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Research Article

THE DUALISTIC MODEL AND "RATIONAL CENTRALIZATION" AS FACTORS OF THE EFFECTIVE FUNCTIONING OF LOCAL GOVERNMENT WITHIN THE RUSSIAN PUBLIC AUTHORITY MECHANISM

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Abstract. The analysis is given on the correlation of state power and local government within the public power system of Russian Federation. The authors note that the interaction of relevant elements can be described as a dualistic model, based on a combination of centralization and decentralization principles. It is maintained, that the principle for interaction between state authorities and local government, especially in light of recent constitutinal amendments, should rest in clear delineation of functions and powers, excluding their arbitrary and unreasonable redistribution. It is also noted that for the effective functioning of local government, interaction between central and local authorities is important, based on the support of the latter by the state. State intervention implies the concept of "rational centralization", which envisages strengthening state role in the implementation of both organizational and functional foundations of local government in strictly limited cases and without violating Art. 12 of the Russian Constitution.

Key words: state power, local government, dualistic model, rational centralization

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Introduction

At the heart of the modern constitutional order of the Russian Federation, established by the Constitution of 1993 lies a democratic political regime. Democracy is one of the effective forms of organization, both of the society and of the state. Therefore, the popular will is seen as a fundamental constitutional value, which is also associated with the legitimization of public authority (Komkova, 2017:7).

The constituent elements of the system of democracy, in turn, are state power and local government (part 2 of Article 3 of the Constitution of the Russian Federation). The relevant constitutional provisions are confirmed and disclosed in the legal positions of the Constitutional Court of Russia. For example, in the decision No. 15-P[3] of November 30, 2000 it is stated, that according to part 2 of Art. 3 and Art. 12 of the Constitution, local government is a necessary form of exercising the power of the people and is one of the foundations of the constitutional system of the Russian Federation.

From a theoretical point of view, local government is the quintessence of elements of civic initiative, social self-organization and regulation inherent in civil society entities (public organizations, movements), with public power, which is a characteristic of public (primarily state) bodies. The corresponding synthesis is determined by the very nature of self-government, in which, within the framework of classical understanding, the subject and objects of management coincide. At the same time, the widespread in academic literature idea is that, due to the close interweaving at the local level of the elements of self-government and professional governance, the classical mechanism of self-government is only partially applicable to municipal institutions.

[3] Postanovlenie Konstitucionnogo Suda RF of 30.11.2000 No. 15-P [Decision No. 15-P of November 30, 2000], available at: http://www.consultant.ru. (Accessed 17 January 2020).

The dualistic model of local government as a form of relationship between state and municipal authorities in the public authority mechanism

An important factor, determining the role and place of local government, is the question of its relationship with central institutions. In each state, public institutions have a set of functions and tasks that reflect their purpose — that is, first of all, ensuring safe and comfortable conditions for the sustainable development of groups of the population (society in general) that inhabit the territory of the state. The corresponding tasks have both national scale of solution — e.g., defense, security, strategic infrastructure, as well as regional and local — life support of the population in the territories of its residence, provision of social services, development of local infrastructure. In order to ensure the performance of the corresponding tasks, state authorities and local government bodies are vested with public authority, and this conceptually separates them from civil society institutions — both on state and local level. This factor also unites two sub-institutions of public authority — state power and local government — in a single system.

The issue of autonomy or independence of local government from central government (state power) has always been a topical, yet never a completely resolved problem. On the one hand, it cannot be argued that local government is completely separate from the state and in terms of its degree of autonomy is a "state within a state". Yet on the other hand, the specificity of local *self-government* in the full sense of its meaning lies in the fact that it, as a complex phenomenon, cannot and should not completely belong to the state mechanism. After all, local government is one of the forms of democracy, but not technically an ordinary form of state power.

World practice shows that although local government, in the well-known terminology of J. Vedel, is rather a form of decentralization of public authority in the state than deconcentration; inherent in state administration, it cannot be left out of public authority as such, and in this context, it should be considered as being, if not placed within the hierarchy, but connected with the state power mechanism (Vedel, 1973:392–93).

With that in mind, the general definition of local government given by Princeton University professor D. Lockard should be recognized as fair. It runs as follows: "Local self-government is a public institution, part of a regional or national institution of power, empowered to decide or organize a wide range of is-sues within a relatively small area ... Local self-government is at the core the pyramid crowned by the national government, whereas the middle strata are represented by regional authorities" (Lockard, 1968:45).

It should be said that the semantic content of this definition does not indicate the predetermination of the rigid subordination of the elements of the public authority mechanism, because even in the conditions of its pyramidal structure a certain degree of independence of its sub-parts is possible — both in the implementation of their own competence and in matters of their self-organization. The self-government mechanism

itself presupposes the self-organization of local residents and a certain degree of autonomy in solving local problems directly or through elected bodies. Meanwhile, this definition emphasizes the unity of local government and other elements of the public authority mechanism and the impossibility of their opposition. In this sense, the uniqueness of local self-government phenomenon does not mean its opposition to other public power forms within the state. The denial of the actual unity and interconnection between local and central government in the public power system of Russia ignores a number of important legal and socio-economic factors signaling the opposite.

According to Article 12 of the Russian Constitution, local government bodies are not included in the system of public authorities, and local government is autonomous within its own powers. Thus, the Constitution declares the organizational (institutional) and functional autonomy of local government, which has previously been repeatedly noted in the decisions of the Constitutional Court of the Russia (Decisions No. 15-P of November 30, 2000, No. 3-P of January 15, 1998, etc.).

Local government is viewed as a full-fledged political and legal institution, and its definition as a form of democracy and an element of civil society allows us to look at it the context of the legal status of an individual, recognizing the right to local government as one of guaranteed and protected rights. At the same time, in the Constitution of the Russian Federation, local government is considered primarily as an objective-legal principle of organizing power at the local level, and its autonomy is *strained* by the limits of municipal competence.

In relation to Art. 12 of the Constitution of the Russian Federation N. Mironov writes: "In the formal institutional sense, the Constitution of the Russian Federation provides for both centralization and decentralization of competence on issues of local importance. The level of municipal autonomy can be quite flexibly regulated by federal laws, without the threat of a direct violation of the Constitution" (Mironov, 2006: 21–27).

We can partly agree with the Mironov's academic view. However, it would be more correct to talk about the *elements of centralization*, but not about centralization as such. The system of limits of local government autonomy is widely regulated in Federal Law No. 131-FZ "On General Principles of the Organization of Local Self-Government in the Russian Federation"[4]. Thus, on the one hand, we are dealing with organizational and functional autonomy, and on the other hand, with the subordinate nature of the local government functioning, the limits of which are determined by the legislative bodies of the state. This testifies for the existence of the *dualistic model* of local government in Russia (Chikhladze, 2011:109–114), based on a combination of managerial principles of centralization and decentralization. Accordingly, local gov-

[4] Federalny Zakon ot 06.10.2003 (red. 02.08.2019) No. 131-FZ "Ob obshchih principah organizacii mestnogo samoupravleniya v Rossijskoi Federacii" [Federal Law No. 131- FZ "On General Principles of the Organization of Local Self-Government in the Russian Federation], available at: http://www.consultant.ru (Accessed 19 January 2020).

ernment, being a form of self-organization of the population and a form of democracy, at the same time discovers signs of both a state and public institution.

The peculiarity of the dualistic model is that there is no direct subordination between the levels of central and municipal authorities, however, local governments can act only within the framework of legally established powers. Therefore, the consideration of local government being an element in the framework of decentralization of public administration is an objective reality. It is also fair enough that this model should be based on a combination of central and local governance and, therefore, operate in coordination of actions between public authorities. Is it then possible to regard the interaction in coordination as a violation of the principle of local autonomy? It does not seem so: local governments cannot function completely independently, since they do not possess sovereignty and are an integral part of public authority. And if so, then their co-relation should be ensured through rational mechanisms and forms that create effective interaction between central and municipal authorities.

Constitutional judicial and legislative foundations of the unity of public authority in the Russian Federation

The fact that local governments are not, and by definition cannot be completely independent has been repeatedly established in legal positions of the Constitutional Court of the Russian Federation. For example, the Decision of March 1, 2012 No. 389-O-O[5] stipulates that local government autonomy should be carried out in accordance with the general principles of its organization. The establishment of the latter is referred to joint jurisdiction of the Russian Federation and its constituent entities. Therefore, local government activities should be carried within the established legal framework, elaborated on the state and national level. Thus, local government autonomy, determined by its competence, is not an absolute category.

Another important Constitutional Court decision No. 30-P[6] of December 1, 2015 also emphasizes that the proclamation of local government self-sustainability as the main principle of its relationship with central authorities should account for the absence of its infinite independence. This does not imply a denial of organizational and other forms of autonomy of local authorities from other public authorities. However, according to the legal position of the Constitutional Court, the autonomy of local government is not based on the denial of organizational and other forms of interaction between public power levels either. At the same time, both the decisive participation of central authorities in the formation of local government bodies and the substitution of the latter by central authorities is unacceptable. It seems that the im-

[5] Opredelenie Konstitucionnogo Suda RF of 01.03.2012 No. 389-O-O [Decision of March 1, 2012 No. 389-O-O], available at: http://www.consultant.ru (Accessed 19 January 2020).

[6] Postanovlenie Konstitucionnogo Suda RF of 01.12.2015 No. 30-P [Constitutional Court decision No. 30-P of December 1, 2015], available at: http://www.consultant.ru (Accessed 19 January 2020).

portance of this decision lies in clear demonstration that the line of local autonomy is defined by law and there is an objective dependence of municipal authorities on the institution of the state.

Following the logic of the decision of the Constitutional Court of Russia, in special cases stipulated by law, the state may limit the principle of local government autonomy. However, such a restriction should be rational and aimed at the effective functioning of local government. In general, the regulatory impact of the state ensures the effectiveness of local government in solving issues of local importance.

We should pay special attention to the fact that in almost all decisions of the Constitutional Court, which address the issue of relations between central authorities and local government, the emphasis is put on the fact that according to paragraph "n" of Art. 72 of the Russian Constitution, local government is the subject of joint jurisdiction of the Russian Federation and its regions. It appears that this wording, in public authorities' view, is a rational argument for the possibility of local autonomy restriction. If considered in a systemic bond with Part 2 of Art. 76 of the Constitution, this provision envisages local government regulation by federal laws and the laws of Russia's regions. Consequently, the issue of strict legality of local government — both institutional and operational — is quite topical. Accordingly, municipal legal acts as a regulatory instrument for the implementation of municipal authority should be based on higher regulatory legal acts.

A striking example of the combination of centralization and decentralization in the dualistic model of local government is the 2014 Federal Law No. 136-FZ[7] which laid the foundation for a new stage of municipal reform in the Russian Federation. The essence of the reform was in the provision of Russian regions with the possibility of determining, within the framework of the Federal Law on Local Self-Government of 2003, territorial, institutional and competency models of municipal institutions. That increased the powers of Russian regions in the field of local government regulation, which, in light of the aforesaid, does not contradict the Constitution of the Russian Federation

The Constitutional Court, in its already quoted decision No. 30-P of December 1, 2015, agreeing with the position of the legislator, established that the increase of legal powers of Russian regions in the field of local government is aimed, firstly, at ensuring the coordinated functioning of regional and local authorities, and secondly, at their mutual responsibility in the implementation of constitutionally significant tasks to ensure integrated socio-economic development of the territory of the federal subject of Russia, and finally, at the unity of the functional foundations of the organization of public authority.

However, the provisions of federal legislation, presently in their dynamics, have been criticized by the expert community. Negative reaction was expressed to

[7] Federal Law No. 136-FZ, available at: http://www.consultant.ru (Accessed 21 January 2020).

a new legislative approach on the organizational foundations of local government, namely the non-electoral procedure of filling the post of head of the municipality. The Federal Law No. 8-FZ of February 3, 2015 provides for the possibility of a new form of indirect election of the head of the municipality: he (she) can be elected by the representative body of the municipality from among the candidates presented by a special selection commission. The head of the municipality, elected indirectly, heads the local administration. It should be noted that members of the selection commission are partly appointed by the regional governor.

The power of the head of a Russian region to determine the composition of the selection commission confirms the participation of central power in the local governments' organization, therefore this case is a vivid example of the presence of a centralization element. Yet this legislative approach causes great concern among many researchers. Although the number of government representatives in the selection commission is strictly limited, it is hardly possible to deny the obvious possibility of the regional governor's potential influence on the composition of local governments and their policies (Chikhladze, Hazov, 2016: 392).

Analyzing the most controversial provisions of legislative novels regarding the organizational foundations of local government, V.I. Vasiliev concludes that the order they determine is contrary to Art. 12 of the Russian Constitution. In other words, the constitutional principle of guaranteeing the organizational autonomy of local authorities from the central authority structure is violated — the presence of government representatives in the selection commission limits the autonomy of local government (Vasil'yev, 2014: 51–58). It is hard to deny yet another academic view, according to which "under the changed conditions, the head of a municipality, as the sole body of public representation, legally endowed with a special public law status, becomes a figure fully controlled and accountable to the state (its regions)" (Bazhenova et al., 2019:14).

The official position of the state on the matter, however, as expressed in the Constitutional Court decision No. 30-P of 2015, is that the procedure for electing the head of a municipality does not contradict the provisions of the Constitution. According to the Court, the text of the basic law does not directly indicate that the head of the municipality is an elected official. In addition, constitutional norms do not determine any procedure for filling this position. Therefore, the procedure requires legislative regulation.

Thus, despite the criticism in the academic doctrine, the analysis of the above legislative norms through the prism of their interpretation in the Constitutional Court judgments allows to conclude that there is currently a framework of state legal regulation of local government in Russia, promoting the penetration of centralization elements in the organization and functioning of municipal authorities. The strictly centralized legislative regulation of local government contains elements that make it possible to talk about the existence of a close relationship, that is the unity of the public authority system both on institutional and functional grounds. This proposition is also

supported by the 2020 amendments to the Constitution, confirming and affirming (albeit not without a degree of legal uncertainty) the doctrinal developments of the recent years.

The problems of interaction of public power levels within the framework of the dualistic model and in the context of central and local government functions correlation

The important factors determining both the target value and the effective-ness of public authority as a whole are the volume and meaningful characteristics of those issues that are resolved at its various levels, and, accordingly, the set of tools that are available to solve them. In this case, we are talking about the concept of "competence".

As Professor Yu. Tikhomirov points out, in any state the activities of public institutions is connected with legal provisions. The meaning of the concept of "competence", respectively, is derived from the Latin *competentia* — that is, the number of powers of an institution or person, belonging by law (Tikhomirov, 2010:22).

Professor S. Avak'yan also defines competence as a set of rights and obligations of a state body, local government body, an official, secured by regulatory legal acts (Avak'yan, 2015: 382). Thus, the classical definition of competence indicates that it belongs directly to public authorities or officials.

At the same time, difficulties in law and legal science lie both in defining the basic categories of "competence", "subject matter" and "authority", and in delimiting them to the possessing subjects, which is caused, in the first place, by the contradictory and ambiguous use of legal concepts in constitutional acts (Larichev, 2018:266).

According to Professor T. Byalkina, the essence of competence as a legal category lies in the fact that it acts as a legal means to determine the role and place of a particular in the management process by assigning him a certain amount of public affairs through legislation. According to the author, the objects of competence and specific powers are components of "competence" as a concept, while public institutions, including local government, are subjects of competence (Byalkina, 2007:13–14).

The contradictions in the legal nature of municipalities and their place and role in the public authority system lead to the situation when, acting as agents of state in solving local problems, municipalities do not directly represent its interests when interacting with citizens in the implementation of state functions.

In this regard, over the course of many decades, both in Russia and many other countries, there has been a debate on whether co-participation of various levels of government (federal, regional, municipal) in resolving certain issues at the state or municipal level (multilevel governance) is desirable, or a clear delineation (disentanglement) of functions between the corresponding levels is necessary.

A number of academic works indicate that a complete separation of functions is not only unattainable, but also undesirable (Côté, Fenn, 2014:28). For example,

Canadian experts R. Young and D. Henstra note the positive experience of joint implementation by provincial and municipal authorities of programs for emergency prevention and response to natural disasters (Henstra, 2013:209-210), which ensures coordination and adequate level of preparedness in all municipalities, regardless of their infrastructural capabilities. On the other hand, the authors of the study from the University of Toronto believe that a complete disentanglement of state and municipal functions is a precondition for management efficiency (Mendelsohn et al., 2010:9–11) whereas the resolution of the same issues at different levels and appropriate interaction of bodies should be carried out in exceptional cases.

In Russia, despite the experience of special working groups and government commissions on the delimitation of powers between state authorities and local government, the confusion and interlocking of powers continue, whereas the specter of local issues ranges from garbage collection and road repairs to participation in countering terrorism and extremism.

As Professor L. Andrichenko notes, referring issues such as implementation of measures for civil defense, combating extremism and emergency preparedness to municipalities in Russia, contradicts the substance of local issues, which should normally be connected with the direct provision of vital services to the population. In addition, the resources of municipalities are not aimed at and do not match the solving of such complex problems (Andrichenko, 2010:236). In case of social security, the author, analyzing Russian Constitutional Court's practice, notes that the social function, for example, is inherent in both the state and local government levels. However, the implementation of this function should be carried out with the financial support from the state, which guarantees the provision of social rights.

Despite the fact that federal legislator makes an attempt to systematize the specific powers of local authorities to resolve local issues by listing them in Art. 17 of Federal Law No. 131, there is no clear system of such. Firstly, the list itself is not closed, and secondly, according to Part 1.1 of Art. 17, the powers of local governments can be additionally established by federal laws, charters of municipalities, and in respect to intracity municipalities — by the laws of Russian regions (Larichev, 2017:69). Moreover, in 2014 Russian regions received the right to redistribute, with a few exceptions, powers between local and regional authorities. The specified reform, as some experts believe, calls into question the functional autonomy of local governments (Kostyukov, 2015; Byalkina, 2016).

A large-scale intrusion of sectoral legislation in determining the range of issues and powers exercised at the local level also leads to the expansion of the competence of municipal bodies, which is not financially supported. From the general provisions established by Russian legislation, it is also not possible to conclude that local governments can exercise legal regulation only in areas designated by law.

According to Professor V. Tabolin, local government carries out independent legal regulation not only on issues that are generally pre-determined by state and require "local legal concretization", but also in cases where central regulation is com-

pletely absent and there is no need for its existence or when legislation is not able to cover the diversity of local circumstances (Tabolin, 1997:64).

According to Part 2 of Art. 14.1, Part 2 of Art. 15.1, Part 2 of Art. 16.1 of the Federal Law No. 131, local governments have the right to deal with other issues that are not within the competence of local governments of other municipalities or state government bodies, and are not excluded from their competence by federal laws or laws of constituent entities of the Russian Federation, implementing them at the expense of local budget revenues, with the exception of inter-budget transfers provided from the upper budgets, and tax revenue for additional deduction rates.

Thus, we would agree with the position of A. Dzhagaryan that Russia "does not exclude the primary municipal legal regulation both on issues of local importance and those social issues that are, although not directly related to local issues but are closely associated with them and have not received a meaningful regulation in the current legislation, on precondition that a municipality does not intrude in the competence of other public entities" (Dzhagaryan, 2011: 6–9). After the introduction of state regulation, municipal acts adopted in an advanced manner should be brought into compliance with it.

It should be noted that the judicial practice regarding the determination of local authorities competence is contradictory. The Resolution of the Plenum of the Supreme Court of Russia of November 29, 2007 does not contain comprehensive rules for identifying the content of the competence of local authorities in case of contentious issues. The document indicates that when checking compliance with the competence of the body or official who adopted the municipal act, it is necessary to find out whether the issues settled in the contested act or part thereof relate to issues of local importance. However, as discussed above, the competence of local authorities is not limited to issues of local importance.

The Resolution also states that if an act or part thereof was issued without violating constitutional provisions on delimiting the competence of the Russian Federation, its subjects or local governments, the powers of the body or official who issued the disputed act should be checked for their ability to exercise legal regulation of this issue.

When checking the authority of a local government body (official), it is necessary, in particular, to consider the following: a) The courts are not entitled to review the appropriateness of the adoption of the disputed act by the body or official, since this falls within the exclusive competence of local authorities and their officials; b) The issues of local importance are enshrined in Art. 14, 15 and 16 of the Federal Law No. 131; c) Normative legal acts of local authorities or officials cannot establish any responsibility for their non-fulfillment (sanction as a measure of coercion). Such liability is established by federal laws and the laws of the constituent entities of the Russian Federation.

If the court establishes that the impugned act or part thereof was adopted on the issue that could not be settled by a regulatory legal act of a given level, or was

adopted in violation of the authority of the body that issued this act, the impugned act or part thereof shall be deemed invalid.

Considering the foreign experience of local government, E. Belousova notes that municipal authorities of most countries act within their own powers, and use them depending on financial capabilities. At the same time, along with their own (optional) powers, the municipal bodies are assigned with mandatory (established by the state) and delegated powers, the implementation of which is controlled by central governments (Belousova, 2016:31–34).

Mandatory powers are exercised with the participation and under the control of the state, since the state, having supreme sovereignty, vests a certain minimum of powers on self-government bodies, and local government bodies are not entitled to refuse those powers. The powers delegated (transferred) by the state, in turn, are close in their functional significance to mandatory powers, but are financed from the state budget.

Professor A. Kostyukov, analyzing the Anglo-Saxon model of local government on the example of the United States, indicates the presence in the structure of local authorities competence of two elements: objects of competence and respective powers. The latter, as the author notes, can be divided into two groups — mandatory and optional (Kazannik, Kostjukov, 2015: 440). Summarizing the content of the competence of local authorities in foreign countries, L. Chikhladze also distinguishes the circle of its compulsory and optional powers (Chikhladze, Hazov, 2016:288–289).

Yu. Fenenko subdivides the competence of self-government into primary and secondary. The primary competence, according to the author, is limited by the local affairs (housing and communal services, school education, beautification, etc.). The secondary competence is what local authorities most often carry out on behalf of higher authorities: registration of voters, draftees, public safety events, and those other issues that are not directly related to local affairs and what the central government is more interested in (Fenenko, 2004:35).

The European Charter of Local Self-Government plays a significant role in determining the competence of local authorities in those Western states, that are mostly attributable to the continental model of local government. In accordance with Part 1 of Art. 3 of the European Charter, local government is understood as the right and real ability of local governments to regulate and manage a significant part of public affairs, acting within the framework of the law, on their own and in the interests of the local population.

The Charter does not intentionally specify the range of public issues subject to municipal administration, leaving the definition of the relevant list to the state party, and only maintains that "the exercise of public authority should, as a rule, be vested primarily with the authorities closest to citizens", and "allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy" (Part 3, Art. 4).

Thus, it seems that within the framework of the dualistic model of the relationship between state authorities and local government, both theoretical and norma-

tive work is required to eliminate defects and optimize the functional load of municipal institutions. It should be determined, inter alia, whether and to what extent the joint management of issues by state and municipal bodies is acceptable (Peshin, 2007:130–135; Gulina, 2013), what are the criteria for determining the possibility and extent of compensating municipalities for expenses incurred by state decisions, and, in the absence of a mechanism of transfer of certain state powers to the local level, what are the limits of competence of municipal bodies outside the lists, established by law.

The need for clarification on those issues becomes even more pressing with the aforementioned constitutional amendments to Art. 132 and 133 of the Russian Constitution, introduced in early 2020. The amendments not only recognize the unity of local and state bodies in the public power system (Art. 132), but also contain the formula of "cooperation of local and state bodies in the implementation of public functions of state importance" (Art. 132–133). However, despite a reference to a certain mechanism of compensation of local government expenditures in the relevant sphere, these new provisions leave a great amount of ambiguity in respect to the extent of such cooperation, the content of the functions in question, as well as the specifics of financial and material base of their implementation.

It seems that the basis for interaction of state and local authorities in this area should be the principle of clear delineation of functions and powers, excluding arbitrary, unreasonable redistribution of them. The use of the appropriate mechanism should be strictly thought out, regulated and detailed. It should be emphasized, that the legal subordination of local government within the system of public authority does not mean dictatorship, and any centralization here should be *rational*.

Rational centralization as a principle of sustainable development of municipal institutions within the framework of the dualistic model of local government

Since the very formation of the state, it is difficult to talk about the complete autonomy of local government from state power. The historically developed territories in which members of territorial public collectives compactly resided became the immediate distribution area of a unified state power. Such a situation, by definition, makes the direct impact of the state on society as a whole and on the local community in particular inevitable.

On the one hand, power and subordination give a rise to a tendency to develop a universally acceptable model for interaction between public authorities and local governments. Consequently, the search for an optimum here leads to the desire in developing a new, relatively conflict-free paradigm of relations that combines the interests of the state and local government. On the other hand, if central institutions tend to dominate over local government institutions, this inevitably leads to an uncontrolled concentration of power in the hands of the state, which will sooner or later result in a conflict of interest between public authorities and society.

It seems that for the effective functioning of local government, the interaction between central authorities and municipalities is important as it is based on the support of the latter by the state. This need for interaction a priori creates the phenomenon of dualism in local governance. It also determines the mandatory presence of both imperative and dispositive methods in relevant interaction mechanism.

Close rational interaction with government bodies through the development of uniform (for all levels of public authority) standards of ensuring the livelihood of local population is in this context a priority. It therefore seems acceptable to define in federal legislation (along with the legislation of Russian regions) the standards and volumes of social and infrastructure services provided at the local level. It seems that the level of their provision cannot depend on the socioeconomic status of individual municipalities as this violates the constitutional principle of equality of citizens in exercising their own rights and freedoms. Central governments, therefore, should pursue a more active policy of budget and resource support of municipalities in local issues maintenance. Such an approach would be consistent both with the newly introduced constitutional norms and with legal positions of the Constitutional Court of the Russian Federation expressed in the Decision No. 33-P[8]of July 18, 2018, where the Court maintained that local government, through its bodies, is integrated into the general institutional system, implementing the functions of a democratic state on the territory of a municipality on the basis of interaction with both federal government bodies and regional authorities.

Speaking about such an approach, i.e state intervention only in certain areas and within reasonably justified limits in order to ensure national welfare, we mean that implementation of the concept of "rational centralization" leads to strengthening the role of the state through interference in the regulation and operation of both the organizational and functional foundations of local government in cases, strictly limited by law, without violating the relevant provisions of Art. 12 of the Russian Constitution.

Summary

The presence of centralization elements in the modern model of local government does not give grounds for absolutization of local government autonomy from the state. Moreover, the integration of state authorities and local government in the direction of mutual cooperation to solve common problems is perfectly acceptable. However, this integration should not be reduced to the mere inclusion of local authorities in the system of state authorities and, as a result, to the complete local government assimilation as central government local units. Otherwise, this would not be integration, but rather a disintegration, leading to the destruction of the true meaning of

[8] Postanovlenie Konstitucionnogo Suda RF of 18.07.2018 No. 33-P [Decision No. 33-P of July 18, 2018], available at: http://www.consultant.ru (Accessed 19 January 2020).

local *self-government* as a concept. Only the implementation of the principle of "rational centralization" can preserve both the special self-government nature of municipal institutions and contribute to their effective functioning within the public authority system, in order to ensure safe and comfortable conditions for the sustainable development of groups of people living in certain areas.

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Научная статья

ДУАЛИСТИЧЕСКАЯ МОДЕЛЬ И «РАЗУМНАЯ ЦЕНТРАЛИЗАЦИЯ» КАК ФАКТОРЫ ЭФФЕКТИВНОГО ФУНКЦИОНИРОВАНИЯ МЕСТНОГО САМОУПРАВЛЕНИЯ В СИСТЕМЕ ПУБЛИЧНОЙ ВЛАСТИ РОССИЙСКОЙ ФЕДЕРАЦИИ

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В статье дается анализ соотношения государственной власти и местного самоуправления в системе публичной власти Российской Федерации. Авторами отмечается, что взаимодействие соответствующих элементов можно охарактеризовать как дуалистическую модель, базирующуюся на сочетании управленческих принципов централизации и децентрализации. По мнению авторов, в основу взаимоотношений органов государственной власти и местного самоуправления, особенно в свете последних конституционных изменений, должен быть положен принцип предельно четкого разграничения функций и полномочий, исключающий, в том числе и произвольное, необоснованное их перераспередление. В статье отмечается, что для результативного функционирования местного самоуправления важно взаимодействие между органами государственной власти и местного самоуправления, основанное на поддержке последнего государством. Вмешательство государства подразумевает реализацию концепции «разумной централизации» — усиление роли государства в осуществлении как организационных, так и функциональных основ местного самоуправления в строго ограниченных законом случаях, без нарушения положений ст. 12 Конституции Российской Федерации.

Ключевые слова: государственная власть, местное самоуправление, дуалистическая модель, разумная централизация

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Государственная власть и местное самоуправление являются составными элементами системы народовластия в Российской Федерации, лежащей в фундаменте ее конституционного строя. Несмотря на различную правовую природу рассматриваемых институтов, актуальной и до конца не решенной проблемой является обособленность и самостоятельность местного самоуправления от государственной власти.

В каждом государстве публично-властные институты имеют набор функций и задачи, отражающих их целевое назначение — это, прежде всего, обеспечение безопасных и комфортных условий устойчивого развития групп населения (в целом — социума), населяющего территорию государства. В обеспечение решения соответствующих задач как органы государственной власти, так и органы местного самоуправления наделяются публично-властными полномочиями, и это концептуально отделяет их от институтов гражданского общества — как национального, так и локального уровня. Указанный фактор объединяет два субинститута публичной власти — государственную власть и местное самоуправление — в единую систему. С другой стороны, специфика местного самоуправления в полном его концептуальном значении заключается в том, что оно как сложное и комплексное явление, не может и не должно полностью принадлежать государственному механизму.

В статье дается анализ соотношения государственной власти и местного самоуправления в системе публичной власти Российской Федерации. Авторами отмечается, что взаимодействие соответствующих элементов можно охарактеризовать как дуалистическую модель, базирующуюся на сочетании управленческих принципов централизации и децентрализации. Особенность дуалистической модели заключается в том, что между уровнями государственной и муниципальной власти нет прямого подчинения, однако органы местного самоуправления могут действовать только в рамках законодательно установленных полномочий. В статье, сквозь призму анализа связанного законодательства и решений Конституционного Суда РФ, рассматриваются конституционно-правовые элементы указанной модели.

Между тем на сегодняшний день взаимодействие уровней публичной власти в рамках дуалистической модели небеспроблемно: это касается, прежде всего, соотношения функциональных основ их деятельности. По мнению авторов, в основу взаимодействия органов государственной власти и местного самоуправления, особенно в свете конституционных изменений 2020 г., должен быть положен принцип предельно четкого разграничения функций и полномочий, исключающий, в том числе и произвольное, необоснованное их перераспределение. Применение соответствующего механизма должно быть строго продуманным, регламентированным и детализированным. Субординация местного самоуправления в системе публичной власти не означает диктат, а централизация в рассматриваемом вопросе должна быть разумной.

В статье отмечается, что для результативного функционирования местного самоуправления важно взаимодействие между органами государственной власти и местного самоуправления, основанное на поддержке последнего государством. Тесное рациональное взаимодействие с органами государственной власти посредством выработки единых (для всех уровней публичной власти) стандартов обеспечения жизнедеятельности местного населения является первоочередной задачей местного самоуправления. В этом контексте следует считать вполне допустимым определение в федеральном законодательстве (законодательстве субъектов РФ) стандартов и объемов предоставляемых на местном уровне социальных и инфраструктурных услуг. Уровень предоставления соответствующих местных услуг, как представляется, не может зависеть от социально-экономического состояния отдельных муниципалитетов, поскольку такой подход нарушает конституционный принцип равенства граждан в реализации ими собственных прав и свобод. Государство, в этой связи, должно вести более активную политику бюджетной и ресурсной поддержки муниципалитетов в сфере решения местных вопросов.

Говоря о таком подходе — вмешательстве государства только на отдельных направлениях и разумно обоснованных пределах, в целях обеспечения общенационального благосостояния, подразумевается реализация концепции «разумной централизации» — усиление роли государства в регулировании и реализации как организационных, так и функциональных основ местного самоуправления по мере необходимости и в строго ограниченных законом случаях, без нарушения соответствующих положений ст. 12 Конституции Российской Федерации.

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