

LOCAL SELF-GOVERNMENT IN THE STRUCTURE OF RUSSIAN STATEHOOD: PROBLEMS AND PERSPECTIVES

Olesya L. Kazantseva, Elena V. Kuzina

Altai State University, Barnaul, Russia

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Essay. The subject of this research is to provide an elaborate analysis of current municipal reform in the RF and assess its impact on the self-government place, the role and development trends within the system of the Russian statehood. This paper aims either prove or disprove a hypothesis about the impact of adopted legal regulations on local self-government in the RF in view of the amendments to the RF Constitution, and make a contribution to scientific understanding of this issue.

Methodology. The research methodology is built by combining such methods of scientific knowledge as analysis (to study normative legal acts on the research topic), synthesis (to analyse theoretical sources and make generalizations), comparative legal method (to study and compare legal norms), logical method (to identify the peculiarities of the research object), system-structural approach (to define the role of local self-government in the Russian statehood), the method of legal hermeneutics (to provide an interpretation of legal documents) and the synergistic method which allowed to analyse the system of local government in cooperation with state authorities.

Results. Local self-government shall be recognized as the basis of a democratic regime and present-day Russian statehood. The adoption of the 1993 Constitution resulted in numerous normative acts which regulate the system of local self-government, including The Federal Law of October 6, 2003 No. 131-FZ “On the General Principles of Local Self-Government Organization in the Russian Federation”. However, regular changes to this law regarding local self-government have raised a number of concerns about uncertainty and contradictions in the legal system. Thus, along with positive effects of ongoing reforms, there are some negative trends including current tightening of local self-government officials’ liability

in Russia as well as the increasing gap between the population and local self-government, uncertainty of legal solutions and enforcement practice. Members of the expert community, municipalities and practitioners have high hopes for the new legal framework in the field of local self-government, which is being developed following the amendments to the Constitution of the Russian Federation in 2020. As a result, strengthening and expansion of local self-government powers are expected, which will increase citizens’ involvement in resolving issues of local importance. However, draft law No. 40361-8 on local self-government submitted to the State Duma on December 16, 2021, provides for the liquidation of the settlement level and the reduction in the number of lower-level local self-government bodies. As a result, the gap between the population and local self-government bodies has highly increased. In addition, the draft law strengthened responsibility of the heads of municipalities to the highest officials of the constituent entities of the Russian Federation, which implies more dependence of lower-level authorities on the state.

Conclusion. Legislation is rapidly adjusting to the existing realities rather than establishing a legal basis for local self-government development. In order to restore the essence of local self-government, deformed as a result of systematic changes in the legal basis of local self-government, it is necessary to improve the submitted bill, strengthening local self-government as a factor in the sustainable development of a democratic Russian state.

1. Introduction.

Local self-government is one of the basic elements of a democratic regime, the lower level of public authority which represents specific local public needs and determines how these needs can be met. The population participates in managing local self-government in accordance with the forms and types prescribed in normative legal acts, as well as through local self-government bodies established by municipal charters.

Local self-government powers are regulated by legal acts and its reform is directly related to the state policy. Local self-government is recognized and guaranteed by the state (Article 12 of the Constitution of the Russian Federation¹), and, therefore, is dependent on the general state policy. In the context of the deformation of democratic institutions, including local self-government, the problem of maintaining a balance between power and freedom, state and social principles becomes urgent, especially at the local level.

Present system of local self-government in Russia is considered unstable. The imposition of state power to regulate local self-government is reflected in the ongoing municipal reform, which is aimed at strengthening the role of the state and integrating local self-government into the power vertical. Numerous amendments to the current Federal Law of October 6, 2003 No. 131-FZ "On the General Principles of Local Self-Government Organization in the Russian Federation"² (hereinafter - Federal Law No. 131-FZ) highlighted a deviation from the originally established concept of

local self-government development, as well as inconsistency and unsystematic character of the carried out local government reforms.

At the same time, the development of local governance is the basis for effective public administration in general [1, 2]. In this regard, the research topic is relevant due to permanent changes in the constitutional and legal foundations of local self-government, the need to study the constitutional and legal regulation of local government and its current state, and, finally, the necessity to choose of the best ways of interaction between the state and local government [3]. The conceptual model of modern local government in the Russian Federation should be aimed at strengthening its organizational, economic, territorial and competence independence.

Local self-government in the Russian Federation shall be recognized as the basis of the constitutional system, one of the forms of democracy and shall provide for the independent resolution by the population the issues of local importance. Local self-government is the most important constitutional value that shall be guaranteed and provided by the state [4]. The works of T.M. Byalkina [5], E.V. Gritsenko [6] are dedicated to permanent reforming of local self-governance, V.I. Vasiliev [7], O.I. Bazhenova [8], K.F. Sheremet [9], A.N. Kostyukov [10], E.S. Shugrina [11], O.A. Ezhukova [12] are concerned with priorities and problems of local self-government legal regulation. The issues of improving efficiency of local self-government [13] and perspectives of self-government development arise much concern [14, 15].

The amendments to the Constitution of the Russian Federation draw attention to public authorities performance [16-19], procedure and forms of interaction between state and local bodies [20 - 23].

Much attention is paid to local self-governance in foreign literature. Thus, the issues of local self-government performance [24], reforming local self-government and improving efficiency of local self-government [25-27] are also considered important.

¹ The Constitution of the Russian Federation (adopted by popular vote on December 12, 1993 with amendments approved in the nationwide vote on July 1, 2020) // Reference legal system "ConsultantPlus" URL: http://www.consultant.ru/document/cons_doc_LAW_28399/ (accessed: 09.03.2022).

² Federal Law of October 6, 2003 No. 131-FZ "On the General Principles of Local Self-Government Organization in the Russian Federation" (with changes and additions) // Reference legal system "ConsultantPlus" URL: http://www.consultant.ru/document/cons_doc_LAW_44571/ (accessed: 09.03.2022).

2. Constitutional and legal regulation of local self-government in Russia.

Initially, the RF Constitution recognized local self-government as one of the forms of people's participation in the management of local issues, thus, the citizens had a right to participate in managerial decision-making, which increased their involvement in resolving issues of local importance. Articles 3, 12 of the RF Constitution establish independence of local self-government within the limits of its powers and organizational isolation of local self-government from the system of public authorities. These are fundamental principles of local self-government performance and building ties between state and local authorities, which meant non-interference of the state in the activities of local self-government bodies and ensured some guarantee and protection from pressure from state authorities.

Municipal elections are direct expression of population power, and the will of people shall not be changed without the consideration of their opinion [28]. However, the adopted legislation on local self-government with further amendments and additions has led to minimizing this interference through the transfer of powers and financial resources from the federal to the regional level, which put municipalities in a dependent position on the subjects of the Russian Federation and, thus, limited their independence. Thus, in 2007 direct elections of heads of municipalities were abolished, who were previously elected from among the deputies of local representative bodies. In 2008 "city managers" institute was established, in 2009 local deputies were empowered to remove the elected head on the proposal of the governor, in 2014 the regions were granted the right to establish local self-government bodies. Later the competitive appointment of heads of municipalities was introduced, where regional authorities had the right to form 50% of the competition commission. Such transformations do not contribute to the implementation of local self-governance foundations as prescribed by the Constitution of RF.

The state strengthened its position by moving towards centralization but weakening the foundations of local self-government. Local self-

government interposed between the constitutional ideal and its ghostly reality. It seems that the constitutional provisions on independent local self-government are only a distant goal that cannot be achieved in the near future for a number of reasons.

The state, providing legal regulation of local self-government, pursues a policy of balance of two powers: state and local self-government. Meanwhile, one power can significantly outweigh the other. The reason for this imbalance is that the state policy in the field of local self-governance faces a lack of confidence in local authorities. If the position of local self-government is strengthened and its autonomy is increased, will it be able to become a real support to the state and will it not pose a threat to the state security? The question is quite acute, since local self-government can become a bulwark of the Russian statehood only if the population really needs it and is interested in it. In the meantime, the gap between the population and local self-government is increasing. Consequently, the population feels being isolated, and, as a result, becomes passive and unmotivated.

Accordingly, the state should continue to serve democratic goals and not to abandon them, and not to oppose local self-government to the state power. These are two levels of public authorities which should solve the tasks and functions assigned to them and ensured by the law. In this regard, the distance between the state and local self-government will allow them to exercise their powers more efficiently. The interaction between the state and local self-government should be based on the main principles of constitutional and legal foundation of local self-government, which provides for the self-organization and autonomy of the latter. It is necessary to take into account the essential nature of local self-government, which is the most important foundation of the constitutional system, and, therefore, must have independence, which prevents is "nationalization". Meanwhile, the independence of local self-government should be reflected in the ability of local self-government to resolve issues of local importance on its own responsibility and with the consideration of population opinion of the municipality.

3. The Draft Federal Law "On the General Principles of Organization of Local Self-Government"

in a Unified System of Public Power".

The adoption of amendments to the Russian Constitution in 2020 sparked heated debates about the future of local self-government. A number of scholars and practitioners have expressed concern about embedding the lower level of public authority into a unified system. The joint implementation of certain state policies by state and local authorities, the weakening of economic and organizational framework of the local self-government can lead to its complete emasculation. An attempt to link two levels of government with different purposes and scope does not exclude the possibility of integration of municipalities into a single Power Vertical.

The 2020 amendments to the Constitution of the Russian Federation vested public authorities with the right to participate in the formation of local self-government bodies, the appointment and dismissal of local government officials in accordance with the federal law. Excessive interference and control of the state over local self-government bodies was criticized earlier by a number of scholars [29 - 31]. However, the constitutional changes were approved by the Decision of the Constitutional Court of the Russian Federation and came into force.

Integration of local self-government bodies into the unified system of public authority indicates their common origin and interchangeability. However, this is unlawful since local self-government has been established throughout the territory of the Russian Federation, and Article 12 of the Constitution of the Russian Federation prohibits any refusal to exercise it. Local and state bodies are organizationally separated from each other.

In order to organize the work of both levels of public authority, it is necessary to coordinate their activities [32]. The coordination was based on the organizational unity of public and local power, but within the limits stipulated by Article 12 of the Constitution of the Russian Federation. However, some new possibilities for the state interference in local self-government policy give rise to doubts about its stability and independence.

On the one hand, strengthening the interaction of state power and local self-

government at the constitutional level can promote joint initiatives and support local self-government. On the other hand, there is no clear understanding of the terms used in the Constitution of the Russian Federation (public power, public authority, a unified system of public power), which can be the reason of their free interpretation in adopting federal laws to enforce the provisions of the Constitution of the Russian Federation.

Adoption of new legal framework for local self-government can be considered the next stage of its reform. Thus, public and local authorities should cooperate more closely and efficiently to meet the needs of the population. The duty of local governments is to create conditions for the enforcement of the state policy and to ensure the involvement of the population in solving local affairs.

However, the Draft Law No. 40361-8 "On the general principles of organization of local self-government in a unified system of public power", which was developed further to new constitutional amendments and submitted to the State Duma³ on December 16, 2021, raised a number of questions.

First of all, we notice the absence of a provision to define the main terms and concepts. The current Federal Law No. 131-FZ contains such a provision. Given the specifics of legal terminology pertaining to local self-government, it is necessary to submit this provision into the Draft Law. The definitions used in the federal legislation are borrowed by the constituent entities of the Russian Federation and municipalities in their law-making activities. Thus, clear definition of these concepts will help to avoid any misinterpretation and ambiguity and, consequently, will facilitate their correct application by public officials and citizens.

Moreover, there is no provision in regard to judicial protection of local self-government despite the fact that local self-government shall be guaranteed by the right to judicial protection. Judicial protection is not only the right of local self-government but also its duty. This provision in the Basic Law on local self-government would increase

³ The Draft Federal Law "On the General Principles of Organization of Local Self-Government in a Unified System of Public Power" // URL: <https://sozd.duma.gov.ru/bill/40361-8>

the importance of judicial protection as its most important guarantee. In this regard, it is relevant to include the provision dealing with the subjects, objects, methods of judicial protection of local self-government into the Draft Law, and not to spread out provisions on judicial protection throughout the text of a normative act.

According to the Draft Law, local self-government is recognized and guaranteed by the Constitution of the Russian Federation and its structure shall be determined by the population independently, while in Federal Law No. 131-FZ local self-government is recognized as the foundation of the constitutional system. From this perspective, the importance of local self-government is minimized in Article No. 1 of the Draft Law and the essence of local self-government can be defined as a government formed by people themselves which is more similar to territorial public self-government than to local self-government as a form of democracy. Thus, the Draft Law defines local self-government as a level of power.

Current municipal consolidation trends, which are mainly driven by economic reasons, are ensured by law. Radical changes in the territorial organization of local self-government are taking place. In particular, local self-government in rural settlements, which truly involves population in shaping their economic and social lives, is abolished and self-governing village bodies are to be liquidated in the transition period by 2028. However, the expected savings in public money in elections to the representative bodies of settlements, reduction of expenses for local government bodies and municipal officials' maintenance will not compensate for the damage to democratic values, including democracy in the form of local self-governance. In addition, the enlargement of municipalities leads to a reduction in social institutions, a shortage of medical infrastructure. This evokes protest and popular dissatisfaction, which was particularly evident during the pandemic. There is no logic, balance and clear criteria for optimizing the territorial organization of local self-government in the context of demographic and territorial changes. Replacing two-level local self-government with a

single-level one will lead to the abolition of local authorities, make it difficult for the population to receive services, increase social tension and strengthen the influence of state power.

Another argument for the abolition of the settlement level is that limited human and organizational resources do not allow efficiently resolve issues of local importance. However, this level of local self-government is the true local self-government, which solves issues of local importance in cooperation with the population. At present local self-government bodies of settlements and other municipalities as well as bodies of state power face staffing problems. It is not only a challenge for settlements but also a problem of federal importance which can't be solved by the abolition of settlement level of local self-government.

At present stage of statehood building there is a strong demand for innovative managers with problem-solving skills to implement solutions fast and efficiently at all levels of public authority. New innovative management can be a consequence of restructuring of educational system with a focus on higher level of self-organization culture, interest in solving professional problems independently and the ability to take responsibility, as well as enhancing the prestige of municipal and public service as a whole. Remuneration of employees should be decent to attract highly qualified specialists, create new leaders in the local self-government system. Decent wages will attract highly qualified specialists, shaping a new range of leaders in the local self-government system.

In the meantime the reality is that the population does not have much experience in management issues. The forms of public participation in local self-government that are already ensured by legislation are not in demand because they are too complex and unmanageable and require special knowledge and take a lot of time (for example, citizens' law-making initiative). The task of the state is to create a legal framework which establishes such forms of participation not only on paper but ensures active participation of the population in the implementation of decisions on issues of local importance; promotes closer cooperation between local authorities and population in order to improve the living standard of

the population of all municipalities, and also makes decision-making of local issues more efficient and provides information and methodological support in the implementation of these forms. Therefore, citizens should change their attitude and actively participate in the management process. They also should exercise the rights that are granted by the state, initiate appeals to local governments, participate in solving local issues, and, as a result, strengthen their role in this area. Otherwise, residents of municipalities will become isolated from management process and remain passive observers.

According to the proposed Draft Law, the governor is vested with the right to directly participate in the appointment of the head of the municipality. Meanwhile, strengthening accountability of municipal leadership to the highest official of the subject of the Russian Federation means the resignation of the heads of the municipalities if they show a systematic failure to achieve key performance indicators of local government, and, moreover, shows the dependence of the head of the municipality on the governor. This increased responsibility refers to the head of municipality of being more accountable to the state than to the population which contradicts to the provision on this elective position and diminishes population rights as a subject of local self-government and as a source of power that cannot directly influence the head of the municipality, including termination of his powers. Issues relating to the population of municipalities (abolished settlements) will be decided on a residual basis, since there will be no direct interest in it.

The major task of the Draft Law is to identify the place of local self-government in the system of public power, to enshrine the principle of unity of public power, which means the application of a single model to the organization of a system of public authorities and local self-government, to determine their legal status (rights, duties etc.), a unified approach to financing state and local bodies. However, the analysis of the Draft Law reveals that state power and local self-government, as levels of power, are in some opposition to each other.

All of the above clearly indicates the growing verticalization and centralization of power where local self-government occupies the lowest level. This kind of "optimization" of local self-government undermines the local government authority. This contradicts the purpose of the Draft Law to strengthen public power, which is people's power, and one of the forms of exercising public power is local self-government.

The cooperation between public authorities and local self-government should comply with the constitutional model, provided that local self-government keeps its independence. In order to integrate local self-government in the system of public power, it is necessary to define its place and role within it, to divide powers between levels of power, to support financial stability of local self-government, to strengthen the mission of local self-government and its self-sufficiency as the most important condition for the sustainable development of Russian statehood.

4. Conclusion.

A comprehensive study of the constitutional and legal foundations of local self-government in Russia, analysis and correlation of the current legislation on local self-government and the Draft Law No. 40361-8 on local self-government, assessment of the real situation led to the following conclusions. Firstly, the development of the Russian state as a legal and democratic state directly depends on the effective organization of central and local authorities within it. The last 15 years Russia has been searching for some balance between centralization and decentralization, optimal distribution of powers and allocation of financial resources between the levels of public authority as well as identifying some forms and methods of interaction between state authorities and local self-government.

Secondly, the recognition of constitutional and legal guarantees of local self-government independence is not an unconditional protection of local self-government, but the 2020 amendments to the Constitution of the Russian Federation on the unity of public power, close interaction of public power and municipalities to solve problems efficiently and provide compensation for additional costs to local government can significantly impact

the state of affairs in local government. The federal power intervenes into local self-government policy by replacing direct elections of heads of municipalities with a competitive procedure, the expansion of municipalities, the establishment of municipal districts, isolation of local authorities from the population, the increasing complexity of municipal services provision, etc.

Thirdly, the constitutional provisions of Chapter 1 of the RF Constitution on local self-government provide the guidelines that cannot be ignored in adopting normative legal acts of different levels. All over the world, local authorities contribute to the development and improvement of the living standards of the population, which means the state has to grant the independence of local self-government.

Fourthly, the Draft Federal Law No. 40361-8 on local self-government in the system of public power submitted to the State Duma does not reflect the essence and specifics of local self-government, needs significant improvement with the cooperation of general public, ranging from the population to experts in this field. Local government should work in close cooperation with the population in order to meet their needs. It is necessary to improve successfully practiced forms of participation of the population in local self-government matters. As the settlement level is very important for citizens, the boundaries of the territories of municipalities should be proportionate and optimal for solving local problems and fulfilling duties. Strong local power with the support and involvement of the population is a guarantee of reliability and support for state power. Otherwise, such changes may negatively affect the implementation of true local self-government, which will be in unity with state power rather than with the population.

1. Finally, the most important indicator of the efficient policy of the local self-government bodies in modern conditions is the active participation of the population in the adoption and implementation of decisions on issues of local importance. In this respect, the main goal of the municipal reform is to promote closer cooperation between local authorities and population within the legal framework, since

stable and strong local government is a guarantee of the development of a strong state [33].

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INFORMATION ABOUT AUTHORS

Olesya L. Kazantseva – PhD in Law, Associate Professor, Department of Constitutional and International Law

Altai State University

68, Sotsialisticheskii pr., Barnaul, 656049, Russia E-mail: verwaltung@mail.ru

ORCID: 0000-0003-3697-9903

Elena V. Kuzina – PhD in Philology, Associate Professor, Department of Foreign Languages of Economic and Legal Profiles

Altai State University

68, Sotsialisticheskii pr., Barnaul, 656049, Russia E-mail: keepsake27@rambler.ru

ORCID: 0000-0002-5486-2744

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