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EVOLUTION OF THE MUNICIPAL LAW IN THE YEARS 2014 -2016

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The subject. This article is devoted the municipal reform 2014 – 2016. The reform of state are: Institute of territorial organization of local self-government, Institute of organizational principles of local self-government, Institute of competency bases of local self-government.

The purpose of this paper is to show that the municipal reform 2014 – 2016 is directed on limiting local self-government and the subordination of local self-government to state authorities of the subjects of Russia.

Methodology. The author uses a dialectical method, a method of analysis and synthesis, a formal legal method, a comparative legal method.

Results, scope. Urban districts with intracity and intercity division areas – two new municipalities have been legally introduced. In science municipal law formed two points of view on the admissibility and feasibility of separating the urban district in the inner city areas. According to the first point of view, the separation of large urban districts in the inner city areas is acceptable and appropriate. According to the second point of view, the separation of large urban districts in the inner city areas is unacceptable and inappropriate. The author adheres to the second point of view, since the introduction of a two-tier model of local government organization would violate the principle of unity of municipal economy, will lead to the rupture of a single urban space on the organizational and financial sustainability areas dependent city district, will lead to a sharp increase in the number of deputies and municipal employees, unnecessary increase financial expenses.

Municipal and regulatory policy in the sphere of organizational principles of local self-government is aimed at the maximum limit of direct elections of the population of the local self-government, which leads to their further alienation from the local authorities (the direct election of saved only 11 urban districts (13%), which are the administrative centers of the subject of the Russian Federation). In addition, the actual subject of the Russian Federation determines the organizational model of local self-government for all the municipalities in its territory. This contradicts the Russian Constitution and the European Charter of Local Self-Government.

Federal Law № 136-FZ of the legislation on local government introduced a completely new institution - the redistribution of powers. In accordance with Part. Article 17 of the Federal Law № 131-FZ of the laws of the Russian Federation subject may be a redistribution of powers between the local authorities and public authorities of the RF subject. The norms of the Constitution there is no reference to the possibility of transmission to public authorities of powers of local governments to address local issues. From the analysis of the norms of the Constitution, the European Charter of Local Self-Government, the legal position of the Constitutional Court is apparent that the public authorities as a general rule is not entitled to decide local issues, to withdraw from the jurisdiction of the powers of local government. Meanwhile, as of March 1, 2017 34 subjects of the Russian Federation adopted laws on the redistribution of powers between the local authorities and public authorities of the Russian Federation.

The results of the study can be applied in the design of the legal regulation of Institute of territorial organization of local self-government; Institute organizational principles of local self-government; Institute of competency bases of local self-government.

Conclusions. Analyzing the latest evolution of municipal law the author comes to the conclusion that the target of the municipal reform 2014 – 2016 proclaimed by the legislator - the restoration of the lost connection between citizens and local self-governments – is clearly

declarative in nature. The real target of the reform is a gradual, but consistent integration of local self-government into the system of public authorities.

Keywords: *municipal reform; Institute of territorial organization of local self-government; Institute organizational principles of local self-government; Institute of competency bases of local self-government; Borough with intracity division; inner city areas; the unity of the urban economy; redistribution of powers; The Constitution of the Russian Federation; European Charter of Local Self-Government.*

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1. Reforming the institute of territorial organization of local self-government.

In the course of the municipal reform of 2014 - 2016 urban districts with intracity and intercity division areas have been legally introduced. In accordance with Part 1 of Art. 2 of the Federal Law No. 131-FZ, an urban district with an intra-urban division is a city district in which, in accordance with the law of a constituent entity of the Russian Federation, intra-urban areas are formed as intra-municipal municipalities. Inner city area is an urban municipality in the territory of the city district with intra-urban division, within which local government is exercised by the population directly and (or) through elected and other bodies of local self-government. Criteria for the division of urban districts with intra-urban division into intra-urban areas are established by the laws of the subject of the Russian Federation and the charter of the urban district with intra-urban division.

There are two points of view on the admissibility and feasibility of division of the urban district into inner city areas.

According to the first point of view, this division is permissible and expedient. Thus, N.L. Peshin points out that "large cities cannot be managed as settlements, their local government bodies should be more closely approximated to the population, and the demographic criterion becomes the main criterion for determining the level at which local government bodies should be formed. The city district must necessarily include a settlement where population is at least 100 thousand people. This settlement should be divided into intra-urban areas, and these areas should have the status of municipalities. Issues of development of citywide infrastructure, engineering networks, etc., should be solved at the district level, which should act as an administrative-territorial unit"[2, p. 52]. According to V.I. Vasilyeva "the creation of district municipalities can bring together local authorities with citizens and increase their participation in the management of the affairs of the city, have a positive impact on the business, unless, of course, will not break the unity of the urban economy. The reservation in Federal Law No. 131-FZ on the need to preserve the city as an integral organism is not accidental. District municipal municipalities have already existed before. Their education was allowed by Federal Law No. 154-FZ. But they were abandoned because of the fragmentation of the urban economy, which has become the result of imbalance in the powers of city and regional authorities" [3, p. 51].

According to the second point of view, the division of large urban districts into intracity districts is unacceptable and inexpedient. V.S. Osnovin emphasized that "... the city acts as a unity of sectoral and territorial infrastructures, which makes the unity of its management of sectoral and territorial lines" [4, p. 75]. A.N. Kostjukov writes that "the transfer of local government on the level

of inner city areas would almost completely dilute Institute of Local Self-Government. The urban community is the basis of local self-government. Of course, people have needs related directly to the territory of their residence in the city. But the interests of citizens are not limited to this. Prospects of development, urban environment, cultural space - all this is formed at the level of the city as a whole, and the urban community should have a decisive voice in the choice of possible alternatives to address these issues. It is no accident the RSFSR Law № 1550-1 contains a whole chapter 9 concerning the basis of city management organizations, the content of which it followed that the city should be managed as a whole "[5, p. 60]. N.S. Bondar and AA Dzhagaryan emphasize that "urban settlements regardless of the breadth of its spatial boundaries are historically established form of territorial self-organization of the population, involving the unity of municipal economy" [6, p. 25]. In the Resolution of the Omsk City Council of September 10, 2014 No. 920 "On Addressing the Working Group on the Implementation of the Federal Law No. 136-FZ in the Omsk Region," deputies of the Omsk City Council asked the working group "to recommend to the Legislative Assembly of the Omsk Region to maintain the existing model of local self-government.

The Constitutional Court of the Russian Federation in its Decree No. 30-P of 01.12.2015 stated the following legal position: "... Taking into account the factors influencing the implementation of local self-government in the urban district ... when federal law No. 136-FZ introduces relevant amendments to Federal Law No. 131 -FZ considered it necessary to separate urban districts as part of municipal formations with intra-urban divisions, as well as intra-urban areas that are part of such urban districts. This isolation is caused by the desire to additionally guarantee to citizens the possibility of direct participation, while preserving the unity of the city economy, in solving the issues of local importance that are most closely connected with their everyday needs and at the same time creating a mechanism for the implementation of public authority at the level of the urban district with intra-urban division that would allow the most complete way to express the citywide interests of it residents".

The declared purpose of these transformations is the approach of local authorities to the population, ensuring the citizen a real opportunity to take part in the management of a city or a village. An analysis of the law enforcement practice of the subjects of the Russian Federation demonstrates that these goals of the reform have not been achieved.

In practice of 67 cities with the intra-urban division two-level model is introduced only in the cities of Chelyabinsk, Samara and Makhachkala. Representative bodies and local administration have been formed in each inner city district of each urban district with an intra-urban division. The total number of deputies of representative bodies of the indicated municipalities: Chelyabinsk - 170 deputies, Samara - 325 deputies, Makhachkala - 124 deputies.

However, "there are no sources of tax revenues to the budgets of intra-urban districts of Chelyabinsk, Samara and Makhachkala. Financial support for their activities is provided through intergovernmental transfers from the budgets of the respective city district. In other words, the system of financing intra-urban areas proposed by the legislator replaces the problem of financial independence (self-sufficiency) of intra-urban areas with the problem of financial security. Whatever the source of revenues to the district budget is, the financial situation of the inner city districts always directly depends on the discretion of the constituent entity of the Federation, the city district, on the nature of the relations that develop between them" [7, p. 60].

In such a situation it is difficult to count on the high significance of the inner city area in the life of the city district as a whole. It turns out that the main goal of the municipal reform, and namely, the approach of local authorities to the population, providing the citizen with a real opportunity to take part in the management of a city or a village has not been achieved, since there

is very little real power in the inner city districts as municipalities. It is necessary to agree with O.I. Bazhenova, who claims that the representative body of the inner city district can only "act as a place of concentration and splash of social discontent" [8, p. 51].

"Economic science has long proved the positive effect of the scale effect (otherwise - agglomeration effect) on economic development. The transfer of local self-government from the city level to the level of intra-urban areas negates the scale effect, which will lead to a slowdown in economic growth" [9, p. 78].

T.M. Byalkina rightly notes that "the creation of independent government bodies in urban areas can be permissible only in very large cities, first of all, capitals of states, and in our legislation it was originally envisaged for cities of federal significance. In the vast majority of other large Russian cities, there is not such a significant diversity of the population and significant differences in their interests and needs in order to build an expensive two-stage municipal power system fraught with conflicts, clashes between the interests of city and regional elites, and disorganization of management in general"[10, p. 62-66].

2. Reforms of the institute of organizational principles of local self-government

Federal Law № 131-FZ (as amended by Federal Law of 27.05.2014, № 136-FZ) maintained three organizational models of local government. According to the first model (the traditional model), head of the municipality is elected in direct elections and heads the local administration. According to the second model, the head of the municipality is elected by the representative body of the municipality and at the same time replaces the position of chairman of the representative body. The head of the local administration in this model shall be appointed on a contract, according to the results of a competition to fill the positions (model "council-manager" or "City Manager"). According to the third model, the head of the municipality is elected in direct elections and headed by a representative body, and the head of the local administration shall be appointed on a contract (the model of "elected mayor and a strong manager").

In our opinion, the main reason for the introduction and cultivation of the organizational model "city manager" in the large cities of the Russian Federation in many respects was available in these towns considerable economic resources, the management of which could provide a political power in the Russian Federation as a whole. Thus, A.N. Kostjukov notes that "the process of implementing the model wore a distinct political overtones" [11, p. 138].

From the analysis of regional practices, it follows that:

Firstly, following the entry into force of the Federal Law of 05.26.2014, № 136-FZ of the Russian Federation, most subjects chose the "city manager" model, according to which the head of the municipality is elected by representative bodies of the municipality.

Secondly, in accordance with the current version of the Federal Law № 131-FZ, the choice of the organizational model of local self-made law of the subject of the Russian Federation and the charter of the municipality from among the models by the Federal Law № 131-FZ. However, the charter of the municipal entity cannot be contrary to the law of the subject of the Russian Federation, and in the event of a conflict to be brought into conformity with the law of the Russian Federation. Thus, in fact the subject of the Russian Federation determines the organizational model of local self-government for all the municipalities in its territory (before the entry into force of the Federal Law of 27.05.2014, № 136-FZ, the definition of the organizational model of local self-government is the responsibility of local authorities).

In addition, such an approach to the choice of organizational models of local government is contrary to the applicable legal positions of the Constitutional Court of the Russian Federation. Thus, the RF Constitutional Court judgment of 15.01.1998 № 3 P- 8 found not matching Articles 12, 130 and 132 of the Constitution of the Russian art. 31 of the Law of the Republic of Komi "On the bodies of executive power in the Republic of Komi", according to which local authorities carry out public administration as bodies of general competence, are included in the system of executive power, and are formed by the Head of the Komi Republic. The Constitutional Court of the Russian Federation noted that "should be abolished the laws of the Republic of Komi, establishes the structure of local authorities, the general scheme of local government, as it contradicts h. 1 tbsp. 131 of the Constitution of the Russian Federation. "

Federal Law № 8-FZ secured two new organizational models of local government. According to the first one the head of the municipality is elected by the representative body of the municipality from its members and is headed by the local administration (the model of "leader-cabinet"). According to another model, the head of the municipality is elected by the representative body from among the candidates submitted by the competition commission on the results of the competition, and is headed by the local administration (the model of "Council-Commission").

Of great importance for the understanding of the logic of the legislative and enforcement of short stories is the analysis of Decisions of the Constitutional Court on 01/12/2015 number 30-P. The Constitutional Court of the Russian Federation stated the following, "... the federal legislator is determined based on the balance of constitutional values and national interests of the most efficient in the specific historical conditions of the legal mechanism to achieve the constitutional objectives, involving all levels of public authority is entitled to the best, in his opinion, at this stage options (methods) of formation of local government ... the legislator the subject of the Russian Federation shall have the right to carry out a secondary, derivative regulation in this area e " .

According to the Constitutional Court of the Russian Federation, direct relations of local authorities with a larger population are demanded in the areas of rural and urban settlements. Article 131 of the Constitution of the Russian Federation allegedly provided wide discretion of local communities at the level of settlements.

The order empowering the head of the municipality and its position in the system of local government is the main criterion for differentiating organizational models of local government.

One of the principles that reinforce the formation of the right to local self-government is ***the principle of election of officials and local government officials***. This principle provides the constitutional right of citizens to elect and to be elected to bodies of local self-government.

According to experts in the field of constitutional and municipal law the principle of election of officials and local government officials at different historical stages was decisive and the traditional, not only for Russia but also for foreign countries with advanced models of organization of municipal authorities.

One of the "founding fathers" of modern Russian municipal law V.I. Fadeev determined by the local government as a "special way of organizing power in the field, which is characterized by such features as independence in solving local issues, election bodies and officials, material and financial independence" [12, p. 23]. AN Kostjukov also highlights the "principle of elected bodies and local government officials including the principles relating to the organizational forms of municipal-legal relations" [13, p. 158; 14, p. 40]. According to V.I. Vasiliev, "the election is the

main feature of the local government, and it is one of the essential guarantees of local self-government" [16, p. 35].

As of March 1, 2017 the direct election of the head of the urban population of the county, takes place only in 11 cities (Abakan, Birobidzhan Novgorod, Voronezh, Yekaterinburg, Kemerovo, the Novosibirsk, Tomsk, Ulan-Ude, South Sakhalinsk, Yakutsk).

According to a number of senior experts, "regardless of the model of local government the head of the municipality is replaced through elections (albeit with a different range of subjects of the election process), and the person elected by the chapter acquires the status of an elected official". This interpretation of the notion of "election" grossly contradicts both the nature of the legal institution, and its legislative definition. In accordance with para. 9 Art. 2 of the Federal Law of 12.06.2002 № 67-FZ "On Basic Guarantees of Electoral Rights and the right to participate in the referendum citizens of the Russian Federation" elections is a form of direct expression of the citizens, and prepared in accordance with the Constitution of the Russian Federation, federal laws, constitutions (charters), laws of the Russian Federation, charters of municipalities in order to create a public authority, local authority or granting official powers". The Constitutional Court in judgment of 22.01.2002, № 2-P also pointed out that "in the Russian Federation elected bodies are formed by free elections on the principle of universal, equal and direct suffrage by secret ballot" .

When accepting the Federal Law Nr. 136-FZ and the Federal Law Nr. 8, the legislator proceeded from the fact that the Constitution enshrines the obligatory presence in the municipality ***only an elected representative body.*** Some local governments also can be formed in a different way depending on local circumstances and to ensure the necessary balance local and national interests.

We cannot agree with this for the following reasons. It municipalities are the closest to the population public law entities, local governments are closest to the public (and in accordance with the Constitution of the Russian Federation shall consist of representatives of the people living on the territory of the municipality), their main task is to address the main issues of local importance including the organization of local life. In this regard, head of the municipality should be elected directly by the population for open and free elections. As shown by Russian and foreign practice, only directly elected head of the population of the municipality receives legitimacy directly from the people elected him to work with the greatest impact, and feels his responsibility to the voters, even when a serious lack of financial resources in the municipality.

3. Reform of the Institute of competency bases of local government

Federal Law № 136-FZ introduced a completely new institution - the redistribution of powers. The term "redistribution" of powers can be understood in a narrow and in a broad sense. In a narrow sense, the redistribution of powers involves the removal of powers from local authorities and their transfer to the state authorities (regional or federal ones). In a broad sense, devolution implies the removal of powers from local authorities and their transfer to the state authorities (regional or federal), and the reverse process is the transfer of the powers of public authorities (federal and of subjects of the RF) to local authorities. The Federal Law № 131-FZ understands the redistribution of powers in the narrow sense as a one-way transfer of powers to local self-government bodies

In fact, the federal legislator abandoned the basic principles underlying the division of powers of public authorities in the sphere of local self-government. In accordance with Article 130 of the Constitution of the Russian Federation local issues are resolved by the population directly or through elected and other bodies of local self-government.

As correctly noted by O.A. Kozhevnikov, "the absence of regulatory consolidation criteria allows the subject of the Russian Federation to take the law of redistribution of authority in itself, not only violates the rights of citizens and of the local authorities on the independent decision of local issues (Articles 12, 32, 131 of the Constitution), but also can give the subject of the Russian Federation excessive autonomy in the use of the federal legislator delegated the right to reallocate the powers of local self-government in their favor"[17, p. 54].

From the analysis of the norms of the Constitution, the European Charter of Local Self-Government, the legal positions of the Constitutional Court it is apparent that the public authorities as a general rule is not entitled to decide local issues and seize powers from the jurisdiction of local governments. Withdrawal of any mandate from the jurisdiction of local self-government may be permitted only in exceptional cases and only in order to improve performance of the authority and improve the situation of the population of the municipality. Such removal can be carried out only by amending the Federal Law № 131-FZ. Another approach poses a potential threat to the gradual replacement of local government to local governance.

The existing legislative model of the distribution of powers of public authorities in the sphere of local government is contrary to the constitutional model, which enshrines the local government level as an independent public authority independent of state power and resistant to it (Article 12 of the Constitution). In addition, the existing legal regulation makes declarative other norms of the Constitution, in particular the provisions of Article 3 of the Constitution, proclaiming the only source of power in the Russian ethnic people exercise their power directly and through bodies of state power and local self-government. As we can see, the legislator is increasingly depriving municipal authority powers in the sphere of local government, gradually reducing its role by building local government in the hierarchy of the government. It seems a valid temporary implementation by public authorities of certain powers of local authorities only in the event of circumstances under Art. 75 of the Federal Law № 131-FZ.

Conclusions.

Analyzing the latest evolution of the Municipal Law, we come to the following: the legislator proclaimed goal of municipal reform - the restoration of lost communication between citizens and the city government - is clearly declarative. The real objective of the reform - a gradual but steady integration of local governments in the system of state authorities. Should listen to the statement AN Kostyukova: "The adoption and implementation of the Federal Law № 136-FZ can not be assessed otherwise than deliberate government policy of humiliation urban districts " [18, S. 64].

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