General state policy aimed at implementing the constitutional principle of the social state (article 7 of the Constitution of the Russian Federation)."

This also corresponds to the provisions of the European Charter of local self-government, which establishes that the protection of financially weaker local self-government bodies requires the introduction of financial equalization procedures or equivalent measures aimed at correcting the consequences of uneven distribution of possible sources of funding, as well as the costs incurred by these bodies (article 9, paragraph 5), as indicated in the decision of the constitutional Court of the Russian Federation No. 16-P of November 11, 2003.

For a long time, in fact, since the adoption of Federal law 131-FZ, the absolute majority of scientists, experts and practitioners in their works and speeches pay attention to the extreme disparity between issues of local significance and sources of formation of local budgets [13; 14; 15]. Moreover, this disparity does not decrease from year to year, which leads to the need for local authorities to apply to higher-level authorities of the budget system for assistance. This, in turn, leads to the fact that

in practice, the formation of local budget funds is carried out by Federal and regional state authorities in the process of fulfilling their constitutional and international obligations to ensure the equalization of the level of minimum budget provision for municipalities in the current conditions of widespread lack or insufficiency of their own funds for municipalities [16; p. 40-42]. Obviously, this in no way helps set by the legislation of the Russian Federation the principle of independence of local government, I must say honestly, in the formation of the municipal budget, it is actually not.

6. Property rights

Property rights in Russian law, as a rule, are understood as subjective rights of a municipality, participants in municipal legal relations, related to the possession, use and disposal of property, as well as those material (property) claims that arise between participants in economic turnover regarding the distribution and exchange of this property [17; p.18-20].

The General rules of ownership, use and disposal of municipal property, which form the basis of property rights of municipalities, are established by article 51 of Federal law 131-FZ, which contains a number of fundamental rules implementing the provisions of part 1 of article 132 of the Constitution of the Russian Federation on the independence of local self-government bodies in the management of municipal property. In particular, local self-government bodies on behalf of a municipality independently own, use and dispose of municipal property, have the right to transfer it for temporary or permanent use to legal entities, alienate it, and make other transactions with municipal property in accordance with Federal laws. The form of disposal of municipal property may be a concession, which in turn is regulated by

Federal law No. 115 - FZ of 21.07.2005 "on concession agreements" [18, p. 785].

Identifying the constitutional and legal meaning of the provisions of article 51 of Federal law No. 131-FZ, the constitutional Court of the Russian Federation in its ruling of February 25, 2016 No. 405-O noted that the Constitution of the Russian Federation directly refers to the competence of local self-government bodies the powers to exercise independent management of municipal property, while granting local self-government bodies the right to manage municipal property does not mean that the constitutional rights of citizens to exercise local self-government are not disregarded, since local self-government is not carried out by individual citizens or groups of citizens within the meaning of current domestic legislation, and in General, the population of the municipality, both directly in the established forms, and through local governments .

The extension of the principles of inviolability and freedom of property, freedom of contract and equality to local self-government bodies as authorized representatives of owners of municipal property in civil circulation was confirmed by the legal position of the constitutional Court of the Russian Federation, set out in its ruling No. 131-O-o of February 08, 2011. It was noted that when concluding contracts for the sale of municipal property to small and medium-sized businesses, municipalities acting in relations regulated by civil law on an equal basis with other participants in civil turnover (paragraph 1 of article 124 of the civil code) and therefore local authorities, as representatives of the municipality, as well as other property owners (public, private, etc.), have the right to act their will in their interest, since this right is not limited by legislation.

In completing the analysis of the legal

positions of the constitutional Court of the Russian Federation regarding the regulation of property rights, as one of the important elements of the economic basis of municipalities, we cannot fail to recall the Decision of the constitutional Court of the Russian Federation of December 20, 2010. No. 22-P, in which the Supreme body of constitutional control emphasized that, despite the fact that municipalities as participants in civil turnover do not engage in entrepreneurial activities, the solution of local issues in some cases involves the provision of municipal property to economic entities of a different form of ownership (with the preservation of municipal property rights for the municipal authorities) in order to provide these economic entities with certain services related to the life support of the population. In such situations, the finding of objects of municipal property in the Treasury of the municipal education is a guarantee that regardless of the will of the entity carrying out economic activities, free in deciding about its termination or change on their own at any time, the municipality will lose the property and the further possibility of obtaining the relevant works and services due to the lack of appropriate infrastructure.

7. Conclusions

The current state of the economic foundations of local self-government is assessed by most experts as extremely unsatisfactory [19, 20, 21]. The absolute majority of municipalities are subsidized, that is, they are unable to provide an economic component in solving local issues using their own resources. In such circumstances, Federal and regional authorities are forced to provide all possible assistance in equalizing the budget provision of subsidized municipalities within their budgetary authority. However, this often creates elements of "dependency " and clearly does not encourage local authorities and

communities to improve the efficiency of the municipality's economy.

In addition, the absence in fact of economic independence of local authorities is not only not conducive to the growth of economic potential of the regions and the entire state, but is in apparent contradiction with the provisions of the European Charter of local self-government, the Constitution and leads to the constant need of state power to "keep afloat" local self-government [22, 23, 24]. The negativity of the existing system of implementing the regulatory framework of the economic base of municipalities is also evident in the judicial practice of the constitutional Court of the Russian Federation, which largely smooths out this negative through the development of its legal positions and sets up legislative and Executive authorities to create the necessary conditions for the development of local self-government and strictly ensure its economic and organizational independence. However, it should be recognized that not all decisions of the constitutional Court of the Russian Federation are executed properly and are expressed in the relevant decisions of legislative and Executive bodies [25, p. 10]. In this regard, it is very important that the President of the Russian Federation, as a guarantor of the implementation of the Basic law throughout the territory of the Russian Federation, take effective measures within his powers to ensure the implementation of decisions of the constitutional Court of the Russian Federation in any sphere, and especially in the field of local self-government, since the economic future of the entire state depends on the local authorities closest to the population.

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