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**TYPES OF MUNICIPALITIES IN RUSSIAN FEDERATION:  
THE ANALYSIS OF LEGISLATION AND LAW ENFORCEMENT**

The question of the concept and characteristics of a municipal formation has a very practical embodiment: in disputes about territorial foundations of local self-government, the courts often have to infer the presence or absence of the municipality, to investigate the presence or absence of signs of a municipal formation have a specific territory. The objective is to study the concepts and characteristics of the municipality in the materials of law enforcement, a comparative analysis of different types of municipalities. Methodology. The study used the dialectical, system-structural, functional, comparative-legal and other methods of cognition. The article compares the types of municipalities found in the Federal legislation and the legislation of subjects of the Russian Federation, explores the question of the powers of the constituent entities of the Russian Federation on the establishment of new types of municipal formations. For example, the practice of the constitutional Court, materials of the State Duma emphasized that in providing different types of municipalities, the Federal legislator has quite clearly articulated its desire to establish their differences. Special attention is paid to the analysis of differences in the legal status of municipalities belonging to the same species. Conclusions. Analysis of legal material, law enforcement practice allows the following attributes of municipal formation: territory, permanently or primarily resident population, municipal property and local budgets, bodies of local self-government, the Charter and the system of municipal legal acts, official symbols. When considering the question of the legal status of municipalities stated that the question of equality of different types of municipal formations is not so straightforward. Most of the differences in the legal status of different types of municipalities is established by Federal laws and is driven by the desire to make local government more efficient and municipal services more accessible. In addition to actual differences in the legal status of the municipal formations of different types, there are examples of establishing the differences between the municipalities belonging to the same species. Especially sharply this question arose in 2014-2015, when the subjects of the Russian Federation received the right to establish the order of formation, as well as other issues of organization and activity of local authorities. With reference to the decision of the constitutional Court of the Russian Federation from December 1, 2015 States that it is possible to establish different models, different criteria determine the structure of local governments for different types of municipalities or the specific municipalities. For this to be established concrete and clear criteria; otherwise will mean the restriction of the right to exercise local self-government that contradicts a number of articles of the Constitution.

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To indicate the territorial organization of local self-government in the early 1990s one used the term "municipality", which was disclosed in the Federal Law of August 28, 1995 № 154-FZ "On general principles of local self-government in the Russian Federation" (hereinafter - the Federal

Law № 154 FZ). According to Article 1 of the aforementioned Act, a municipality was designated as urban, rural settlement, several settlements, united by a common territory, part of the settlement, and another populated area, within which local self-government is being realized, as well as which has its municipal property, the local budget and the elected bodies of local self-government. This definition actually used specific features of the municipality.

Thus, the municipality is a populated area, within which:

- Local self-government is carried out;
- There is a municipal property;
- There is a local budget;
- There are elected local authorities.

According to V.I. Fadeev mandatory features of each municipality are [1; from. 301-302]:

- territory with boundaries set by the law of the Federation in accordance with the requirements of the Federal Law "On General Principles of Local Self-Government in the Russian Federation";
- competence, which is defined by statutory local issues and powers of local self-government;
- the economic basis which includes municipal property, local budgets, as well as the property rights of municipalities;
- elected and other bodies of local self-government;
- the charter of the municipality and other municipal legal acts which constitute the system of municipal legal acts of the municipality;
- official symbols reflecting historical, cultural, national and other local traditions and peculiarities.

Sharing the opinion of V.I. Fadeev, we'd like to pay attention to the fact that the abovementioned list doesn't contain the population [2, p. 24-31; 3]. AA Zamotaev pointed on the importance of this feature and drew attention to the fact that the populated territory is the territory with a permanent population, or territory which is in any way used by this population [4, c. 75-76; 5, c. 533-537].

This seemingly theoretical question about the special features of the municipality is very important for practice. In disputes about territorial bases of local government, the courts often have to make a conclusion about the presence or absence of the municipality. This decision requires to find out presence or absence of signs of the municipality in a particular area [6; 7; 8; 9]. The Constitution of the Russian Federation (Part 1 of Article 130, part 1 of Article 131, part 1 of Article 132) indicates on a number of manifestations of independence of local government (the solution of local issues, management of municipal property, the approval of the local budget, establishment of local taxes and fees, the presence of local authorities ) [10]. In legal practice each of these manifestations of independence can be interpreted as a sign of the municipality, the presence or absence of which confirms or denies the existence of a particular municipality [11, c. 66].

DB Sergeev comes to the conclusion that the signs of the municipality according to court decisions are:

- the realization of local self-government by the population directly or through elected bodies;
- availability of municipal property, manufacturing, transport and other infrastructure needed to resolve issues of local significance;
- definition of the boundaries of the municipality in the manner prescribed by law;
- approval and registration of the statute of the municipality and its inclusion in the register of the charters of municipal formations;
- granting the existence of municipal property and local budget;
- determination of the structure and order of formation of local self-government bodies, as well as their names and powers;

the lack of funding from the budget of another municipality; uniform budget and the elected bodies, the registration of residence and property, common infrastructure.

In his opinion, the essential features of the scientific definition of the municipality as a legal phenomenon which distinguishing it from a number of subjects of public law are the greatest proximity to the population in comparison with other public law entities and the fact that the municipality brings the organizational and legal assistance to the local community in the implementation of local self-government [12, c. 488-494]. Sergeev D.B. rightly draws attention to the fact that all public law entities should have similar features, although they reflect their specific character (for example, it is obvious that RF subjects and municipalities are not sovereign).

Thus, specific features of the municipality are territory, permanently or resident population, municipal property and local budget, local government, constitution and system of municipal legal acts, official symbols.

No signs of the municipality are listed in the federal law. In accordance with Article 2 of the Federal Law № 131-FZ municipality is an urban or rural settlement, municipal area, urban area, urban district with intracity division, intercity or intracity district area federal cities. In other words, instead of determining the municipality, the legislator just listed different types of municipalities.

Some legal scholars suppose that it is necessary to allocate a special species such municipalities as science cities, Innovation Center "Skolkovo" and other similar areas. This position seems to be disputable because the territory of science cities and Closed Administrative-Territorial Unit always has a city district status; Innovation Center "Skolkovo" is located on the territory of two municipalities which are different settlements in the Odintsovo district, Moscow region. Therefore, it is more accurate to speak not about a special municipality, but about the features of the organization of local self-government in these territories.

The Federal Law № 131-FZ mentions two territorial levels of local government and introduces 7 types of municipalities. Is this list exhaustive? Can the subjects of the Russian Federation introduce other types of municipalities?

Analysis of laws of subjects of the Russian Federation shows that the vast majority subjects reproduce of types of municipalities contained in the federal law are reproduce the federal list in the regional laws without distortion. However, there are some different examples. Thus, according to Paragraph 2 of Article 1 of the Law of Moscow of 06.11.2002 N 56 (ed. Of 11.18.2015) "On the organization of local government in the city of Moscow," the local government in the city of Moscow is carried out in the inner municipalities - municipal districts, city districts, settlements (hereinafter - the municipalities). In part 2 of Article 2 of the Law of St. Petersburg from 25.07.2005 N 411-68 (ed. On 15.10.2015) "On the territorial system of St. Petersburg" (adopted 30.06.2005 AP SPb) provides that intracity municipalities of Saint-Petersburg (hereinafter - the municipalities) are municipalities, cities and towns (intercity territory of the city of federal significance Saint Petersburg) .

Analysis of the laws of the cities of Moscow and St. Petersburg, charters of municipalities located on the territory of these cities of federal significance, as well of analysis of legal practice show the following facts:

- some municipal districts, urban districts and settlements are regarded as separate kinds of municipalities;
- sometimes the name of the municipality and the kind of municipality are identified; usually the name of the municipality contains a reference to the respective kind of the municipality and his name [13, c. 25-31], for example, rural settlement "Volost NSK"; for comparison, there names of municipalities in the city of Moscow: the Altufievsky municipality, the Arbat municipality;

- urban district, on the one hand, is a separate kind of the municipality in accordance with the Federal Law № 131-FZ, and on the other, it is a kind of intra-municipal entity located in Moscow; the same term is used in different values [14, c. 18-21].

According to Article 6 of the Federal Law № 131-FZ subjects of the Russian Federation have a so-called coherent competence. They can regulate only those issues of organization of local self-government, which are assigned to them by the Federal Law № 131-FZ, or other federal law [15, c. 28-35]. None of the powers of the federal law on the establishment of new types of municipalities or their variants for the public authorities belong to the RF subjects.

The issue of equality of different types of municipalities is not so straightforward and is discussed in the decisions of the Constitutional Court, as well as researched in the materials of the State Duma. Thus, the legal equality of municipalities is discussed in the context of the formation of local authorities, as well as in the context of the financial relationships. According to the Constitutional Court, departing from the principle of legal equality of municipalities where local communities can be put in the position of the only object of government activity is not consistent with their constitutional and legal status, in particular the prohibition of any restriction of the rights of local government (articles 130, 131 and 133 of the Constitution).

However, by providing different types of municipalities, the federal legislator has quite clearly stated his intention to establish their differences. For comparison, the rules of the Federal Law № 154-FZ contained only one form of municipalities.

Analysis of the legislation allows to conclude that the actual differences in the legal status of different types of municipalities. These are the following ones.

1. The Federal Law № 131-FZ actually states a certain relation between of the form of administrative-territorial unit and of the type of municipality. For example, a rural settlement is one or more combined settlements (towns, villages, hamlets and other rural settlements); an urban settlement is town or village.
2. Different principles of territorial organization are provided for different types of municipalities. For example, the transport accessibility criterion applies only to municipal districts.
3. The ability to change the status by converting into another form of the municipality is not available for all types of municipalities. For example, there is no procedure in the transformation of the urban district municipal area and vice versa.
4. Only rural settlements can be abolished or created. With regard to other types of municipalities the term "transformation" should be used.
5. Different lists of issues of local competence are provided for different types of municipalities. The list can be found in the different articles of the federal law: Article 14 of the Federal Law № 131-FZ for urban and rural settlements; Article 15 for municipal districts; Article 16 for urban districts, Article 79 for inner-city areas of federal significance.
6. Mostly municipal districts and urban districts (Article 2 and Part 3 of Article 19 of the Federal Law № 131-FZ) can get delegated of realization of separate state powers.
7. The Federal Law № 131-FZ provides different models of local self-government system, depending on the municipality (article 23, 34-37). There is a the dependence of the type of electoral system on the type of municipality (Article 23). For example, a municipal area provides an indirect procedure for the formation of the representative body.
8. There are significant differences in the field of budgetary relations. For example, the authority of the local administration of the settlement on the formation, execution and (or) control over the implementation of the budget may be fully or partially carried out on a contractual basis by the local administration of the municipal district (Article 52 of the Federal Law "On General Principles of Local Self-Government in the Russian Federation").
9. Articles 61 - 63 of the Budget Code of the Russian Federation provide various sources of income of local budgets, including different size of deductions from federal and regional taxes. Municipal legal act of the representative body of the municipal district can establish the same amounts of deductions to the budgets of settlements from federal taxes and duties.

10. There are differences in the distribution of budget transfers between different types of municipalities. For example, paragraph 5 of Article 137 of the Budget Code provides the possibility of delegation to local government of municipal areas of authority of state authorities of the Russian Federation on the calculation and provision of subsidies to the budgets of settlements at the expense of the budgets of subjects of the Russian Federation.

It is important to emphasize that all the differences and limitations are set by federal laws and motivated by the will of the legislator to make local government more effective, and municipal services more accessible.

According to Article 55 (3) of the Constitution of the Russian Federation the rights and freedoms of a human and citizen can be limited by federal law only to the extent that is necessary in order to protect the constitutional order, morality, health, rights and lawful interests of others, national defense and state security. The differences in the legal status of municipalities established by federal laws and restrictions entailing certain rights of citizens in general correspond to constitutional requirements. Article 55 of the Constitution does not say anything about the constitutionality of restrictions on the rights of the Russian Federation on the basis of the subject of the Russian Federation, even if it is accepted within delegated authorities.

Scholars almost did not research the issue of whether all municipalities have equal status or be equal in the relationship with the subjects of the Russian Federation (by analogy with the subjects of the Russian Federation and the Russian state, Article 5 of the Constitution). However, this problem occurs in legal practice, for example, during consideration of citizens' complaints. In such cases, the law enforcer pays attention only to the fact that the exercise of the constitutional right to local self-government has been realized by the citizens.

The establishment of principles of organization of local self-government is possible by identifying and establishing a balance between the competing constitutional values, the constitutional rights and freedoms [18, c. 41-51]. Thus, by analyzing the ratio of the right to self-determination of the population structure of local authorities and ensuring the defense capability and security of the state, the federal legislator has chosen the only possible model of organization of local self-government in the Closed Administrative-Territorial Unit. The other example: identifying the balance between the right to vote and the right to exercise local self-government, the federal legislator established that the proportional system is applied only if the distribution among the list of candidates shall be not less than 10 seats. This approach corresponds with Article 55 of the Constitution of the Russian Federation: the limitation is set by the federal law in connection with the need to protect certain constitutional values. The Constitutional Court has always stood on guard of it. Thus, considering the possibility of establishing a representative body of the municipal area, both by direct vote of the population, and in another, different from the municipal elections, the order of the Constitutional Court of the Russian Federation drew attention to the fact that the formation of a representative body of the municipal district by delegation is possible if there is the will of the population of the municipality (expressed either directly or through the appropriate representative bodies of the settlements), and in case if the heads of settlements and deputies of representative bodies of settlements acquire their powers on the basis of the will of the population (the order of the Constitutional Court of the Russian Federation of 18 May 2011 Nr. 9-P).

SV Narutto draws attention to the importance of the constitutional balance of interests. Competition between fundamental rights and other constitutional values involves significant competitiveness between different constitutional rights, between the individual constitutional rights and the public interest. A reasonable compromise can be achieved only by sacrificing one right in favor of another. It may not seem to coincide with the position of the Article 17 (3) of the Constitution. However, a legitimate limitation of the right to a full realization of the other right which is more important for the individual and society in this particular situation, does not mean the violation of the right [19, c. 56-64] .

The issue of differences in the legal status of municipalities has been investigated by the Constitutional Court of the Russian Federation in 2015 when considering the "Irkutsk case." This case arose as a reaction to the changes in the legislation of the subjects of the Russian Federation in years 2014-2015.

The laws of the subjects of the Russian Federation actually established significant differences for municipalities of the same kind. For example, in all the municipal areas of the Novgorod region representative bodies have been formed by the delegation, but in some areas - equally, regardless of the size of the settlement population norm of representation, and some - on the basis of the number of population settlement. The heads of all the city districts of Novosibirsk region (except Novosibirsk) were to be elected by the representative bodies of municipalities from among the candidates submitted by the competition commission on the results of the competition and lead the local administration. The mayor of the city of Novosibirsk was to be elected in municipal elections and had to lead the local administration. In Moscow region, Kaluga region, the Trans-Baikal Territory representative bodies of some municipal districts were to be formed only by delegation, and the other ones only in municipal elections. The law of the subject of the Russian Federation contained the list of municipalities with an indication of the model to be applied.

The differences in the legal status of the municipalities belonging to the same kind are also manifested in the level of legal regulation (in similar municipalities the same issues are in some cases governed by the charter of the municipality, and in other cases by the law of the subject of the Russian Federation). The Federal Law № 131-FZ set different status for different types of municipalities. Legal inequality of similar municipalities within the same subject contradicts the Constitution of the Russian Federation RF.

The most surprising fact is that the courts of general jurisdiction have not noticed any violations. Analysis of the court decisions shows quite unexpected interpretation of the Constitution norms, of federal laws, as well as of the laws of the Russian Federation. The following judgments of courts should be marked:

- the difference in the forms of election of heads of similar municipalities can not testify to discrimination, since the inhabitants of certain municipalities do not have the right to participate in local government outside of their place of residence (in a different municipality);
- constitutional right of citizens to exercise local self-government allows the existence of regional differences in the implementation of this right;
- the restriction of constitutional rights to exercise local self-government based on direct regulations of the federal law, which provides for the possibility of empowerment of heads of municipalities through the election of the number of the members of the representative body of the municipality;
- there are no selection criteria for a form of election of the head of the municipality.

The analysis has highlighted a very serious problem. If the federal legislator considers it appropriate, he may establish different models or different criteria for determining the structure of local self-government bodies for the different types of municipalities or for specific municipalities. Unless the federal legislator does, the subjects of the Russian Federation shall have no right to do this and this would mean restriction of the right to exercise local self-government, which is contrary to several articles of the Constitution.

In response to the law-enforcement practice, the Constitutional Court of the Russian Federation in its Resolution of 01.12.2015 N 30-P emphasized the legal equality of municipalities and formulated certain criteria of their differentiation potential. In the opinion of the judge of the Constitutional Court N.S. Bondar the municipalities can be classified for the purposes of:

- a) securing an uncontested model of organization of local government for specific municipal entities;

b) the using of different models of organization of local self-government on the same level of territorial organization.

In accordance with the decision of the Constitutional Court on the "Irkutsk case" subjects of the Russian Federation should develop and fix criteria for the identification of municipalities. Only one way of the formation of a representative body, as well of the election of the head of the municipality, including criteria for defining of the urban settlements should be fixed [20, c. 62-65]. On the basis of Article 80 of the Federal Constitutional Law of 21.07.1994 N 1-FKZ (ed. Of 12.14.2015) "On the Constitutional Court of the Russian Federation," this decision must be executed within 6 months.

According to the amendments to the Federal Law № 131-FZ of December 30, 2015 the law of the subject of the Russian Federation establishes a list of municipal districts and urban districts, in which the examination of municipal regulatory legal acts concerning issues of entrepreneurial and investment activity is mandatory. In this case the law of the subject of the Russian Federation fixes determined criteria for inclusion of municipal districts and urban districts in the above list, reflecting the objective features of the local government in this region of the Russian Federation, including the degree of concentration of the state authorities assigned to municipalities.

The analysis of laws of subjects of the Russian Federation shows that the subjects can not or do not want to formulate the criteria which enable them to enter the uncontested model of local self-government. According to the Russian Ministry of Justice 7 laws of the RF subjects initially corresponded to the decision of the Constitutional Court of the Russian Federation; the laws in 56 regions of Russia are in line with the Court's decision; in 22 regions of Russia this work is in the final stage.

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