

PARTICIPATION OF THE HIGHEST OFFICIAL OF THE CONSTITUENT ENTITY OF THE RUSSIAN FEDERATION IN MUNICIPAL LEGAL RELATIONS

Oleg A. Kozhevnikov^{1,2}, Aleksandr N. Meshcheryakov³

¹ Ural State Law University, Yekaterinburg, Russia

² Ural State University of Economics, Yekaterinburg, Russia

³ Tyumen Advanced Training Institute of the MIA of Russia, Tyumen, Russia

Article info

Received –

2020 June 1

Accepted –

2020 August 20

Available online –

2020 October 01

Keywords

Local self-government, municipal legal relations, constituent entity of the Russian Federation, highest official, public power, development of local self-government, cooperation of authorities, forms of cooperation, participation

The subject of the research is public relations concerning the execution of the powers of the highest official of the constituent entity of the Russian Federation in the sphere of local self-government.

The aim of the research is substantiating the urgent need for legal regulation of the forms of participation of the highest official of the constituent entity of the Russian Federation in municipal legal relations, systematization of these forms and determining the limits of participation of this official in municipal legal relations.

When setting the aim of the research, the authors proceeded from the fact that the independence of local self-government defined in the Constitution of the Russian Federation is not absolute and unlimited. On the contrary, the Constitution of the Russian Federation and current federal legislation provide the possibility of participation of state authorities, including the highest official of the constituent entity of the Russian Federation, in municipal legal relations.

The research methodology includes general scientific methods, as well as some special ones, such as formal logic, structural analysis, structural-functional and interpretative methods, legal analysis, comparative analysis. The authors analyzed legal regulation in Russia and law enforcement practice

The main results of the research. Theoretical and practical approaches to legal substantiation of the necessity of participation of the highest official of the constituent entity of the Russian Federation in municipal legal relations were formulated. The authors systematized the organizational and legal forms of participation of the highest official of the constituent entity of the Russian Federation in municipal legal relations and analyzed their content. This made it possible to substantiate a set of proposals directly or indirectly aimed at improving this model of public relations within the framework of the concept of the unity of public authority enshrined in the Constitution. The main forms of participation of the highest official of the constituent entity of the Russian Federation in municipal legal relations are: promoting the development of local self-government; interaction with local self-government bodies; participation in the formation of local self-government bodies; application (participation in application) of measures of legal responsibility in respect of local self-government bodies and local self-government officials; temporary exercise of certain powers of local self-government bodies.

Conclusions. According to the special legal status of the highest official in the system of state authorities of the constituent entity of the Russian Federation, the combined potential of all organizational and legal forms of his participation in municipal legal relations undoubtedly allows to increase the effectiveness of public authority. Such participation helps to provide additional guarantees for the implementation of governmental programs for the development of local self-government on the territory of the constituent entity of the Russian Federation, to assist local self-government bodies in resolving local issues and vested certain state powers, to ensure strict observance of the law, rights and freedoms of people on the territory of municipalities.

1. Introduction

2020 will certainly be a special year in the history of the Russian state and in particular of Russian constitutionalism. For the first time since 1993, when the original text of the Constitution of the Russian Federation was adopted, large – scale work is being carried out on the initiative of the head of state to amend the basic law of the state. The amendments to the Constitution of the Russian Federation submitted for public discussion caused a mixed reaction both in society and in the scientific community. However, there is no doubt that these events encourage scientists-constitutionalists to evaluate the existing achievements in the implementation of existing constitutional provisions, as well as the prospects for further development of the constitutional amendments submitted by the President of the Russian Federation.

Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of 14 March 2020 № 1-FKZ "On improving the regulation of certain issues of organization and functioning of public authorities" provides for significant adjustments to the provisions of Article 131 and 132 of the Constitution. In particular, the mentioned act proposes to establish a unified system of public power at the constitutional level in the Russian Federation, the subjects of which interact with each other for the most effective solution of tasks in the interests of the population living in the relevant territory, and also proposes to consolidate the right of state authorities to participate in the formation of local self-government bodies, the appointment and dismissal of local self-government officials in the procedure and cases established by Federal law.

The constitutional court of the Russian Federation in its opinion of March 16, 2020

No. 1-Z the above amendments is not recognized as inconsistent with the text of the Constitution, because they do not deny the independence of local government within its powers and does not indicate the occurrence of local self-government in system of public authorities (Articles 12 and 130 of the Constitution of the Russian Federation).

The almost 30-year history of local self-government in Russia has clearly shown that the independence of the lower level of public power does not mean that it is closed from constructive interaction with state authorities and officials. Moreover, due to the establishment in the Russian Federation of an extremely insufficient normative level of the organizational and economic basis of local self-government, sometimes only interaction, and in some cases, provided for by normative acts, the intervention of state authorities in the organization and functioning of local authorities in the territories of municipalities allows you to maintain at least a minimum level of solving local issues, especially in terms of their budget support, as well as to maintain the appropriate level of legality in these territories, fulfilling the requirement of the Constitution of the Russian Federation on the supremacy of human rights and freedoms throughout the Russian Federation.

The current Federal law of October 6, 2003 No. 131-FZ "On General principles of organization of local self-government in the Russian Federation" (hereinafter – the Law on principles of local self-government) delineates the powers of state authorities in the field of local self-government in Articles 5 and 6. This distinction is periodically criticized in the legal literature, since it is obvious that there is a certain inconsistency in the provisions of these Articles. But despite the criticism and perhaps not the most successful design, it generally corresponds to the constitutional and legal

approach of delineating the subjects of jurisdiction and powers, and in comparison with the discussed theory of "subjects of joint jurisdiction of state authorities of the subjects of the Russian Federation and local self-government bodies" seems more viable.

It should be noted that the evaluation of subjects of conducting Federation and its subjects concerning the organization and functioning of local self-government in Russia, the practice of the Federal constitutional justice have repeatedly pointed out objectively necessary preconditions of interaction of public authorities among themselves, in particular of bodies of state power of subjects of Federation with local governments to ensure sustainable and integrated socio-economic development of municipalities within the entire territory of the Russian Federation. This interaction is certainly not limited to ensuring the economic foundations of local self-government. The scope of participation of public authorities in the organization of local self-government on the territory of the subject of the Russian Federation at the present stage is reflected in the legislative regulation of the procedure of formation of local self-government bodies, election of certain officers of local self-government, at the same time, Russian legislation provides for the participation of elected officials of local communities, taking into account their opinions in the procedure for a post of the higher official of the subject of the Russian Federation.

Issues of participation of state authorities in municipal legal relations were directly or indirectly addressed in the works of S. A. Avakyan, A.V. Bezrukov, T. M. Byalkina, A. N. Kostyukov, S. G. Solovyov, E. S. Shugrina, V. A. Shchepachev and many other authors.

In this paper, the authors would like to focus primarily on the regulatory aspects of interaction between the head of a subject of

the Russian Federation and local self-government bodies of municipalities within the borders of the corresponding subject of the Russian Federation. Not to mention the fact that among the bodies of state power of subject of the Russian Federation specialized in the field of local self-government the Law on principles of local self-government the greatest amount of authority in the field of interaction with local authorities gives the highest official of the RF subject. This is predetermined by its special legal status in the system of state authorities of the subject of the Russian Federation, the presence of both a large amount of authority and an increased level of responsibility, which is expressed in the possibility of removing the head of the subject of the Russian Federation from office by the President of the Russian Federation due to loss of trust, for improper performance of duties.

So, the highest official of the subject of the Russian Federation participates in municipal legal relations in various forms. Let's focus on the most important of them.

2. Promoting the development of local self-government

In accordance with part 3 of Article 1 of Federal law No. 184-FZ of October 6, 1999 "on General principles of organization of legislative (representative) and Executive bodies of state power of subjects of the Russian Federation" (hereinafter – the Law on principles of organization of power of subjects), assistance to the development of local self-government is one of the principles of activity of state authorities of a subject of the Russian Federation.

As noted by A. N. Kostyukov, the Federal legislator has transferred the key decisions in the sphere of local self-government bodies of state power of a subject of the Russian Federation, while the centralization of power

subjects of the Russian Federation transferred a significant amount of authority in the sphere of local self-government [1]. Under these conditions, the role and importance of the participation of the highest official of the Russian Federation in the development of local self-government is undoubtedly increasing.

Local self-government in the Russian Federation is not only the level of organization of public power, but also the right of citizens to exercise it. In accordance with Article 72 of the Constitution of the Russian Federation, the Russian Federation and its subjects are jointly responsible for establishing General principles for organizing the system of local self-government bodies, as well as for protecting human and civil rights and freedoms, including the exercise of local self-government. As part of the implementation of these constitutional provisions, the heads of constituent entities of the Russian Federation, within their competence, have the right to participate in promoting the development of local self-government in the territory of the relevant region. First of all, this is implemented through the development, adoption and implementation of various programs for the development of local self-government in the territory of the subject of the Russian Federation. Programs are usually approved by a regulatory legal act of the Supreme Executive body of state power of the subject of the Russian Federation. But since the system of bodies of state power in the constituent entities of the Russian Federation is developing according to a given Law on principles of organization of state power of the subjects of the model in which the highest official of the subject of the Russian Federation directs the Supreme Executive body of state power of subject of the Russian Federation and, as a rule, it is headed, it turns out that initiating the adoption of relevant programmes, it is involved in municipal

matters through the Supreme Executive body of state power of a subject of the Russian Federation, including by signing the appropriate regulatory legal act.

This model is widely used in the Russian regions. For example, the government of the Kaluga region approved the distribution of inter-budget transfers to municipal budgets by a Decree signed by the Governor of the Kaluga region to help achieve and / or encourage the achievement of the best performance indicators of local self-government bodies within the framework of the state program "Economic development in the Kaluga region" for 2019.

Resolution of the government of Khabarovsk territory on December 27, 2013 No. 464-PR "On approval of the state program of the Khabarovsk Krai "promoting the development of local self-government in Khabarovsk region" signed with reference to the combination of the posts "the Governor, the Chairman of the Krai Government".

There are examples when decisions to promote the development of local self-government are issued by an act of the highest official of the subject of the Russian Federation, and the highest Executive body of state power of the subject of the Russian Federation is tasked with ensuring its implementation. For example, the Resolution of the Governor of the Kamchatka territory of July 17, 2009 No. 178 on the allocation of grants to municipalities from the regional budget .

On the one hand, such strict regulation provides a unified and transparent approach to the allocation of funding, on the other – limits the ability of the highest official of the subject of the Russian Federation to support "lagging" municipalities, since the method is strictly associated with high performance.

Supporting the criticism of this methodology and its individual criteria [2], including the thesis that "the results of evaluating the effectiveness of local self-

government bodies should primarily encourage regional and Federal authorities to take measures, including in the field of legal regulation, aimed at ensuring the quality of life of all citizens, regardless of what municipality they live in" [3, p. 67] should be offered in its improvement to provide for the right of subjects of the Russian Federation independently to establish a set of criteria tailored to the needs of development of local self-government on the territory of the RF subject, that would be fair, since the grants are allocated through the budget of the RF subject.

Along with these forms of support, it should be noted that the highest official of the RF subject can promote the development of local self-government on the territory of the subject of the Russian Federation exercising the right of legislative initiative in legislative (representative) body of state power of a subject of the Russian Federation. It also has the right to reject the law of a subject of the Russian Federation submitted for signature. And even if these rules are not widely applied, the very fact of their existence allows the highest official of the subject of the Russian Federation, if necessary, to use them in the interests of local self-government.

3. Interaction with local self-government bodies

The law on principles of organization of power of subjects provides that the highest official of the subject of the Russian Federation can organize interaction of Executive authorities of the subject of the Russian Federation with local self-government bodies (item "d. 1" of part 7 of Article 18). But this is only one of the forms that does not exclude other ways of interaction.

As it was noted earlier, within the framework of the actual construction of a unified system of public power, interaction

with local self-government bodies is carried out to some extent by all branches of state power. Issues related to the organization of interaction between state authorities and local self-government bodies in the science of constitutional law, as well as in the science of municipal law, have been significantly developed.

As S. A. Avakian notes: "The Constitution of the Russian Federation as a whole proceeds from the fact that the vertical division of powers is assumed, including taking into account the presence of such a level of public power as local self-government" [4, p. 10]. Since subordination between these levels of government is excluded, the only way to ensure the unity of public power remains interaction.

According to T. M. Byalkina, the legal basis for interaction between state authorities of the subjects of the Russian Federation and local self-government bodies is part 6 of Article 4 of the European Charter of local self-government [5, p. 109]. The basic principles of such interaction are laid down in the Constitution of the Russian Federation and the Law on the principles of local self-government.

The organization of interaction between local governments and state authorities have repeatedly been the subject of consideration by the constitutional Court, which has consistently maintained that such cooperation is necessary "for the most efficient solutions to common problems that are directly related to local issues in the interests of the community". In the conclusion of March 16, 2020 No. 1-Z the constitutional Court of the Russian Federation noted that it: "has repeatedly pointed out the constitutional basis for the unity of public power in the Russian Federation and the objective need for interaction with local self-government bodies of state authorities of the subject of the Russian Federation, designed to create conditions for ensuring sustainable and integrated socio-economic development within

the entire territory of this subject of the Russian Federation...".

Made in 2020, in the Constitution amendments don't just suggest, but require bodies within a single system to consistently operate and interact (part 2 of Article 80, paragraph "E. 5" Article 83, part 3 of Article 132).

Interaction between state and municipal authorities presupposes an optimal combination of direct and feedback links, which A.V. Bezrukov defines as "subordination and coordination" [6, p. 23-24]. Taking into account the subjects of interaction in these relations, "horizontal" and "vertical" forms are distinguished [7, p. 47-48].

According to E.S. Shugrina its forms include: "granting local self-government bodies separate state-power powers, conclusion of contracts and agreements, creation of coordination and Advisory bodies, joint working groups, implementation of the right of legislative initiative in a representative body of state power of a subject of the Russian Federation, sending proposals and appeals of local self-government bodies to state authorities" [8, p.333-343]. Directly or indirectly, all these forms of interaction with are implemented in the activities of the highest official of the subject of the Russian Federation.

There is also a broader approach to understanding the interaction of state authorities of the subjects of the Russian Federation and local self-government bodies. I. I. Gusenbekov identifies such forms as "coordination and state control of local self-government" [9, p.39]. This position is seen as indisputable, since state control is hardly a form of interaction, while interaction in the form of coordination is not in doubt and is confirmed by practice.

As an example, the participation of the

higher official of the subject of the Russian Federation in the organization of interaction of Executive authorities of constituent entities of the Russian Federation and the municipal authorities to lead the resolution of the Government of Oryol region from February 3, 2020 No. 45 "On establishment of working group on coordination of activity of Executive bodies of state power of special competence of the Oryol region and local authorities of municipalities of the Orel region within the framework of the connection of socially significant objects to the Internet in territory of the Oryol region". Such a working group was created by the Decree of the Governor of the Kemerovo region – Kuzbass dated April 8, 2020 No. 31-PG . A large number of such working groups are being created in the regions of the Russian Federation.

Despite the obvious examples of the presence of the directions involving the higher official of the subject of the Russian Federation, municipal legal relations, the lack of a regulatory framework at the Federal level to determine its special powers and corresponding responsibilities of local governments is seen by the gap in the legal regulation of respective relations, since, in practice, may generate opposition from senior officials of constituent entities of the Russian Federation with the heads of cost-effective municipal entities (such conflicts were in the Sverdlovsk region [10], in the Kamchatka region [11]).

In order to avoid such confrontations in the Law on principles of local self-government should be made the duty of local authorities to participate in meetings held in connection with the implementation of the higher official of the subject of the Russian Federation of powers on the organization of the coordinated functioning and interaction of bodies of Executive power of a subject of the Russian Federation with local governments.

We believe that such a statement of the

issue will not contradict the provisions of the Constitution of the Russian Federation on the independence of local self-government within its powers, since the essence of coordination powers is not to force or dictate the will, but to develop agreed solutions that reflect the interests of the parties involved. Establishing the duty of local self-government bodies to participate in such organizational forms of interaction will strengthen the capacity of both local self-government bodies and regional authorities and increase efficiency.

Special attention should be paid to the contractual way of organizing interaction. In accordance with paragraph "a" of part 7 of Article 18 of the Law on the principles of organization of power of subjects, the highest official represents the subject of the Russian Federation in relations with local self-government bodies, and has the right to sign contracts and agreements.

According To E. V. Lungu: "the Federal law" on General principles of organization of local self-government in the Russian Federation " does not even provide for the possibility of applying the method of self-regulation or contractual method in relations between local self-government bodies and state authorities of the Russian Federation or subjects of the Russian Federation (Articles 5, 6)" [12, p.67].

It is difficult to agree with this statement. Despite the absence in Articles 5 and 6 of the Law on principles of organization of power of subjects of direct reference to the contractual way of regulating relations between state authorities of subjects of the Russian Federation and local self-government bodies, it is a way of interaction and for the purpose of its implementation can be implemented.

A special feature of the contractual method of interaction is the legal equality of the parties, in which the decision is achieved

by agreeing on the will of the parties aimed at achieving common goals.

This is evidenced by law enforcement practice, for example, in the Republic of Mordovia, the law approved 22 agreements between the Republic of Mordovia and municipal districts located on its territory. On the part of the Republic of Mordovia, the agreements were signed by its head, and on the part of municipal districts-by the heads of districts. The government of the Republic of Tuva approved a draft agreement on information interaction between the Government of the Republic of Tuva and local self – government bodies of several municipalities, to be signed by the Head of the Republic of Tuva on the one hand and the heads of the respective municipalities on the other.

Another way of participation of the head of a subject of the Russian Federation in ensuring interaction of Executive authorities of subjects of the Russian Federation with municipal authorities is the interaction of regional authorities with councils of municipalities of subjects of the Russian Federation carried out on the basis of part 1 of Article 66 of the Law on principles of local self-government and relevant laws of subjects of the Russian Federation. In some subjects of the Russian Federation, this form of interaction has found its legislative expression, but in most subjects of the Russian Federation, the content of these laws is typical. They establish the principles of interaction of state authorities of the Russian Federation with the relevant councils of municipalities, the powers of state authorities of the Russian Federation to organize such interaction and its forms.

When implementing this form of interaction, the highest official of a subject of the Russian Federation is usually given the authority to appoint an authorized official to participate in the work of the Council of municipalities and review information about the

activities of the Council of municipalities.

4. Participation in the formation of local self-government bodies

In accordance with the legislation, this form is currently implemented when selecting candidates for election to the position of head of a municipality, conducting a competition for the position of head of the local administration.

In a municipal district, a municipal district, an urban district, an urban district with an inner-city division, or an inner-city municipality of a Federal city, the highest official of a constituent entity of the Russian Federation appoints half of the members of the competition Commission:

a candidate who represents a representative body of a municipality for election as the head of a municipality (clause 2.1 of Article 36 of the Law on the principles of local self-government).

to conduct a competition for the position of head of the local administration (clause 5 of Article 37 of the Law on the principles of local self-government).

It should be noted that the emerging trend of gradual transition from direct elections of heads of municipalities to competitive procedures involving the authorities of the subject of the Russian Federation is quite critically perceived by the scientific community. Law enforcement practice does not contribute to this, in particular, the participation of the head of the Russian Federation in the formation of a competitive Commission for filling positions in municipalities creates a prerequisite for the implementation of the subjective factor of the individual in this issue. So, if in the Leningrad region the Governor proposed to include representatives of the social sphere, veterans' organizations and businesses in the

competition commissions, taking into account the opinion of the population, in the Volgograd region in recent years the Governor promoted only those close to him to the competition commissions, and public opinion was ignored when approving the heads of local administrations. As a result, this led to a fall in the authority of both local and regional authorities [13, p. 47].

The law on amendments to the Constitution of the Russian Federation No. 1-FKZ of 14.03.2020 establishes the powers of state authorities to participate in the formation of local self-government bodies in the updated version of Article 131 of the Constitution of the Russian Federation. Despite the fact that this version of the provision in the opinion of 16.03.2020 No. 1-W recognized by the Constitutional court of the Russian Federation not contradicting the Constitution, however, in this study it is useful to recall the position of the constitutional court on the limits of authority of bodies of state participate in the formation of local governments set out in the Decision of the constitutional Court of the Russian Federation from December 1, 2015 No. 30-P. In the decision of the Federal body of constitutional review, said: "securing the independence of the local government as the main principle of its relations with organs of state power, the Constitution of the Russian Federation proceeds from the fact that this independence is not absolute, it does not imply the denial of organizational and other forms of interaction of local governments and public authorities, but excludes a crucial part of public authorities in the formation of local governments, as well as substitution of local self-government bodies by state authorities when resolving issues of local significance (resolutions of the constitutional Court of the Russian Federation No. 9-P of may 18, 2011 and No. 32-P of December 24, 2012). The independence of local self-government, which also manifests itself in determining the

structure of its bodies, thus serves not only as a limit that restricts arbitrary interference of state authorities in the Affairs of local self-government, but also as a basis for its integration into the system of public power and maintaining inter-level interaction in it based on a balance of interests."

It seems that this position should become the basic basis for the use of the highest official of the subject of the Russian Federation of their powers to participate in the formation of local self-government bodies.

5. Application (participation in the application) of legal liability measures in respect of local self-government bodies and local government officials.

In accordance with Article 73 of the Law on principles of local self-government the highest official of the subject of the Russian Federation participates in the procedure of dissolution of a representative body of the municipality by amending the legislative (representative) body of state power of subject of the Russian Federation of the project of the corresponding law of the subject of the Russian Federation in cases if the court found that:

a representative body of a municipality has adopted a normative legal act that contradicts the law, which, within three months from the date of entry into force of a court decision or other term stipulated by it, has not taken measures to implement it within its powers, including canceling the relevant normative legal act;

the elected (newly elected) representative body of the municipality did not hold an authorized meeting for three consecutive months.

Issues of early termination of the powers of a representative body of a municipal formation as a form of legal responsibility have

repeatedly been the subject of consideration by the constitutional court of the Russian Federation, during which the Federal constitutional control body emphasized the unchanged position that

"the provision on the possibility of termination of powers by law of a subject of the Russian Federation is a special guarantee of the rights of local self-government: unlike other types of decisions (including resolutions), the law is adopted in a more complicated procedure (mandatory stages of the legislative process); the law must be signed by the President of the Republic or by the chief Executive, and, therefore, the termination of powers must result from consent of the legislative and Executive authorities of the Russian Federation or, at least, the decisions of its legislative body, adopted by a qualified majority of votes."

To date, the practice of applying this measure of responsibility has already been formed in the regions of the Russian Federation. For example, due to the lack of meetings – the Law of the Republic of Karelia dated 2 December 2019 No. 2411-ZRK "About the dissolution of the Council of Sortavala urban settlement", the Law of the Arkhangelsk region on June 8, 2018 No. 644-44-OZ "ON the dissolution of the Council of deputies of municipal entity "Pirinsko" Pinezhsky municipal district of the Arkhangelsk region", etc. In connection with non-execution of a court decision-the Law of the Republic of Buryatia of March 5, 2007 No. 2176-III "on the dissolution of the representative body of the municipal formation "Muysky district" - the district Council of deputies of the municipal formation "Muysky district", the law of the Krasnoyarsk territory of June 16, 2016 No. 10-4657 "on the dissolution of the representative body of the municipal formation "Mansky district", etc. The relevant laws were introduced and signed by the highest officials of the subjects of the Russian Federation.

Another form of legal responsibility at the municipal level, which are mandated to participate by the head of the RF subject, is depriving them of the head of the municipal formation or the head of local administration from the post, as well as initiating procedures for removal of the head of municipal Union in resignation.

Article 74 of The Law on the principles of local self-government provides two grounds for applying the procedure for removing the head of a municipality or the head of a local administration from office. The first edition specified officials of local self-government the normative legal act contrary to the law, if such contradictions are established by corresponding court, and the officer within two months from the date of entry into force of the judgment or within another period provided they have not accepted within their powers of measures for judgment execution. Second – Commission by the head of the municipal formation or the head of local administration actions (including publication of the legal act, non-regulatory nature) that entail violation of the rights and freedoms of man and citizen, threat to unity and territorial integrity of the Russian Federation, national security of Russia and its defensibility, to unity of legal and economic space of the Russian Federation, the misuse of inter-budgetary transfers having target purpose, budget loans, violation of conditions of granting of interbudgetary transfers and budgetary loans, received from other budgets of the budget system of the Russian Federation, if this is established by the relevant court, and the specified official has not taken measures to implement the court's decision within the limits of his / her authority.

In the context of consideration of participation of the higher official of the subject of the Russian Federation on removal of the head of municipal Union in resignation,

it should be noted the fact that such an initiative is issued in the form of treatment that is the representative body of a municipal formation, together with the draft decision of the representative body of the municipality (section 6 of Article 74.1 of the Law on principles of local self-government).

The term "appeal" itself carries the meaning of a petition from the weak to the strong.: "a constitutionally guaranteed expression of the will of a person (a group of citizens or an organization) that meets the form of normative requirements, expressed in the form of a written, oral or explicit demand for the implementation or protection of rights, freedoms and legitimate interests, addressed to a state (municipal) body..." [14, p. 9-10]. The appeal of the highest official of the subject of the Russian Federation to the representative body of the municipality formally corresponds to the above definition. In addition, the appeal must be submitted together with the draft of the relevant decision of the representative body of the municipality. That is, for example, having seen in the actions of the head of a municipality signs of a corruption offense, the head of the subject of the Russian Federation must prepare a draft decision of the representative body of the municipality and make a corresponding appeal, which may be rejected as a result of consideration.

In view of the above, the use of the term "appeal" for sending materials (documents, information) from the highest official of the subject of the Russian Federation to local authorities seems extremely unsuccessful. Appeals, as a rule, on the contrary are sent from local self-government bodies to the address of the highest official of the subject of the Russian Federation, but this is a different form – interaction.

If there are enough examples of the removal of the head of a municipal formation on the initiative of deputies of a representative

body of a municipal formation [15, p. 51], then it is difficult to find cases of removal from office at the request of a top official of a constituent entity of the Russian Federation. While the practice of removing the head of the municipality is available. For example, the decree Of the President of the Republic of Sakha (Yakutia) dated April 7, 2011. No. 573 "On the removal from office of the head of the municipal entity "Tiksi Settlement" Bulunsky ulus (district) of Sakha Republic (Yakutia) Alekseev A. N.", The decree of the Governor of Nizhny Novgorod region from July 6, 2009 № 42 "About the removal from office of heads of local government kulebaskiy municipal district N. M. Ryabykina" . Both cases - in connection with the actions (omissions) of the head of the municipality, which resulted in a violation of human and civil rights and freedoms, established by a court decision and failure to take measures to implement the court decision within the limits of their powers.

Constitutional-legal interpretation of the Institute of dismissal of the head of the municipal formation, the head of local administration from the post exhaustively in the Definition of the constitutional court of the Russian Federation of 16 July 2013 No. 1219-O , in which the Federal body of constitutional review noted that the granting of the higher official of the subject of the Russian Federation the right to make decision on the dismissal of the head of the municipal formation and the head of local administration due to its special constitutional-legal status, as well as responsibility for ensuring compliance on the territory of the subject of the Russian Federation with Federal and regional regulations not only the Constitution(Charter), laws and other normative legal acts of this subject of the Russian Federation, but also the Constitution of the Russian Federation, Federal laws and other normative legal acts of the

Russian Federation.

In its decision of 16 January 2018 № 12 Of the constitutional court of the Russian Federation once again confirmed that "the removal from office of heads of municipalities, heads of local administration on grounds envisaged by paragraph 2 of part 1 of Article 74 of the Federal law "On General principles of organization of local self-government in the Russian Federation", the decision of the higher official of the subject of the Russian Federation in itself cannot be regarded as violating constitutional rights".

However, there is a judicial practice to cancel such a decision of the highest official of the subject of the Russian Federation. Decree Of the Governor of the Arkhangelsk region of April 27, 2016 No. 42-u "On the dismissal of the head of the municipality "Konoshskoye" of the konoshsky municipal district of the Arkhangelsk region A.V. Krinin" was canceled by the Supreme Court of the Russian Federation, and the head of the municipality was reinstated due to the lack of evidence of committing actions that entail violation of human and civil rights and freedoms .

This example shows that unlike the President of the Russian Federation having the right of dismissal by the highest officials of constituent entities of the Russian Federation in connection with loss of trust, the procedure for dismissal of the higher official of the subject of the Russian Federation head of the municipal formation requires statutory grounds supported by evidence.

As part of the implementation of item 9 of the National anti-corruption strategy approved by the decree of the President of the Russian Federation dated April 13, 2010. No. 460 to eradicate the causes and factors fuelling corruption in Russian society, ensuring inevitability of responsibility for corruption offences and unbiased application of the legislation of the Russian Federation there is

another method involving the higher official of the subject of the Russian Federation in the application of measures of legal responsibility – making a decision to check the accuracy and completeness of information on income, expenses, property and property obligations submitted in accordance with the legislation of the Russian Federation on anti-corruption by a Deputy, a member of an elected local government body, or an elected official of a local government (Article 40 of the Law on principles of local government).

In identifying the verification of facts of violation of restrictions, failure to fulfil the obligations established by anti-corruption legislation, which apply on early termination of powers of these officers of local government or the application in respect of these persons a measure of responsibility in local government, authorized to make a decision, or the court.

Thus, the current regulatory framework adequately provides for the right of the Supreme official of constituent subject of the Russian Federation to participate in municipal matters on the application of measures of responsibility in respect of the representative body of the municipality and his deputies, head of the municipal formation and the head of local administration, members of elective local government, elective officials of local self-government.

6. Temporary exercise of certain powers of local self-government bodies

In the cases established by Article 75 of the Law on principles of local self-government of the higher official of the subject of the Russian Federation on the basis of the decision of the representative body of local self-government or decision of legislative (representative) body of state power of a subject of the Russian Federation of the decision on the temporary exercising by

Executive bodies of state power of a subject of the Russian Federation corresponding powers of local authorities.

Based on the fact that the highest official of the RF subject is "(head of the higher Executive body of state power of subject of Russian Federation)", and full Executive power of a subject of the Russian Federation is actually in his hands [16, p. 30], it is fair to say that his participation in the exercise of powers of bodies of local self-government in fact, there is nothing like leadership in the implementation of these powers.

Despite the fact that according to T. M. Balcisoy as a result of applying this procedure, "the public authorities directly start to solve the local issues that, in fact, directly contradicts the constitutional principle of independence of local government in addressing local issues" [17, pp. 71-73], such provisions are reflected in the constitutions (statutes) of constituent entities of the Russian Federation and adopted in the laws on local self-government (principles of local government, the regulation of individual relations connected with the implementation of local self-government).

There is also a practice of applying this form of participation of the highest official of the subject of the Russian Federation in municipal legal relations. Thus, by the Order of the head Of the Republic of North Ossetia-Alania dated December 16, 2008 No. 133-RGA "On measures of state support to the local government administration of the city of Vladikavkaz" to stabilize the socio-political situation in the city of Vladikavkaz and direct execution of public standard obligations of the municipal formation of the Government of the Republic of North Ossetia-Alania has been tasked with addressing issues related to the implementation of the budget of municipal formation town of Vladikavkaz in 2008, and to provide subventions and subsidies from the Republican budget on execution of public

standard obligations of the municipality.

In pursuance of this order, the government of the Republic of North Ossetia-Alania adopted Resolution No. 298a dated December 19, 2008 "On amendments To the decision Of the Vladikavkaz Assembly of representatives "on the budget of Vladikavkaz for 2008", approving the main characteristics of the budget of the municipality – Vladikavkaz.

In this example, the temporary exercise of certain powers of local self-government bodies was carried out not as a form of constitutional and legal responsibility, but as a measure of support required in connection with an emergency situation caused by the fact that the head of a municipality was killed, and half of the deputies of a representative local self-government body resigned their powers.

Thus, the temporary exercise of certain powers of local self-government bodies as a form of participation of the highest official of a subject of the Russian Federation in municipal legal relations, depending on the grounds for its application, can be considered as a measure of support and as a measure of constitutional and legal responsibility applied in connection with violations of legislation. Regardless of the reasons for its use, this form allows state authorities, represented by the highest official, to guarantee compliance with the rule of law, human and civil rights and freedoms on the territory of the subject of the Russian Federation.

7. Conclusions

The President of the Russian Federation of amendments in the Constitution regarding the organization of public authority has caused a new wave of scientific interest in issues related to the organization of local self-government and the ways for their relations with public authorities. Among the subjects of

this interaction, of course, is the highest official of the subject of the Russian Federation – its head. The study of the issues of participation of the highest official of the subject of the Russian Federation in municipal legal relations allows us to formulate the following main conclusions:

1. The Constitutional provisions on the independence of local self-government do not mean its absolute independence from the state power and its bodies. The interrelation of constitutional norms, their correct reading, and the emerging constitutional and judicial practice make it clear that state authorities and local self – government bodies work together to implement the main and only constitutional duty of the state-the recognition, observance and protection of human and civil rights and freedoms. The improvement of the model of public power organization consists in the development of their coordinated functioning and interaction, which involves the participation of state authorities in municipal legal relations and Vice versa – local self-government bodies in the implementation of certain state powers. Taking into account the constitutionalization of the concept of public power, the value of studying the issues of mutual participation of state authorities and local self-government bodies in legal relations arising from its implementation increases.

2. In order to implement the constitutional provisions that establish the foundations of the constitutional system, human and civil rights and freedoms, the legislation provides for various forms of participation of state authorities in municipal legal relations. Powers in the field of local self-government are vested in both Federal state authorities and state authorities of constituent entities of the Russian Federation. A large amount of authority vested in the highest official of the RF subject, due to the territorial proximity of bodies of state power of subjects of the Russian Federation to municipal entities

and its special position in the system of bodies of state power of subjects of the Russian Federation, its presence as a large amount of power and high levels of responsibility, expressed in particular in the possibility of impeaching the President of the Russian Federation.

The analysis of current legislation and current law enforcement practice shows that the highest official of a subject of the Russian Federation participates in municipal legal relations both directly and through the highest Executive body of state power of the subject of the Russian Federation, which he directs, and in most subjects of the Russian Federation directly heads.

3. The study of the powers of the highest official of the subject of the Russian Federation in the field of local self-government allowed us to identify the following main forms of his participation in municipal legal relations:

1) promoting the development of local self-government;

2) interaction with local self-government bodies;

3) participation in the formation of local self-government bodies;

4) application (participation in the application) of legal liability measures in respect of local self-government bodies and local government officials;

5) temporary exercise of certain powers of local self-government bodies.

A substantive review of the listed forms of participation of the highest official of the subject of the Russian Federation in municipal legal relations has shown that all of them are actually valid and the corresponding law enforcement practice has been formed in the subjects of the Russian Federation.

By the nature of implementation, the first three forms in the list have a positive character, since they are aimed at the development of local self – government, the

fourth-obviously negative, because it is a response to violations of the rule of law, human and civil rights and freedoms. The nature of the temporary exercise of certain powers of local self-government bodies depends on the grounds for applying this form of participation in municipal legal relations and can acquire both a positive (support measures) and a negative (response to violations) character.

4. Despite the presence in legal publications of fair criticism of the implemented model of granting state authorities powers in the field of local self-government in the context of the ongoing formation of the model of organizing local self-government enshrined in the Constitution of the Russian Federation, due to the objective historical lack of traditions of its implementation, the exclusion of interference by state authorities in this area is unacceptable, since it can lead to significant violations of human and civil rights and freedoms. Currently used forms of participation of the highest official of the subject of the Russian Federation in municipal legal relations are based on the provisions of legislation, are associated with compliance with established procedures, do not imply broad discretion and are provided with guarantees of local self-government, including a guarantee of judicial protection, which, as shown in the Article, is confirmed by the materials of judicial practice.

5. With the development of local self-government, the formation of the traditions of its implementation such extraordinary forms as the application (part in use) measures of legal liability against local governments and officials of local self-government, the provisional implementation of certain powers of bodies of local self-government should go into the category of "sleeping" and remain a deterrent to constitutional violations, as well as a reliable mechanism for coping with emergencies (when they arise).

On the contrary, the potential of such

forms as promoting the development of local self-government, interaction with local self-government bodies is not fully exhausted. Integrated promotion of local government development, design and implementation of target programs of social and economic support, transfer of separate state powers are the priorities of the higher official of the subject of the Russian Federation in the field of local government.

Improvement of positive forms of participation of the higher official of the subject of the Russian Federation in municipal matters directly or indirectly aimed at the achievement of indicators of assessment of efficiency of their activities: natural population growth, the number of families improved their housing conditions, housing affordability, the proportion of cities with a favorable urban environment, the quality of the environment, the level of education . By participating in municipal legal relations, the highest official of a subject of the Russian Federation ensures the effectiveness of local self-government, and with it the high results of the activities of public authorities on the territory of the subject of the Russian Federation.

REFERENCES

1. Kostyukov A.N. Unified factory concept in organizing local self-government in Russia. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and municipal law*, 2015, no. 8, pp. 75–78. (In Russ.).
2. Schepachev V.A. Evaluation of local government performance as a form of social control. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and municipal law*, 2017, no. 2, pp. 57–61. (In Russ.).
3. Ezhukova O.A. Evaluation of efficiency of activity of agencies of local self-government in the Russian Federation: problems and perspectives. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and municipal law*, 2012, no. 1, pp. 61–67. (In Russ.).
4. Avak'yan S.A. the structure of public power in Russia: problems of formation and development. *Vestnik Sibirskogo yuridicheskogo instituta MVD Rossii = Vestnik of Siberian Law Institute of the MIA of Russia*, 2018, no. 4, pp. 7–13. (In Russ.).
5. Byalkina T.M. Modernization of the relations of the executive government bodies of the Russian Federation subjects and local self-government bodies. *Vestnik Voronezhskogo gosudarstvennogo universiteta: Seriya «Pravo» = Proceedings of Voronezh State University. Series "Law"*, 2013, no. 2, pp. 102–113. (In Russ.).
6. Belyukov A.V. State and municipal power in the system of the uniform public power in Russia. *Gosudarstvennaya vlast' i mestnoe samoupravlenie = State power and local self-government*, 2015, no. 6, pp. 23–28. (In Russ.).
7. Schepachev V.A. About forms of interaction between the local authorities and state authorities. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and municipal law*, 2010, no. 12, pp. 45–48. (In Russ.).
8. Shugrina E.S. *Municipal law of the Russian Federation*. Moscow, Prospekt Publ., 2007. 672 p. (In Russ.).
9. Gusenbekov I.I. Some aspects of interaction between the local authorities and authorities of the subjects of the Russian Federation. *Zhurnal rossiiskogo prava = Journal of Russian Law*, 2006, no. 6, pp. 38–46. (In Russ.).
10. Mukhametov R.S. Specific features of the conflict between elites in the Sverdlovsk region. *Studia Humanitatis*, 2013, no. 2. Available at: <http://st-hum.ru/content/mukhametov-rs-specifika-vnutrielnogo-konflikta-v-verdlovskoy-oblasti> (accessed on: 01.06.2020). (In Russ.).
11. Shulikov A.O. The process of formation and development of regional political elite in Kamchatka krai. *Vestnik Moskovskogo gosudarstvennogo oblastnogo universiteta. Seriya: Istoriya i politicheskie nauki = Bulletin of the Moscow Region State University. Series: History and Political Sciences*, 2015, no. 4, pp. 138–150. (In Russ.).
12. Lungu E.V. Constitutional legal relations and state legal relations: peculiarities of the methods of implementation. *Lex russica*, 2019, no 10, pp. 63–70. DOI: 10.17803/1729-5920.2019.155.10.063-070. (In Russ.).
13. Kudryavtsev V.V. Constitutional legal regulation of the engaging citizens in the formation of local authorities in the subject of the Russian Federation. *Marijskij yuridicheskij vestnik = Mari Law Vestnik*, 2015, no. 3, pp. 45–49. (In Russ.).
14. Savoskin A.V. *Applications of citizens in the Russian Federation: the constitutional legal research*. Doct. Diss. Thesis. Yekaterinburg. 2019. 44 p. (In Russ.).
15. Solov'yev S.G., Chetvergova A.V. Retirement of a head of municipality. *Zakonnost*, 2011, no. 11, pp. 49–52. (In Russ.).
16. Meshcheryakov A.N. *Legal status of the highest-ranking official of the subject of the Russian Federation in the system of separation of powers*. Yekaterinburg, Ural law institute of the MIA of Russia publ., 2013. 102 p. (In Russ.).
17. Byalkina T.M. Constitutional principle of independence of the local government in solving issues of local importance at the modern stage of municipal reform. *Konstitutsionnoe i munitsipal'noe pravo = Constitutional and municipal law*, 2016, no. 5, pp. 69–73. (In Russ.).

INFORMATION ABOUT AUTHORS

Oleg A. Kozhevnikov – Doctor of Law, Professor;

¹ Professor, Department of Constitutional Law, ² Professor, Department of Constitutional and International Law

¹ Ural State Law University

² Ural State University of Economics

¹ 21, ul. Komsomolskaya, Yekaterinburg, 620144,

Russia

² 62/45, 8 Marta ul. / Narodnoi Voli, Yekaterinburg,
620144, Russia

E-mail: jktu1976@yandex.ru

RSCI SPIN-code: 1494-4895; AuthorID: 346061

Aleksandr N. Meshcheryakov – PhD in Law, Associate
Professor; Head, Department of Philosophy, Foreign
Languages and Humanitarian Training of Law En-
forcement Officers

*Tyumen Advanced Training Institute of the MIA of
Russia*

75, Amurskaya ul., Tyumen, 625049, Russia E-mail:
12.00.02@mail.ru

RSCI SPIN-code: 9571-7365; AuthorID: 105809

ORCID: 0000-0001-9676-2816

ResearcherID: AAS-3148-2020

BIBLIOGRAPHIC DESCRIPTION

Kozhevnikov O.A., Meshcheryakov A.N. Participation of
the highest official of the constituent entity of the
Russian Federation in municipal legal relations.

Pravoprimerenie = Law Enforcement Review, 2020, vol.
4, no. 3, pp. 86–102. DOI: 10.24147/2542-1514.
2020.4(3).86-102. (In Russ.).