

## LEVELS (CENTERS) OF PUBLIC AUTHORITY: MODERN INTERPRETATION OF THEORY AND PRACTICE\*\*

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The subject of the study is the legal relations arising from the public authority's organization and its levels' interaction after the constitutional reform of 2020. The organized interaction of the public authority levels determines the effectiveness of this system itself. Nowadays the issue of coordinated interaction between levels (centers) of public authority has become important, especially considering new global challenges in the different spheres. Therefore, the public authority and its levels as well as its organization and interaction become the subject of the legal theory and serve as a catalyst for legal changes, including constitutional one.

The purpose of this paper is to examine the concept of public authority and analyze different approaches to the levels of it in theory and practice, paying the attention to the municipal level and its twofold role.

Methodology. Formal-logical, comparative-legal, analysis methods were used. The interaction of levels of public authority is considered from the point of view of dialogism. This approach allows to establish that the interaction between levels of the public authority can be regarded as full only if they are organizationally isolated and financial and decision-making independent.

Main results. The authors demonstrate the vitality of the theory that predetermined the ongoing changes in the Russian legal system, and examine approaches to the concept of public authority and its levels. It is however apparent that the created system does not include the level of community public authority. Based on the analysis of decisions of the Constitutional Court of the Russian Federation, the evolution of levels of public authority in their interaction with each other is revealed. Besides, certain elements of centralization of public administration are essentially opposed to the principle of subsidiarity, the analysis of which is also presented in the paper since it determines the scope of competence of public legal entities and allows achieving maximum freedom and efficiency of the activities of bodies. At last, the authors give characteristics to the municipal level by two opposing trends: globalization and glocalization.

Conclusions. In Russia the practice of organizing public authority does not fully comply with the principle of subsidiarity as well as the new legal term of the system of public authority does not include all the variety of elements that the constitutional scientists mentioned, including the community public authority. This one along with the municipal authority level assessed as a potential matter for further reforms necessary for the formation of a trust of public authorities and for the population's participation in state affairs.

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## 1. Introduction

The quality of public administration “directly depends on the performance of the functions assigned to the authorities, on the coordinated interaction of various branches and levels of public authority” [1, p. 48]. Ultimately, it is the coordinated interaction of the elements of the public authority system that determines the effectiveness, sustainability of the system itself and public trust in it. Since the issue of coordinated interaction between levels (centers) of public authority has become so important (especially, when public authority is constantly faced with new global challenges of a social, economic and natural character), it becomes the subject of the legal theory.

The interest in this category arose as a result of the constitutional reform of 2020, since it was included in Chapters 3 and 8 of the Constitution. The inclusion of this category in the Constitution is not the Russian constitutional innovation. This category is found, in particular, in the texts of the Constitution of the French Republic and the Constitution of the Republic of Poland. Moreover, in both cases, the mention of public authority is enshrined in the first chapters of the constitution, traditionally called as foundations of the constitutional system. In Russia such reform is regarded as the optimization of public authority. In 2023, the Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin highly appreciated the Constitutional reform from the point of view of the balance of power, noting that today all authorities are in a non-conflict cooperation and unity<sup>1</sup>. However, this cooperation or interaction can be considered full only if each level of the public authority is organizationally isolated, financial and competence independent and possesses necessary resources.

## 2. Public authority: general concepts. Levels of public authority

The concept of “public authority” in the

science of constitutional law is very interesting. It has gone from a scientific, theoretical construct to a legal term and category of current legislation, and formed the basis of the ideology of the new Russian constitutionalism. It should be noted that the terms “public authority” and “bodies of public authorities” have been actively used and continue to be used in the practice of the Constitutional Court of the Russian Federation. And although the phrase “public authority” appears for the first time in the Judgement of the Constitutional Court of the Russian Federation dated July 31, 1995 No. 10-P<sup>2</sup>, the disclosure of the very concept of public authority in the legal positions of the Constitutional Court occurred later. In particular, it took place in the Judgement on the so-called “Udmurt case”<sup>3</sup>. The Constitutional Court comes to the conclusion that public authority can also be municipal: “at the level of a city of district subordination, other urban and rural settlements in the regions, as well as other urban settlements, public authority is exercised through local government and its bodies not included into the system of government bodies.” In

<sup>1</sup> Meeting with judges of the Constitutional Court. <http://www.kremlin.ru/events/president/news/72989> (date of access: 16.12.2023).

<sup>2</sup> Judgement of the Constitutional Court of the Russian Federation dated July 31, 1995 No. 10-P “On the case of verifying the constitutionality of Decree of the President of the Russian Federation of November 30, 1994 No. 2137 “On measures to restore constitutional legality and order on the territory of the Chechen Republic”, Decree of the President of the Russian Federation dated December 9, 1994 No. 2166 “On measures to suppress the activities of illegal armed groups on the territory of the Chechen Republic and in the zone of the Ossetian-Ingush conflict”, Judgement of the Government of the Russian Federation dated December 9, 1994 No. 1360 “On ensuring state security and territorial integrity of the Russian Federation, legality, rights and freedoms of citizens, disarmament of illegal armed groups on the territory of the Chechen Republic and adjacent regions of the North Caucasus”, Decree of the President of the Russian Federation of November 2, 1993 No. 1833 “On the Main provisions of the military doctrine of the Russian Federation.”

<sup>3</sup> Judgement of the Constitutional Court of the Russian Federation dated January 24, 1997 No. 1-P “On the case of verifying the constitutionality of the Law of the Udmurt Republic of April 17, 1996 “On the system of public authorities in the Udmurt Republic.”

its Resolution dated November 2, 2006 No. 540-O<sup>4</sup>, the Constitutional Court more thoroughly revealed the structure of public authority in Russia, outlining three basic levels: “the constitutional characteristics of local self-government as a form of public authority determine the features of its legal personality, comparable to the features of the legal personality of other public entities - the Russian Federation and the constituent entities of the Russian Federation.”

As a scientific category, “public authority” was known long before the constitutional reform of 2020. Kokotov A.N., analyzing the philosophical foundations of social power, points out that one of its types is “mass social power with the participation of large associations of people, i.e. public authority, distinguished by the legitimacy of its origin and the legal nature of its functioning” [2, p. 7]. According to Kokotov A.N., organizational and legal forms of objectification of public authority include direct public authority, i.e. power exercised through institutions of direct democracy, public state authority, public municipal authority, public corporate authority - the power of civil society institutions and their permanent bodies and supranational (international legal) public authority [2, p. 11].

Although Kokotov A.N. considers public authority as something immanent to a large association of people, Chirkin V.E. sees in public authority the property of a territorial public collective, establishes a connection between power and territory and provides us with the following classification of levels: sovereign state authority (as “the most powerful and concentrated expression of public power”, public authority of the subjects of the federation (“not state, but state-like non-sovereign public power” [3, p. 94, 96]), non-state

municipal public authority, community public authority (public authority existing in indigenous communities).

Avakyan S.A. notes that the totality of citizens of the state who have the ability to exercise public authority and exercise it (participate in its implementation) are called “the people” [4, p. 96]. There is a transition from the term “public authority” to the broader and less scientifically specialized concept of “power of the people,” which is understood as the self-organization of the people in order to manage their affairs and use mechanisms to participate in the implementation of power functions, also known as civilizational self-regulation [5, p. 33]. The power of the people in the Russian Federation, according to Avakyan S.A., is exercised in three main forms: state authority, public authority and the authority of local self-government as a mixed community-state authority [6, p. 59, 76]. More conservative approach to the people’s authority as an integral part of the legal order are presented in the works of B.S. Ebzeev [7].

The reform of domestic legislation in the sphere of state power and local self-government and the introduction into legal circulation of the terms “public authority” and “unified system of public authority” confronted the legislator with the need to determine their content. Federal Law No. 394-FZ of December 8, 2020 “On the State Council of the Russian Federation” brought partial clarity, revealing the concept of a unified system of public authority. The legal definition of the system of public authority does not include all the variety of elements that the constitutional scientists mentioned above spoke about. Public corporate authority is absent [8]. On the one hand, this can be considered an omission, which leads to a separation of theoretical knowledge and constitutional legal practice and, as a consequence, to a distortion of the understanding of the essence of public power. Since public authority directly influences the formation of corporate democracy - an extremely important element for the formation of trust between citizens and authorities in the state [9, p. 29].

On the other hand, in the conditions of unification of the constitutional and legal status of the subjects of the Russian Federation and the

<sup>4</sup> Resolution of the Constitutional Court of the Russian Federation dated November 2, 2006 No. 540-O “At the request of the Government of the Samara Region to verify the constitutionality of Article 1, parts 6 and 8 of Article 2 of the Federal Law “On Amendments and Additions to the Federal Law “On General Principles of Organization of Legislative (Representative) and executive bodies of state power of the constituent entities of the Russian Federation” and Article 50 of the Federal Law “On the General Principles of the Organization of Local Self-Government in the Russian Federation”.

erasing of differences between state authority and local self-government, public corporate (community) authority can save a certain degree of autonomy, which leaves hope for building a strong civil society in Russia.

From the perspective of dialogical discourse, the formation of local self-government as an independent element of the system of public authority required, at a certain historical moment, its distancing from the system of state power, which is also confirmed by the analysis of legislation on local self-government from the moment of its formation [10]. The establishment of legal mechanisms that gradually eliminated the independence and organizational isolation of local self-government [11], and the actual transformation of municipal government into a “lower level” of state power, eliminated the distance between these two public-power subsystems. The formal consolidation in the Constitution of the concept of a unified public authority marked a new stage in this transformation, which today, as in the last decade, is controlled by the legislator through legal regulation of the organizational foundations of municipal government [12, p. 71]. The reform of public authority, which legally formalizes the unified status of state authorities and local self-government, gives a new quality to the interaction of these bodies. The nature of the dialogue will ultimately be determined by its intertextual content, and therefore by how the powers of public authorities will be implemented in practice. The expansion of public authorities that are part of the system institutionally [11] or territorially [12] will also play a significant role.

### **3. Theory and practice of implementing the principle of subsidiarity as a principle of public administration**

The powers and approaches to determining the competence of various elements of the public authority system are based on the theory and practice of implementing the principle of subsidiarity. The essence of the principle of subsidiarity is that management measures should be taken by the level of government that can ensure the most effective achievement of the goals

of taking such measures. Initially, the exercise of public powers should be primarily entrusted to the authorities closest to the citizens. The transfer of any function to any other authority must be made taking into account the scope and nature of the particular task and the requirements of efficiency and economy.

Onoprienko L.A. notes: “Subsidiarity as a principle of public administration, according to which management and decision-making should be carried out at the lowest possible level, received its theoretical justification in the social doctrine of the Catholic Church. For Catholics, subsidiarity is a kind of variation of the principle of solidarity, adjusted for the scope of its application [15]. It can be noted that the implementation of the principle of subsidiarity in the system of federal relations (as well as in the implementation of local self-government) is often studied with some mathematical abstraction: researchers identify general patterns, designate the criteria for the applicability of the principle in question, always presuming equal legal and actual status of sublevels of public power. The practice of constitutional and legal dialogue within the system of public authority in Russia (including between state power and local self-government) convinces us, however, of the inequality of levels of public authority and the deep systemic disproportion of their political roles. Vydrin I.V. and Rudenko (Emikh) V.V. noticed: “The subjects of jurisdiction of municipalities of all types are determined exclusively by the federal government... Financial sources filling local budgets are regulated by the state. And there are enough such examples indicating that supposedly uncontrolled local government exists according to rules dictated by the state” [16, p. 84].

If we take as a starting point the statement that subsidiarity is “the principle according to which even the smallest territorial, social and political units can have all the rights they need in order to regulate their own affairs freely and effectively” [17, p. 38], it will lead to the question of what is meant by free and effective regulation of one’s own affairs? How to determine the scope of competence of public legal entities in order to achieve maximum freedom and efficiency of such regulation? The experience of foreign countries offers a system of tests that allows

the principle of subsidiarity to be applied in practice. Pimenova O.I. underlines that the test requires two criteria: the criterion of the sufficiency of the funds and the criterion of best achieving the goal of the proposed action [18, p. 12].

Perhaps, in the practice of implementing the principle, attention should be paid not so much to the readiness of a public legal entity of a lower order to effectively solve a larger volume of public government tasks on its own, but on the readiness of a public legal entity of a higher order to provide these rights (powers) without prejudice to itself.

Besides, the factor of stability of a higher-order entity (for example, a federal state) is still not considered. In this regard, we note that during the formation of a new system of federal relations in Russia the subjects of the Russian Federation found themselves in an unstable position in terms of delimitation of competence and political influence, as well as regional bodies attempted to include local self-government into the system of state power or establish absolute control over it (for example, the Kursk case [19], the Udmurt case [20, pp. 33-34]). Instability of the state also often leads to the organizational municipal authority level's dependence.

To maintain a balance between centralization and subsidiarity in communication between levels of public authority, various means can be used to ensure the mobility of their competence. In Russian reality, such means are the vesting of government bodies or local self-government with certain state powers [21, p. 454 - 461], transferred from another level of government, or redistribution of powers of local governments to state authorities. Despite the fact that the mentioned tools generally provide flexibility to the public authority system, these tools are non-perfect: due to incomplete clarity in the sphere of competence, the level of local government is forced to constantly seek financial resources to solve problems [22].

#### **4. Glocalization and the potential of local self-government**

Global values and guidelines cannot fully dominate in all areas. At the same time, at the local

level there is a desire to preserve traditions, rules in the field of education, family values, culture, language, etc. In this regard, local self-government can become a barrier to general globalization, a place for preserving local interests and traditions, developing glocalization as a phenomenon capable of ensuring different interests.

The role of local self-government in the transformation of modern states should be assessed objectively, taking into account the goals and objectives that stood during the formation of this level of government and in the development of self-organization of citizens at the present time. It must be remembered that in Russia local self-government was declared from above as an initiative of the federal level of government. This approach of establishing a local level of government certainly determines the need to legislatively formalize the organizational isolation of local government bodies and public authorities, vesting them with subjects of jurisdiction (provided that they previously belonged to the sphere of public authorities). It is also important to note that the state must not only provide local self-government with authority, but also create guarantees and conditions [23, p. 241-245] for possible resolution of relevant issues by the population itself through the self-government. Is it possible to strictly separate local government from state power? The answer is obvious. Considering that local self-government is a kind of continuation of state power only at the lowest territorial level, it is fundamentally unacceptable to talk about the separation of local self-government from state authority.

Modern states choose different models of internal organization of local self-government, and, consequently, different options for external interaction with other public authorities. There is no one template. Moreover, different options and organizations and interactions may be used in one state. As G. Stoker wrote, there is no state where the relationship between central and local authorities can be adequately described only from the point of view of any one model, since in different spheres these relationships are of a different nature [24, p. 7]. While allowing for diversity at the local level, it should be recognized that in almost all countries today there is a tendency

towards unification of management at the municipal level.

In search of the most optimal option for the development of local self-government, one should not consider the actual formation of this level of government, the organization of specific bodies in the political system, the delimitation of functions between them, or the formation of democratic institutions as the final goal in the light of national reforms and all global changes. After the denunciation of the European Charter of Local Self-Government, there was no longer any need to talk about the need to comply with European standards. At the same time, today there has come an idea of the need to ensure a high standard of living for citizens, endow local governments with financial and organizational resources to improve the management of municipalities. And this can only be ensured by strengthening interaction between bodies at different levels of public authority.

One should agree with Chebotarev G.N., who insists that the directions for effective interaction between bodies of public authorities should be spelled out in the fundamentals of the state policy of the Russian Federation in the field of development of local self-government and subsequently in the Federal Law "On the General Principles of the Organization of Local Self-Government in the Russian Federation" [25]. It seems that the above-mentioned acts should also include those principles established as international standards.

Modern trends in the development of technology, climate change, the increase in the number of armed conflicts, the emergence of territories unsuitable for quality living, globalization in the economic, political, social spheres, the development of the supranational level, to the detriment of the national interests and needs of individual states, certainly put questions before the public authorities in terms of overcoming all crises. Local government, as the level of public authority, closest to the population, will have to play a significant role in this. The situation is complicated by the emergence of new relations that require their own urgent legal regulation, which often leads to extremely

frequent amendments to existing laws, a large number of by-laws adopted in a simplified procedure without the participation of the population, and consequently, the emergence of contradictions and conflicts in the law.

Recognizing the potential of local self-government, the federal level of public authority is making efforts to develop certain types of territories, areas of joint responsibility with local governments.

Thus, federal public authorities pay great attention to the development of rural areas, where almost a quarter of Russia's population lives (more than 30 million people), new approaches to the socio-economic development of these territories are announced, primarily in the social sphere (health care, culture, education). The state has identified the development of small territories and the provision of modern, comfortable living conditions as a strategic priority for itself. Since 2020, the state program "Comprehensive Development of Rural Territories" has been operating, within the framework of which there is a constant search for the development of a system of state support for rural territories. It is planned to create rural agglomerations. The development of a comfortable urban environment in small towns is in the process, too. To ensure comfortable living conditions for the population of these cities, the federal project "Formation of a Comfortable Urban Environment" was initiated.

In order to support municipal governance following the results of the work of the Council for the Development of Local Self-Government (dated on April 20, 2023) the unified standards for organizing the work of local administrations are elaborated, taking into account the best regional practices for optimizing management processes and the implementation of such standards.

It is proposed to develop ways for the introduction of additional standards for deductions to local budgets from federal and regional taxes and fees. The Ministry of Economy has prepared a concept for introducing an investment standard for municipalities, namely, monitoring will be carried out based on the introduced performance indicators (number of launched and planned projects, volume of investments, etc.).

The procedures for transforming unitary enterprises into joint-stock companies or limited liability companies have been suspended until January 15, 2025. In this regard, the development of municipal-private partnerships and the development of the utility services market is seen as promising.

At the same time, it is recommended to identify a federal executive body authorized to coordinate the development, approval, approval and implementation of measures provided for by long-term plans for the socio-economic development of support settlements and adjacent territories, to establish rules for the development, agreement, approval and monitoring of the implementation of long-term plans for socio-economic development of support settlements and adjacent territories. The same questions were raised somewhat differently at a meeting of the Council for Local Self-Government under the Federation Council of the Federal Assembly (June 06, 2023), where an instruction was given to determine the federal executive body authorized to carry out the functions of developing and implementing state policy and legal regulation in the field of development local government, as well as coordination of activities for state support of municipalities. It is interesting to note that the Federation Council proposes to return to a certain variability and establish the possibility of enshrining in the charter of a municipal formation the right of a representative body of a municipal formation to participate in the formation of the local administration, including in approving or agreeing on the appointment of deputy heads of local administration, heads of sectoral (functional) and territorial bodies of local administration.

Thus, although the constitutional reform of 2020 firmly laid the foundation for the theory in terms of understanding the levels of public authority, the practical part of the implementation of the reform runs up. This brings additions and innovations to Russian legislation and a new vision of a unified system of public authority.

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