

INCREASING CIVIL PARTICIPATION IN PUBLIC CONTROL AT THE MUNICIPAL LEVEL

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Received –

2022 April 06

Accepted –

2023 January 10

Available online –

2023 March 20

Keywords

Public control, local self-government, public control subjects

The subject of the research is public control, which is considered to be a modern instrument of citizens' participation in the cases of local self-government. It significantly complements the basic mechanisms of direct democracy at the municipal level, providing the population with the opportunity to evaluate the activities of local authorities.

The purpose of the study is to consider public control from the perspective of its implementation at the municipal level. The key task is to find and justify additional subjects close to this level, revealing new opportunities for a more active response of residents to the shortcomings of the local authorities. The most important in this series is the definition of citizens' role and the public structures they create in the implementation of public control. Another significant task is to develop recommendations for improving the legal regulation of public control at the municipal level.

The methodology. The solution of the set tasks is supposed to be carried out using a number of cognition methods with the analysis as the leading one. It has become determinant in the study of scientific sources and the empirical base. The doctrinal method was used to study the opinions of legal scholars on the issue under discussion. Working with legislation regulating public control was based on a formal and logical method. To formulate the research conclusions the authors used general scientific methods of synthesis and analogy, as well as general-to-specific method.

The main results. The analysis showed that the public chambers (councils) of municipalities created by local governments to exercise public control are to a certain extent dependent on these bodies. We focused on more independent segments of the local community that are not included in the law, but show examples of social activity. The resource of society increases many times if three new subjects at the municipal level are given legislative access to public control: citizens, local public associations, and organized groups of citizens – territorial public self-governments that successfully operate in the local territories of municipalities.

Conclusions. The recommendations presented in the study are the basis for improving domestic legislation on public control and local self-government. Filling in the legislative gaps should have a positive impact on law enforcement practice. The practical nature of the received conclusions and proposals is that they open up new opportunities for the representatives of the local community: (a) to protect their rights and legitimate interests with the help of the tools of public control; (b) to promptly correct mistakes and miscalculations of local authorities. The authors are convinced that the development of democracy on the scale of such a huge state as the Russian Federation should start with a small entity — its entrance hall, street, neighborhood, settlement, and city.

1. Introduction

One of the characteristics of a democratic state is the right of citizens to manage state affairs. This right can be exercised most directly at the local level¹ what demonstrates the value of public activity not only of leaders, politicians, parliamentarians and other public people, but also of every person living in a small town or a rural settlement.

The states shall ensure that everyone under their jurisdiction has the right to participate in the affairs of local government, meaning the right to seek or influence the exercise of powers and duties of local authorities². These words can be understood as proof of the absence or inadequacy of existing measures for the right to participate in the affairs of local self-government [1, p. 271] and as a lack of transparency in the exercise of powers and responsibilities by local authorities [2, p. 25].

Russian legislation provides citizens with ample opportunities to participate in solving local issues through local referendums, citizens' meetings and conferences, law-making initiatives, and other forms of municipal democracy. I.V. Teplyashin considers that public presence is not only necessary, but also is a significant quality of democracy in modern Russia [3, p.3]. In its turn, local self-government as an independent form of democracy, according to A.N. Kostyukov, is aimed at reviving the civil activity of the population, including for the purpose of making publicly significant decisions together. In addition to this thesis, we shall note that citizens have a direct

interest in it, since it is within the framework of municipalities that their daily issues of ensuring quality of life are resolved. Residents know all the features that are present at their microlevel, so we should not be surprised that they are becoming more demanding of the results of the government's work.

After the adoption of the Federal Law «On the Basis of Public Control in the Russian Federation»³ (hereinafter referred to as the Law No. 212-FZ), we can say that the residents of municipalities have acquired legal levers for public control over the activities of local authorities. The institution of public control should be considered as a complement to the basic mechanisms of direct democracy and an extension of civil rights.

This law has caused hot contradictory assessments, especially concerning public control subjects presented in Article 9. When some researchers believe that the greatest value of the adopted law is in the consolidation of the system and the legal status of public control subjects [5, p. 33], others, in contrast, think that the lack of the law is a too narrow circle of public control subjects [6, p. 45] and point to public associations that are unfairly not mentioned in Article 9 [7, p.238]. We have also repeatedly expressed our opinion on the justification of criticism about the absence of such public control subjects as citizens and public associations in the list [8, p. 268-269] and noted the uncertainty of the law in terms of citizens, which does not allow even active citizens to join public control at their own will [9, p. 121; 10, p. 179; 11, p. 91].

We agree with the opinion of R. James and W.F. Hatch that despite the possibility of participation of citizens and public associations in public control, the system of public control is focused on civic chambers and public councils, since only they are the public control subjects according to the law. Therefore, to get the status of official

¹ Council of Europe. 1985. *European Charter of Local Self-Government*. Strasbourg, 10/15/1985, ETS No. 122, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122#:~:text=Treaty%20Office,-Home&text=The%20Charter%20commits%20the%20Parties,where%20practicable%2C%20in%20the%20constitution> (accessed date: 7.12. 2022).

² Council of Europe. 2009. *Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority*. Utrecht: Treaty Office, 11/16/2009, ETS No. 122, <http://coe.int/en/web/conventions/full-list/-/conventions/treaty/207> ((accessed date: 7.12. 2022).

Law Enforcement Review
2023, vol. 7, no. 1, pp. 52–61

³ Federal Law «On the Basis of Public Control in the Russian Federation» of 07/21/2014, No. 212-FZ, <https://legalacts.ru/doc/federalnyi-zakon-ot-21072014-n-212-fz-ob/> (accessed date: 7.12. 2022).

results of public monitoring, the materials of human rights non-profit organizations will have to pass through their filter [12, p. 323-347].

The Law No. 212- FZ now settles only unified public control subjects and does not offer to local self-government the public structures close to the population which could realize their capabilities in this area. The authors consider it an urgent research task to justify additional public control subjects in the field of local self-government, which opens new opportunities for residents' activity.

2. Why do we need additional public control subjects at the municipal level

The new institution of public control for the Russian legal system was of high hopes. A lot of people were excited about its appearance at first and evaluated it as one of the most efficient mechanisms for ensuring transparency of public power [13, p. 32] and as an anti-corruption tool in addition to state control [14, p.38]. According to the position of Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin, the institution of public control is an indicator of public consent and social compromise to ensure social and political stability necessary for further development of society and the state [15, p. 7-8].

However, there are also more conservative estimates. For example, A.A. Minina and O.A. Rizk express fears that public control may be used to fight against the government and become an opposition force [16, p. 662].

S.A. Avakyan managed to form an objective opinion that public control does not basically comply with the hopes that exist in society due to the need to influence the state and the structures of state and municipal power. Sharing this opinion, we would add that in many respects its appearance was caused by the shortcomings of the Law No. 212-FZ, which prevents the widespread implementation of this new democratic institution into life. The analysis of legislative norms from the point of view of their application in municipalities makes to come to such a conclusion.

In the structure of public elements active at the local level there is population, initiative citizens, a large layer of various associations of citizens, which are more sensitive to public problems and act as a barometer of public opinion

and the needs of the population, catching them faster than the authorities. They include public associations of various types: environmental, youth, women's and other organizations which operate on the territory of a settlement, a city or a municipality and are based on local interests.

Voluntary public structures formed by the population to implement their own initiatives at the place of residence are also worth noticing – they are the territorial public self-government.

This practice is also widespread in the foreign countries. E.A. Neznamova notes that since the late 1960s in New York City various public structures have been created with the goal of improving the efficiency of serving neighborhoods and ensuring interaction with the population [18, p. 181]. Hans B.S. Spiegel gives an example of famous so-called Blochorganizations — organizations that joined the residents of one or some streets striving to ensure the cleanliness of the territory, improve courtyards, and maintain public order [19, p. 8-11].

In this context it is necessary to mention a vivid expression of Mirko Pečarič that the local population can serve as a “laboratory of democracy” [1, p. 280].

In the case under study, it would be appropriate to complement this apt expression: “The local community can become a “laboratory of democracy” that generates new public control subjects adapted to the municipal level”. Answering the question why additional public control subjects are needed here, it is necessary to note that people should be able to be personally active in their municipalities and communities, since this ensures their immediate interests are met. In this case increasing access to public control is a necessary condition for new proposals, criticisms, and decisions to encourage local authorities to be more responsive to the diverse local needs and demands of people.

3. The system of active public control subjects and the legal paradoxes

A separate Article 9 of the Law No. 212-FZ is devoted to the public control subjects. First, among them there is the Civic Chamber of the Russian Federation, Civic Chambers of the subjects of the Russian Federation, Civic Chambers (Councils) of municipalities, Public Councils under the federal and

regional executive authorities; second, public inspections and public control groups can be created.

Pointing to the ambiguity of the law on the public control subjects, V.V. Grib concludes that, despite the slight difference in the wording, the groups under study include a different subject composition and are filled with different content. The first group of subjects is assigned «exercising», and the second – «participation in exercising» public control [20, p. 14].

The characteristic feature of the status of civic chambers and public councils at all levels is their affiliation with the bodies whose activities shall be under public control of the above mentioned chambers and councils. V.V. Grib calls such public control subjects dependent because they are created (fully or partly), supported and financed by the state [21, p. 109-110]. According to S.A. Vasilyev, they are state-public formations in their nature [22, p. 160-161]. The same situation persists at the municipal level. There, the civic chambers (councils) are formed either under the head of the municipality or under the administration of the municipality [23, p. 99-100].

Moreover, talking about the public councils, I.V. Teplyashin considers them an important means of constructive dialogue between the state and society and a communicative form of interaction between public structures themselves [3, p. 4].

In the whole, it can be said that the entire official system of numerous public control subjects is represented by participants who are not free from the influence of authorities.

The law executes the legal regulation of citizens' rights in the sphere of public control in a strange way. They are beyond the context of Article 9 and are included in a separate Article 3 "The Right of Citizens to Participate in Exercising the Public Control" In it citizens a) are not called public control subjects; b) may only participate in exercising the public control; c) in fact, have only two forms of participation – as public inspectors and public experts. The understanding of the norm and its correlation with other articles of the Law No. 212-FZ makes it clear the article does not provide for citizen's taking part in public control "personally" on their own initiative; it is related to

the will of third parties, such as the organizer of public inspection and the public expertise.

Probably, the legislator was afraid of unjustified interference, undue influence, or creating obstacles to activities of public authorities, which, according to V.V. Polyansky and I.B. Borisov's vivid expression, may cause "the paralysis of the authorities" [24, p. 16].

In practice, if a citizen as a public inspector or a public expert is involved in public control, then they actually act as subjects of such a control. In this case, there is every reason to include the category "citizens" in the list of subjects established by Article 9 of the Law No. 212-FZ.

The oddities of above mentioned Article 3 do not end there. Despite its name, the article also settled the issues related to the public associations in giving them the right to act as organizers of public monitoring and public discussion. There is not the slightest doubt that according to the above two forms of public control, public associations, which are not officially recognized in the law as public control subjects, are actually public control subjects. The logic suggests that it is necessary to get away from the current ambiguous situation and legalize this status by including public associations in Article 9 of the Law No. 212-FZ, which enshrined the public control subjects. It extended the full range of rights and duties of legitimate public control subjects to such public structures.

4. The potential of the local community to expand the list of public control subjects

Local public associations and citizens received, although unclear, the regulation in the Law No. 212-FZ. Through the amendments proposed above, their status can be significantly strengthened and the local community would receive an additional number of public control subjects. Unlike civic chambers and councils, which often serve only as decorations of legitimacy, they will bring a civic impulse to the public control institution.

However, there are other organized groups in municipalities to promote the needs of their members. Territorial public self-governments have become a notable form of self-organization of citizens at their place of residence. They are created voluntarily by citizens to independently implement their own initiatives on the issues of local

significance and became known after the adoption of the Federal law «On General Principles of Local Self-government in the Russian Federation»⁴ (hereinafter referred to as the Law No. 131-FZ).

Territorial public self-government (hereinafter referred to as TPSG) in its nature is the most flexible and operative form of citizens' self-organization, that is as close as possible to the population [25, p. 51]. Its creation is not dictated from above by local authorities, it is established only on the basis of voluntary initiative of residents.

From such positions it seems appropriate to grant the territorial public self-government represented by its bodies the right to exercise public control over the activities of the municipality that directly affect the interests of the residents of a particular local territory. This is the independent and responsible implementation of their own initiatives on local issues, which serves as the goal of self-organization of citizens at their place of residence.

Law No. 131-FZ names among the main powers of the TPSG bodies the representation of the interests of the population living in the relevant territory; ensuring the execution of decisions taken at residents' meetings and conferences.

In 2020, the Law was supplemented with Article 26.1 on initiative projects, in connection with which the role of TPSG in this area deserves special consideration. The article does not give the concept of a new form of municipal democracy, however, from its content it can be concluded that initiative design presupposes the right of residents of a municipality (or a part of it) to submit an initiative project to local self-government bodies related to the solution of a particular issue of local importance, their further participation in the implementation (financial, property, labor), as well

as in monitoring the progress of implementation.

The legislative novelty significantly supplemented the powers of the TPSG bodies, giving them the right of initiative to introduce such a project and, what is especially relevant in the context of this study, the right to exercise public control over its implementation.

These technologies are directly related to the increase in civic activity, since the object of initiative design are measures for the improvement of residential areas and public spaces [26, p. 34-35], that is the issues close to population, directly affecting the quality, comfort, and arrangement of the habitat.

Assigning the function of public control to the TPSG in this case convinces us of the viability of our proposal to consolidate territorial public self-government in Law No. 212-FZ as an independent subject of public control activities in general. It is obvious that due to the large number of these structures in Russia (about 35,000) and the role that they are assigned in the new conditions, the position of public control in the field of local self-government can be significantly strengthened.

The TPSG as a public control subject has a possibility to involve public inspectors in public inspection and public experts in public expertise from the competent citizens who live in the local territory of public self-government. The selection of candidates for the position of a public inspector or a public expert is significantly simplified. Co-residence and informal interpersonal communications of residents allow them to get to know each other well, get an idea of the educational level, business qualities, qualifications, and legal culture of citizens.

While the question of expanding the list of subjects presented in the Law No. 212-FZ is a democratic one, careful opinions cannot be ignored. A.D. Kerimov notes that public control as one of the forms of participation of citizens in state (municipal) management is one of the most complex types of human activity that requires appropriate knowledge and skills, broad knowledge, and even wisdom [27, p. 25-26]. The same opinion is voiced by E.S. Shugrina, who is concerned by the absence of professionalism and competence among the main principles of public control. For example, citizens, stated their willingness to participate in public

⁴ Federal Law «On General Principles of Local Self-government in the Russian Federation» of 10/06/2003, No. 131-FZ, https://legalacts.ru/doc/131_FZ-ob-obviih-principah-organizacii-mestnogo-samoupravlenija/ (accessed date: 7.12. 2022).

control, shall be accredited at the state, municipal or public level [28, p. 21-22]. G.N. Chebotarev also points out the importance of careful selection of applicants for inclusion in public inspections and public control groups. He proposes to ensure the representation of intelligent citizens who are set up for a constructive dialogue with the authorities and adequately conceive the mistakes and miscalculations of the authorities, due to their education, qualifications, personal qualities, legal and political culture. They should be able to offer definite options for correcting such errors and preventing negative consequences that may arise from decisions made [29, p. 47].

Law No. 212-FZ contains some provisions that guarantee both against the unjustified exercise of public control by its subjects and against the admission of incompetent performers to it. For example, to initiate a public inspection, you need grounds — a complaint, a message in the media, and other reasons. Groundless inspection is not allowed, the mere desire of a citizen or other public control subject for personal reasons to check the work of a body or organization is not enough.

5. Conclusion

According to A.I. Cherkasov, the development of local democracy is more successful in small territories where real participation of population in solving different issues of local life is possible [30, p. 101]. It is affected by the proximity of municipal bodies to the population, as well as the scale of their tasks — providing residents with essential life-supporting municipal services. The population knows directly about the work of municipal bodies, feels their efficient work, sees their shortcomings, and could make a fruitful contribution to improving their efficiency. So public control as a tool for inspecting and evaluating the activities of public authorities is the most important in the area of local self-government.

However, the possibilities of the Law No. 212-FZ, analyzed from the perspective of municipalities, are clearly insufficient, as is the effect of their implementation. Such pessimism is caused by the absence of public control subjects close to the municipal level. Citizens and various civil formations created on their initiative from the

local community have no place in this list.

Fulfilling the public control mission requires an enabling environment, including enabling legislation that establishes precise and clear procedures. The necessity to complement the list of public control subjects in the Law No. 212-FZ by means of local community reserves is justified. The resource of society increases many times if three new subjects at the municipal level are given a legislative access to control measures: citizens, local public associations, and organized groups of citizens — territorial public self-governments that successfully operate in the local territories of municipalities.

The recommendations presented in the study are the basis for improving domestic legislation on public control and local self-government. Filling in the legislative gaps should have a positive impact on law enforcement practice. The practical nature of the received conclusions and proposals is that they open up new opportunities for the representatives of the local community: a) to protect their rights and legitimate interests with the help of the tools of public control; b) to promptly correct mistakes and miscalculations of local authorities. The authors are convinced that the development of democracy on the scale of such a huge state as the Russian Federation should start with a small entity — its entrance hall, street, neighborhood, settlement, and city.

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BIBLIOGRAPHIC DESCRIPTION

Mikheeva T.N., Mikheev D.S. Increasing civil participation in public control at the municipal level. *Pravoprimerenie = Law Enforcement Review*, 2023, vol. 7, no. 1, pp. 52–61. DOI: 10.52468/2542-1514.2023.7(1).52-61. (In Russ.).

