
LOCAL GOVERNMENT — AS ONE OF THE FOUNDATIONS OF THE CONSTITUTIONAL SYSTEM OF THE RUSSIAN FEDERATION (THE MODERN ASPECTS)

D.O. Ezhevski

The Department of Constitutional and Municipal Law
Law Institute of the Peoples' Friendship University of Russia
6, Miklukho-Maklaya st., Moscow, Russia, 117198

In this article author analyzes the development of local government as one of the foundations of the constitutional system of the Russian Federation. This institution has a serious impact on the entire history of the state, and is especially important in today's society. However, there are a number of features of local authorities today. Based on the analysis the author proposes a number of measures to harmonize the existing legislation. Practice has shown that the local government as an institution of direct democracy and public participation in addressing important issues are extremely important, but still not enough to effectively functioning in our country. In any country the ability of local authorities to effectively perform their tasks largely depends on how they are organized. With regard to the mechanism of local government, first of all, means the creation of an appropriate system of local self-government, the development of these structures, the establishment of competence of each of them, selection and placement. In view of the evolution of the institution of local self-government in Russia, it should be noted that in the process of democratization of the society, this institution has an impact on all the historical path of development of the state.

Key words: local government, local government, municipal law, municipal referendum, elections, democracy, social control, electoral system.

The modern attitude to man, it is as a person with its rights and freedoms, proclaimed not only on paper, but having the opportunity to be protected — is definitely an important step, as the evidence of the humanization of the national legal systems and international law. No doubt can be considered fundamental and priority of the rights and freedoms of the individual achievements of modern philosophical outlook, which in turn manifests itself not only in people's minds, but also in the constitutional law. Thus, the Constitution of the Russian Federation establishes the tenet that «people's rights and freedoms are the supreme value. The recognition, observance and protection of the rights and freedoms of man and citizen — the duty of the state».

The constitutional obligation of the Russian Federation for ensuring human rights and freedoms are assigned to all without exception, the public authorities: the federal, regional and organs of the Federation. At the federal level, it is the President of the Russian Federation, Federal Assembly of the Russian Federation, the Russian government (Ministry of Education and Science, Health and Social Development of the Russian Federation, and others), The Commissioner for Human Rights, Constitutional Court and other courts, prosecutor's office, etc.

Local governments are the one of the foundations of democratic systems of social control, much closer to the device management needs of the population, and also to solve local issues much more effectively than with a centralized management system in view of the proximity. In carrying out state policy they provide the interests of small communities, optimally combine the interests and human rights with the interests of the regions and the state as a whole. Moreover, since the local implemented most of the socio-economic rights, at the local government bodies charged with the immediate task to enforce them (the right to education — through municipal authorities and institutions of education, right to health care — through municipal authorities and health institutions and etc.).

What kind of tendencies and prospects of local self-government are there in the context of the upcoming 20th anniversary of the current Constitution of the Russian Federation? Or maybe the question is much wider and bigger, going beyond the «formal» framework of the structure-forming process, which is generally characterized the current state of one of the fundamentals of the constitutional order, including — taking into account the specifics of the implementation of the priority of public and social functions directly «carrier sovereignty and the only source of power»?

The answer — not so simple and obvious as it might seem at first glance, especially given the fact that the municipal practice of recent years clearly demonstrates systemic crisis (and not always latent) sufficiently wide range of public relations, directly or indirectly associated with the self-organization of the city and rural areas of our country [1].

According to paragraph 2 of Article 3 of the Constitution, «the people exercise their power directly and through bodies of state power and local self-government». Authors compilers of the 1993 Constitution seems to be superficially familiar with the theory and practice of government, declaring this principle in the first chapter («Fundamentals of the constitutional order»), apparently hoping that the «euphoria» of the late 1980s — early 1990s materialized in the Russian Federation in the forms of organization of local self-government bodies (municipal authorities), within which the population, «survived» relapse «period of stagnation» and «Soviet centralization» will be able to quickly and smoothly adapt to the mechanisms of self-organization, which (de jure and de facto) quite successfully updated in countries with stable democratic traditions. However, a critical analysis of the first laws and regulations adopted in the development of constitutional provisions, has rightly doubts about how and through what specific mechanisms for the government (especially in the face of federal and regional elites) will implement enshrined in the Basic Law of the declaration. If the law «On general principles of local self-government...» 1995 relevant trends were only designated in the Act of 2003 (subsequently amended), they have developed and got the legal formalization.

It would not be an exaggeration to conclude that the process of self-organization of the general local population, to a greater or lesser extent, experienced the impact etatization acquired over time a sort of controlled and centrally-controlled character. The result — in some regions of the country not only lost relevance (let alone expediency), and essentially become secondary (optional) on the background of large-scale

socio-economic, ideological and moral and philosophical problems caused by the transition to a qualitatively new paradigm of public relations.

It may seem that many of the issues that are regularly encountered (with varying degrees of intensity and frequency) citizens are temporary and superficial (perhaps even contrived) character as a whole — without affecting the basic foundations of local self-government, de jure enshrined in the 1993 Constitution. Indeed, what kind of crisis (especially system crisis) in the field of municipal relations in question, if, from the formal point of view, everything looks fine:

- Municipal elections are held on a regular basis (in this case — against a background of growing alleged voter turnout — from time to time we hear that the so-called «absenteeism» does not refer to the phenomena of relevance to the modern Russian municipalism);

- Local budgets and cost estimates (although that has become essentially a textbook deficient) are executed;

- A list of «local issues» permanently increases (and no one — neither the population nor the authorities — against the public does not mind);

- Scientists defend dissertations and monographs written, and students sit exams and tests on the «municipal law»?

But once (often completely «unexpected» for regional and local authorities) there is another «Biryulyovo» or «Pugachev» (natural disasters in 2010 and 2013 have no point in talking). Problems of the Russian municipalism, the list of which is advantageously increased, becoming bright example of an expression «negative algorithm». The acute shortage of funds, lack of professionalism (lack of education, and even inadequacy) staffing, corruption, nepotism, cronyism, snobbery and voluntarism of municipal chiefs-of favorites (thus as if by themselves appear similar to «localism» and «feeding system»), not to mention mention such «trivial» things as disruption in the housing and communal services, despite the paradoxical associated in the eyes of the majority of the population with the state and federal government, and not with the local authorities and the specific heads of municipalities.

The situation is often compounded by the fact that the preparation of regional legislation (originally written as a general would be «a blueprint») ignored the requirement of paragraph 1 of Article 131 of the Constitution, according to which «the local government made... taking into account historical and other local traditions». The question is, why «reinvent the wheel» (the more exercise law-making initiative) by regional legislatures and municipal assemblies, creating or recreating traditional for a particular locality institutions of self-organization of the population, if at the national level, everything has been installed, it is constituted and is enshrined in the law «On General Principles of Local Self-Government» in 2003?

Imperatively introducing a sort of federal «municipal standard», the population of the regions with compact settlement of a specific people (People), ethnicity, ethnic group — essentially denied one of the most important elements of self-identification as «historical and other local traditions» de facto worn (and still are) as an original character in the North Caucasus, and at the small peoples of the Far North, Siberia, the Far East and the Baltic states.

So what, then, democratic («post-Soviet») model of organization of local self-government fundamentally different from the «Soviet» (centralized) management practices? If in one, and in another case — operate machinery institutional unification, until the territorial bases (rural and urban settlements, municipal district, city district), organ systems (Head of Education, a representative body, the municipal administration, supervisory authority) and the strength of the municipal deputies, regardless of the «historical and other local traditions» of certain regions of the country? As in this situation to take the norm paragraph 1 of Article 131 of the Constitution, in particular, declaring that «... the structure of local governments is determined by the population independently»?

For example, based on the requirements of paragraph 5 of Article 34 («Local authorities») of the Federal Law «On general principles of local self-government» in 2003 (amended in 2005 and 2008), such problems can be resolved through a referendum (or of citizens') — both provided by the law of one of the forms of direct democracy. We emphasize that the mechanism of the public (if the initiative of local residents) may only be used «...in the case of the creation of inter-settlement territories in the newly formed municipality or in the case of a newly formed municipal formation by converting existing municipal formation». Therefore, it is quite possible to assume that all other «hypothetical» situations, particularly in geographically existing municipalities (or in the absence provided for by federal law citizens' initiative to hold a referendum on the scale of the newly formed municipality), the structure of local government is determined not by their own population and the representative body of the municipal government.

I wonder how many in the amount of referenda (within one month from the date of entry into force of the law of the subject of the Federation — the federal city on the delimitation of the respective municipalities) was held in the process of acceding to Moscow new territories and determining the structure of local government bodies of the newly formed municipalities? The question seems to be rhetorical. Against this background the problem presented contradictions directly resulting from the differentiation of species of municipalities 'old' (inner city), and the «new» Moscow, of which, in addition to municipal areas, and includes several urban districts [1].

Along the way, it is impossible not to draw attention to the fact, as the details registered in the federal law (amended in 2005, paragraph 5 of Article 34) the preparation and conduct of the referendum (however, as the elections). That also demonstrates the desire of public authorities not only regulate, but also monitor the implementation of the population of the public powers, including appropriate forms of direct democracy, which has the nation as «the bearer of sovereignty and the only source of power».

Why in such federal states (the texts of constitutions which served as a «role model»), as, for example, Germany and the United States, for many years successfully operating several models of organization of local self-government, and in Russia, a country with centuries-old traditions of self-organization of the urban and rural population, only one? At the same time, there is quite fair (as a whole is not rhetorical) and quite correct question: why European countries actively participated in the

drafting of «Charter of Local Self-Government» of 1985, in no hurry to sign it and ratify (without taking into account national circumstances) and Russia, seeking to become a member of the Council of Europe, has carried out this procedure not only in accelerated mode, but not in the text of the document making any amendments and additions in some way reflected the distinctive character of the relevant institutions and practices?

The well-known paradox is that the worship of the so-called «Western values» (in the background clearly marked «forgetfulness» in relation to its own traditions) in practice sometimes gets ugly-exaggerated, in some cases, extremely opportunistic, or — which is most often observed in certain periods of the process of nation-building — was a cartoon character.

It is possible that there should look for the roots of the systemic problems that permanently faces all that is associated with self-management. To explain the existence of problems, in particular, the infantilism of the local population and the paternalism of the government, not paying attention to the objective character of the reluctance of «the bearer of sovereignty and the only source of power» to carry out anything «at his own expense and on their own responsibility», it turns out is not so convincing, twenty years ago. Calls and slogans (as well as the powers) are not backed by stable material and financial resources, we were (unfortunately or fortunately?) in the «Soviet» past. He was replaced by a pseudo-market pragmatism, «corrected» the mechanisms of central grants and subsidies (not to mention the targeted subsidies), the gratuitous nature of which is substantially burdened the federal and regional budgets, while at the same time — without solving the issues arising from the scarce nature most municipal budgets and budgets.

Before us is quite controversial paradigm: the number of «local issues» increases (refer to him now, and the problems of international relations), the revenues of the municipal budget — the overall decline, exacerbating the already permanently (in the majority of subjects of the federation) crisis. Thus, one of the fundamental tools of the local government, as it passes through the refrain «the European Charter» in 1985 («at his own expense and on their own responsibility»), does not work, forcing municipalities to ask for help and financial support from the state. As a result, the state is increasingly — both vertically and horizontally — are beginning to use «hybrid» (mixed) public mechanisms, one way or another combining individual elements of the power and self-government [2].

In any country the ability of local authorities to effectively perform their tasks largely depends on how they are organized. It is known that any organization which has structural and functional part. With regard to the mechanism of local government, first of all, means the creation of an appropriate system of local self-government, the development of these structures, the establishment of competence of each of them, selection and placement.

REFERENCES/ЛИТЕРАТУРА

- [1] *Ezhevski D.O.* The role of international organizations in the development of local self-government // *Vestnik Rossijskogo universiteta druzhby narodov. Serija «Juridicheskie*

- nauki» [Bulletin of Russian Peoples' Friendship University. Series «Law»]. — 2012. — № 3. — P. 60–64.
- [2] *Ezhevski D.O.* Aspects of regional and local government in Great Britain // *Vestnik Moskovskogo gosudarstvennogo oblastnogo universiteta. Serija «Jurisprudencija»* [Bulletin of the Moscow State Regional University. Series «Law»]. — 2009. — № 2. — P. 66–69.

МЕСТНОЕ САМОУПРАВЛЕНИЕ КАК ОДНА ИЗ ОСНОВ КОНСТИТУЦИОННОГО СТРОЯ РОССИЙСКОЙ ФЕДЕРАЦИИ (СОВРЕМЕННЫЕ АСПЕКТЫ)

Д.О. Ежевский

Кафедра конституционного и муниципального права
Юридический институт Российского университета дружбы народов
ул. Миклухо-Макля, 6, Москва, Россия, 117198

В статье автор анализирует развитие местного самоуправления как одной из основ конституционного строя Российской Федерации. Этот институт имеет серьезное влияние на всю историю государства и особенно важен в современном обществе. Однако имеется ряд особенностей функционирования местных органов власти в современных условиях. На основе анализа автор предлагает ряд мер по гармонизации действующего законодательства. Практика показала, что местное самоуправление как институт демократии и непосредственного участия населения в решении важных вопросов чрезвычайно важен, но все еще недостаточно эффективно функционирует в нашей стране. В любом государстве способность местных властей эффективно выполнять свои задачи в значительной степени зависит от того, как они организованы. Что касается механизма местного самоуправления, это в первую очередь означает необходимость создания соответствующей системы местного самоуправления, развития этих структур, регламентации компетенции каждой из них. Ввиду эволюции развития института местного самоуправления в России следует отметить, что в процессе демократизации общества этот институт оказывает влияние на все исторические пути развития государства.

Ключевые слова: местное самоуправление, местное управление, муниципальное право, муниципальное образование, референдум, выборы, демократия, общественный контроль, избирательная система.