

## STATE AND LAW IN CONTEMPORARY WORLD

### ГОСУДАРСТВО И ПРАВО В СОВРЕМЕННОМ МИРЕ

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Research Article

#### Implementation of constitutional provisions concerning uniformed public authority in the Russian Federation

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**Abstract.** The article analyzes changes introduced to the current Russian legislation after the constitutional amendments adopted in 2020. The analysis is conducted in relation to the previously issued rulings of the Constitutional Court of the Russian Federation concerning several isolated aspects of organization and implementation of the uniform public authority system in the Russian Federation. Upon thorough study of the Federal Law “On the federal territory “Sirius” No. 437-FL of 22 December 2020, as well as of the draft bill “On general principles of organization of public authority in the constituent entities of the Russian Federation” authors outline arising questions and, more specifically, possible difficulties in organization and implementation of the public authority in the federal territories of the Russian Federation.

**Key words:** Constitution, public authority, constitutional amendments, rulings of the Constitutional Court, federal territories, federal government bodies, regional authorities, local self-government, bodies of public authority

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Научная статья

## Реализация конституционных положений о единой публичной власти в Российской Федерации

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**Аннотация.** Рассматриваются изменения, внесенные в действующее законодательство Российской Федерации после внесения изменений в текст российской Конституции в 2020 г. Их анализ производится с учетом ранее высказанных Конституционным Судом РФ позиций по отдельным вопросам организации и осуществления публичной власти в Российской Федерации. Авторами обозначены возникающие в этой сфере вопросы, и особенно подробно рассмотрены возможные проблемы организации и реализации публично-властных полномочий в федеральных территориях на основе анализа Федерального закона «О федеральной территории «Сириус» от 22.12.2020 № 437-ФЗ, а также законопроект «Об общих принципах организации публичной власти в субъектах Российской Федерации».

**Ключевые слова:** Конституция, публичная власть, конституционные изменения, решения Конституционного Суда, федеральные территории, органы федеральной власти, органы региональной власти, местное самоуправление, органы публичной власти

**Конфликт интересов.** Авторы заявляют об отсутствии конфликта интересов.

**Информация о вкладе авторов:** Чихладзе Л.Т. — концепция исследования, анализ полученных данных, написание текста; Фризен О.А. — концепция исследования, сбор и обработка материалов, написание текста.

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### Introduction

Constitution, being the fundamental state law, defines the basic principles and remains permanently the focus of attention: federal legislature is carried out in accordance with the Constitution; law makers initiating legislation are bound by the

Constitution when drafting Federal Law; the Constitutional Court of the Russian Federation verifies laws and other acts for compliance with the Constitution. A lot of research is devoted to Article 80 on the President of the Russian Federation as a guarantor of the Constitution of the Russian Federation (Krasnov, 2021; Konjakulyan & Velichkina, 2019; Liverovsky, Ovchinnikov & Avakian, 2021).

In this respect the approval of substantial amendments to the Constitution of Russia in 2020 drew immediate attention of scholars and researchers in Russia (Gritsenko, 2020; Medushevsky, 2020; Alabastrova, 2021; Troitskaya, 2021; Soboleva, 2020) and abroad (Germany, Latvia, Hungary). Certain Articles of the new Constitution form the basis for revising a great number of Federal Laws<sup>1</sup> and adopting new legislation, such as Federal Laws and new Federal Constitutional Laws<sup>2</sup> and new Federal Constitutional Laws<sup>3</sup>. Meanwhile, it is of the paramount importance that the definitions of the new constitutional phenomena be embodied in the law.

Despite the fact that there have been many papers on the problems of organization of the uniformed public authority in the Russian Federation published by different scholars recently, and although the Constitutional Court of the Russian Federation has long stated and now has given legislative confirmation to the idea of unity of the state and municipal powers, there is still no clear understanding of how and in what from — given the amendments to the Constitution — this uniformity will manifest itself. Some authors are of the opinion that the local self-government currently finds itself at a crossroads (Larichev & Chikhladze, 2021); others warn that becoming a part of the uniform system of public administration self-government will turn into a mere formality (Larichev & Marquart, 2020; Molyarenko, 2021).

All problems could be resolved by a special federal act, regulating this sphere explicitly and unambiguously, but none has been passed yet.

### ***State and municipal elements of public authority***

The current legislation<sup>4</sup> has defined the notion of the uniform system of public authority as a set of bodies of state authority of the Russian Federation, bodies of state authority of the constituent entities of the Federation, other government bodies, and bodies of local self-government, and stated that “the coordination of the work of these authorities shall be a system of decisions and measures ... made and undertaken by the

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<sup>1</sup> For example, the Federal Law No. 367-FZ of November 9, 2020 On introducing changes to the Federal Law On the Prosecutor’s Office, the Federal Law No. 89-FZ of April 5, 2021 On introducing changes to certain legislative acts in the Russian Federation, the Federal Law No. 440-FZ of December 22, 2020 On introducing changes to the Federal Law On the status of the Member of the Federation Council and the status of the Member of the State Duma of the Federal Assembly of the Russian Federation etc.

<sup>2</sup> Federal Law No. 394-FZ of December 8, 2020 On the State Council of the Russian Federation.

<sup>3</sup> Federal Constitutional Law No. 4-FKZ of November 6, 2020 On the Government of the Russian Federation.

<sup>4</sup> Part 1 of Article 2 of The Federal Law No. 394-FZ of December 8, 2020 On the State Council of the Russian Federation.

President of the Russian Federation, as well as by the Government of the Russian Federation, the State Council of the Russian Federation, and by other public authority bodies within the area of their competence”.

After this law was adopted there arose the question of how exactly the “coordinated functioning and cooperation of the bodies of the uniform system of public authority” will be reached<sup>5</sup>, Questions concerning the constitutional status of the State Council of the Russian Federation, and what authorities are meant by “other public authority bodies” mentioned in the act are also not clear enough.

At the same time, it is obvious that the bodies of local self-government are given voice in addressing issues of state importance by the Russian President decision. Along with the members of political parties represented in the State Duma of the Federal Assembly of the Russian Federation, representatives of local self-government bodies, and other persons may be secured seats in the State Council<sup>6</sup>. However, who “other persons” are and how their composition might vary is not specified and remains vague. This matter, together with many others, is for the time being left to the discretion of the President of the Russian Federation (Chairman of the State Council).

Part 4 of Article 11 of the above-mentioned Federal Law shows how broad presidential powers are as far as formation of the State Council is concerned: its Commissions may be made up of representatives of bodies of state authority of the Russian Federation, representatives of bodies of state authority of the constituent entities of the Russian Federation, of other government bodies, of bodies of local self-government, and of other organizations, including those not members of the State Council.

Among the main functions of this body is data collection to support (including through grants) the constituent entities of the Russian Federation and municipalities. Such support can come as award for achieving the planned levels of the socioeconomic development, as well as encouragement of such achievements for regions struggling to overcome obvious constraints. Thus, according to the national rating of socioeconomic conditions of regions, published by RIA Rating on 31 May 2021, at the end of 2020 Moscow was at the top (as expected), Saint Petersburg and Khanty-Mansi Autonomous Okrug — Yugra followed, and Moscow Region was rated fourth).

The Article envisages the probability of complex support of a constituent entity of the Russian Federation or its separate municipalities on its territory. The complex approach is provided for by Clause 3 of Article 6 of the Federal Law on the State Council, which states that the State Council, along with its other functions, analyses practices of federal government bodies and municipalities and puts forward suggestions

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<sup>5</sup> Quotation from Part 1 of Article 1 of the Federal Law No. 394-FZ of December 8, 2020 On the State Council of the Russian Federation.

<sup>6</sup> Part 2 of Article 9 of the Federal Law No. 394-FZ of December 8, 2020 On the State Council of the Russian Federation.

on their improvement<sup>7</sup>. In unison with it, Clause 3 of Part 2 of Article 15 of the Law sets forth the procedure of scientific research on issues related to cooperation between the bodies of public authorities.

Part 4 of Article 17 of the Law on the State Council stipulates various forms of participation of municipalities in resolving current federal issues: for example, bodies of local self-government take part in exercising public functions of national importance (of course, exclusively on territories coming under their jurisdiction)<sup>8</sup>. Such participation may occur not only by endowing local self-government bodies with certain state powers but also in any other manner prescribed by the federal law<sup>9</sup>.

Thus, given that this normative act was nevertheless devoted to consolidating the new — constitutional — status of the previously created State Council and defining the range of tasks to be solved by it, the ambiguous and overly general formulations did not and could not add clarity to the issue of changing (redistributing) the volume of powers exercised by public authorities at different levels. The reference to the alternative ways of powers redistribution suggests that changes will be introduced to not a single but several laws securing the powers of the bodies of public authority of different levels.

In this respect it should be noted that the question of whether the transfer of powers from the bodies of state authority of the constituent entities of the Federation to the municipal level or vice versa and implementation of such authority contradicts the Constitution has already attracted attention of the Constitutional Court Judges. In their opinions some of them asserted that people often do not distinguish between the state authority powers and municipal bodies powers<sup>10</sup>.

The Constitutional Court of the Russian Federation considered constitutionality of some provisions of the Kursk Oblast Charter back in 2000<sup>11</sup>.

The applicant in this case was the State Duma. The members of the Duma claimed that provisions of certain articles of the Kursk Oblast Charter contradicted the provisions of the Constitution on local self-government, delimitation of powers between the Russian Federation and its constituents along with a number of other constitutional provisions.

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<sup>7</sup> Clause 3 of Part 2 of Article 15 of the Law envisages the right of the State Council to conduct research on coordination and cooperation of bodies of public authority.

<sup>8</sup> Part 4 of Article 17 of the Federal Law of 8 December 2020 № 394-FZ “On the State Council of the Russian Federation”.

<sup>9</sup> Part 4 of Article 17 of the Federal Law of 8 December 2020 № 394-FZ “On the State Council of the Russian Federation”.

<sup>10</sup> Opinion of the Constitutional Court Judge Bondar N.S. in the case of constitutionality of Parts 4, 5, and 5.1 of Article 35, and Parts 2 and 3.1 of Article 36 of the Federal Law “On general principles of organization of self-government in the Russian Federation”, as well as constitutionality of Part 1.1 of Article 3 of the Law of Irkutsk Oblast “On certain questions of formation of self-government bodies in Irkutsk Oblast” with respect to the request of a group of members of the State Duma, with reference to the Ruling of the Constitutional Court of the Russian Federation No. 50-P of January 1, 2015).

<sup>11</sup> Ruling of the Constitutional Court of the Russian Federation No. 15-P of November 30, 2000 On the case of constitutionality of some provisions of the Charter of Kursk Oblast as amended by the Act of 22 March 1999 On amendments and additions to the Charter of Kursk Oblast.

The Constitutional Court of the Russian Federation established inconsistency of Clause 2 of Article 21 of the above-mentioned Charter with the Constitution, as the clause provided for the possibility of transfer of certain powers to local governments not by law but by the decision of the state authorities of the district — the district Council of People's Deputies. This body by its virtue and place in the system of public authority cannot act as a legislative body. Earlier in the “Udmurt case”<sup>12</sup> the Constitutional Court rejected possibility of transferring local matters for resolution at the level of state authority of the constituent entities of the Federation. The Constitutional Court emphasized the necessity to resolve issues of local importance only and solely by bodies of local self-government or directly by citizens, noting that federal legislation does not specify the possibility of transferring powers on issues of local importance to state authorities<sup>13</sup>.

Having concluded that a number of provisions of the Kursk Oblast Charter are not in line with the Constitution of the Russian Federation, the Constitutional Court nevertheless noted the possibility of interaction between local municipal bodies of self-government and state authorities of Kursk Oblast in solving local issues<sup>14</sup>.

Considering the opportunity provided to the population by the Charter of Kursk Oblast (as basic law) to voluntarily reject the right of forming local self-government (and thus refusing to exercise the state power of the Kursk Oblast in this territory), the Constitutional Court of the Russian Federation noted that “any change in the territorial foundations of local self-government cannot lead to its rejection”<sup>15</sup>.

We should also highlight the Judgement of the Constitutional Court of the Russian Federation No. 30-P of December 1, 2015<sup>16</sup> in the Irkutsk case, and more specifically in relation to the Opinion of the Constitutional Court Judge Nikolay Semyonovich Bondar, who asserted that the municipalities may vary in the degree of freedom and self-sufficiency and that people tend to confuse the municipal authority with state authority<sup>17</sup>.

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<sup>12</sup> Judgement of 24 January 1997 in the case of constitutionality of the Law of the Udmurt Republic On the system of government authorities in the Udmurt Republic.

<sup>13</sup> Judgement of the Constitutional Court of the Russian Federation No. 15-P of November 30, 2000 On constitutionality of certain provisions of the Charter of Kursk Oblast as amended by the Act of Kursk Oblast of 22 March 1999 On amendments and additions to the Charter of Kursk Oblast.

<sup>14</sup> Judgement of the Constitutional Court of the Russian Federation No. 15-P of November 30, 2000 On constitutionality of certain provisions of the Charter of Kursk Oblast as amended by the Act of Kursk Oblast of 22 March 1999 On amendments and additions to the Charter of Kursk Oblast.

<sup>15</sup> Judgement of the Constitutional Court of the Russian Federation No. 15-P of November 30, 2000 On constitutionality of certain provisions of the Charter of Kursk Oblast as amended by the Act of Kursk Oblast of 22 March 1999 On amendments and additions to the Charter of Kursk Oblast.

<sup>16</sup> Judgement of the Constitutional Court of the Russian Federation No. 30-P of December 1, 2015 On constitutionality of Parts 4, 5, and 5.1 of Article 35, Parts 2 and 3.1 of Article 36 of the Federal Law On general principles of organization of self-government in the Russian Federation, as well as constitutionality of Part 1.1 of Article 3 of the Law of Irkutsk Oblast On certain questions of formation of self-government bodies in Irkutsk Oblast with respect to the request of a group of members of the State Duma. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_189899/](http://www.consultant.ru/document/cons_doc_LAW_189899/) [Accessed 15th November 2021].

<sup>17</sup> Opinion of the Constitutional Court Judge Bondar N.S. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_189899/8b6d4af337c6cb18b4e18f3b5da62e376a331fee/](http://www.consultant.ru/document/cons_doc_LAW_189899/8b6d4af337c6cb18b4e18f3b5da62e376a331fee/) [Accessed 14th November 2021].

These conclusions have been made upon thorough examination of extensive data, not limited to documents submitted to the Constitutional Court. And given that *governing* is the main characteristic of state authority, citizens equate bodies of state authority of the constituent entities of the Federation with *bodies of local self-government* as they cannot always form self-governing and rely on local self-government for resolving local problems. Thus, many citizens cannot tell the difference between the character of authority at the regional level of the Federation and at municipal level.

However, this problem is not the only one. At present, the number of complex constituent entities of the Russian Federation has been minimized and, basically, rules for delineation of public authorities exercised by the state authorities of such entities have been developed. Earlier (in 1997), the issue of public powers intersection was also the subject of attention of the Constitutional Court of the Russian Federation<sup>18</sup>.

In its reasoning, the Constitutional Court noted that the fact of the autonomous okrug joining the territory of the region allows for the extension of the powers of the state authorities of the "parent" constituent entity over it, although these powers are of a different nature: they differ from those that krai or oblast exercise in relation to their other parts<sup>19</sup>.

In the resume part of its decision (Part 4) the Constitutional Court noted the single territory and population in such complex entities, and extension of government bodies powers of such complex territories as krai or oblast over the territory of autonomous districts.

As we see, in this situation the Constitutional Court virtually ruled over the dispute of two constituent entities of the Russian Federation; it considered how they should get along, which bodies of state authority should be formed, to which territory their jurisdiction extends, etc. But it is important to note, that though the constituent entities were of a special character, they were equal in their rights.

### ***Organization and implementation of public authority in federal territories***

Considering the amendments to the Constitution of the Russian Federation of 2020, we may presume that these basic resolutions of the Constitutional Court of the Russian Federation will soon become history. They will probably be used by constitutionalists to illustrate how "things used to be" and how "they have changed". And it is not about the change of the three-level structure of the system of public authority, which the Constitutional Court of the Russian Federation has substantiated in order to understand the general system of power in Russia. Neither

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<sup>18</sup> Judgement of the Constitutional Court of the Russian Federation No. 12-P of July 14, 1997 On interpretation of Part 4 of Article 66 of the Constitution of the Russian Federation on including Autonomous Okrug into Krai or Oblast". Available at: <http://www.constitution.ru/decisions/65786/65786.htm> [Accessed 19th November 2021].

<sup>19</sup> Judgement of the Constitutional Court of the Russian Federation No. 12-P of July 14, 1997 On interpretation of Part 4 of Article 66 of the Constitution of the Russian Federation on including Autonomous Okrug into Krai or Oblast". Available at: <http://www.constitution.ru/decisions/65786/65786.htm> [Accessed 19th November 2021].

do we mean the change of the conceptual approach, but rather the forthcoming integration of elements falling out of this harmonious system, — the federal territories:

- the necessity of correlating public authority relationships (in contrast to the existing layout where the powers are divided between federal state authority, state authority of the constituent entities of the Federation, and municipal authority),
- various opportunities to be used in federal legislative regulation (federal laws on these territories can be very different),
- inevitable emergence of new approaches to understanding possible ways of interaction between different levels of public authority: the relevant (future) decisions of the Constitutional Court of the Russian Federation will certainly be of prime importance; it is only a matter of time that they will appear due to overlapping of powers of public authorities and local self-government bodies, because, after all, until recently, it was the municipal authority that was considered (and it really is) the closest to people.

Professor, Doctor of Law Bondar N.S. distinguished between “positive” and “negative” factors influencing the equality of citizens when describing territorial organization of the population (Bondar, 2008:2). This issue is even more topical in relation to the above-mentioned territories.

How will territories be extracted from municipalities and constituent entities of the Russian Federation to form federal territories? If the territory is municipal (permanent for the residence of certain citizens), then how will the population of the federal territory be qualified? The word "guest status" comes to mind since these citizens will not have much weight in resolving issues of local importance, especially taking into account, that, most likely, local self-government as such is not formed.

So, speaking of the territorial principle of organization of local self-government in the Russian Federation, we cannot ignore the provisions of Article 67 of the Constitution of the Russian Federation envisaging possibility of formation of the federal territories in the Russian Federation in compliance with federal law and specifics of organizing public authority in these territories.

It is quite clear that to become “federal” such territories (being geographically a part of a certain constituent entity of the Russian Federation) must have significant features, or, rather, reasons for the federal legislator to decide in favor of withdrawing such territories from administration of municipalities and constituent entities of the Russian Federation to the direct administration of federal authority.

This idea is further supported by the characteristic of such territories given by some members and representatives of federal and regional authorities.

Thus, Speaker of the Tula Oblast Duma, S. Kharitonov, assessing the necessity of creating such territories, justified the changes by the specifics of the territories requiring social administering. These features can be of different kind: safety, ecology, economy, national reserves, and other protected zones. A similar proposal was put forward by the Chairman of the Federation Council Committee on Constitutional Legislation and State Construction Andrei Klishas.



Certainly, those voicing this initiative have studied similar federal territories in other countries, since the notion has long been known in a number of countries (as a rule, these are special administrative territorial units that are part of the federation without the legislative function and/or any representation in bodies of federal government). The issue of federal territories (districts, counties, regions, areas) in foreign countries is also of certain interest for Russian scholars who investigate foreign territorial forms of organization of public power (Irkhin, 2017; Praskova, 2013).

As of November 1, 2021, the city district Sirius, created in February 2021 in the Imereti Valley based on the infrastructure of the 2014 Olympics, received the status of a federal territory “Siruis”. The corresponding Federal Law No. 437-FZ On the federal territory “Sirius” was adopted on December 22, 2020.

Although the main topic of this article is the system of public authority bodies in the federal territory, it is noteworthy that in 2019 an innovative Scientific and Technological Center, which, among other things, develops fundamentally new forms of education and conducts scientific research, was built there.

This Federal Law<sup>20</sup> establishes the legal framework for the federal territory “Sirius”; thus, it first and foremost regulates matters arising in the process of its creation and organizational issues in the sphere of public authority. It also handles economic and other types of activities within the boundaries of the specified territory.

This specialized normative act contains the definition of this — and this should be emphasized, this particular — federal territory, which is understood as a public-law entity that has national strategic importance. Thus, in the Russian Federation, the federal territory is now one of the public-legal entities.

This Law also defines the competence of the public authorities of such a territory<sup>21</sup>. Let us emphasize again and more specifically — of the bodies of public authority.

This particular wording comes forth in other Articles of this Law: among the acts (forming the legal basis of creating and functioning of the federal territory “Sirius”) *the acts of the bodies of state authority of the Russian Federation or municipal bodies are not mentioned. What the law refers to is exclusively bodies of public authority, which brings us to the conclusion that in this territory a symbiosis of state authority, regional authority, and municipal levels of administration is created. For example, on the official site of the federal territory “Sirius” it is emphasized that here the bodies of the public authority exercise powers of local self-government and most of the regional powers; moreover, some federal powers can be transferred to them as well.*

Due attention should be paid to the Constitution of the Russian Federation legislating on (in a more or less generalized form) the issues of jurisdiction of the bodies of state federal authority, bodies of state authority of the constituent entities of the

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<sup>20</sup> Article 1 of the Federal Law “On the federal territory “Sirius”. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_371784/](http://www.consultant.ru/document/cons_doc_LAW_371784/) [Accessed 19th November 2021].

<sup>21</sup> Part 3 of Article 2 of the Federal Law “On the federal territory “Sirius”. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_371784/](http://www.consultant.ru/document/cons_doc_LAW_371784/) [Accessed 17th November 2021].

Russian Federation, and municipal bodies. There is nothing similar regarding the competence of the bodies of public authority. No doubt that determining the competence of public authorities will allow to determine the total scope of powers of such bodies (both state and municipal). But the same provision allows for the assumption that over time, a new form of public authorities that will act as a mediator between state and municipal authorities will be established. This means that certain set of competences will be formed from the tasks assigned to each level of administration and enshrined by federal law.

Article 3 of this Law (in addition to federal legal regulators etc.) deals with the Statute of this federal territory and with regulatory legal acts of its bodies of public authority. Nothing special but for the novelty — fact that the bodies of public authority of this federal territory enjoy the right to submit proposals to the President of the Russian Federation and the Government of the Russian Federation on the development of draft laws and other regulatory legal acts<sup>22</sup>.

Thus, the Law virtually envisages the right of the bodies of public authority of the federal territory “Sirius” to inform the federal authority (federal executive bodies) about the necessity to regulate certain matters in the federal territory. At the same time, by analogy with the Constitution (Charter) of a constituent entity of the Russian Federation and the Charter of a municipality, the Charter of the federal territory “Sirius” is adopted and approved by the Council of the Federal Territory “Sirius”<sup>23</sup>.

Some features allow to draw a parallel between this territory and a municipal entity: the name of this body (the Council), provision in Part 4 of Article 5 that the Charter of the federal territory “Sirius” establishes other issues (including those taking into account the provisions of the federal law on local self-government in the Russian Federation), and mentioning the decisions of the head of administration of this public-law entity (and the formation of the Administration of the federal territory as an executive and administrative body).

At the same time on the official site of the federal territory, we find: “other bodies of public authority may be envisaged by the Charter of the federal territory.” This formulation facilitates formation of wide scope of bodies called public authorities. The composition of the Council and bodies involved in its formation are also of certain interest:

1) In accordance with the Decree of the President of the Russian Federation No. 555 of September 30, 2021 On the members of the Council of the federal territory “Sirius”, three people have been appointed to it: Deputy Head of the Presidential Administration for Education and Science Policy, Aide to the Presidential Administration for Domestic Affairs and Head of the Education Foundation “Talent and Success” (as agreed).

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<sup>22</sup> Part 3 of Article 2 of the Federal Law “On the federal territory “Sirius”. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439](http://www.consultant.ru/document/cons_doc_LAW_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439) [Accessed 8th November 2021].

<sup>23</sup> Part 3 of Article 2 of the Federal Law “On the federal territory “Sirius”. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439](http://www.consultant.ru/document/cons_doc_LAW_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439) [Accessed 8th November 2021].

2) By the Order of the Government of the Russian Federation No. 2745-r of September 30, 2021 Deputy Minister of Health of the Russian Federation, State Secretary — Deputy Finance Minister of the Russian Federation, and Deputy Chief of the Government Staff of the Russian Federation were appointed to be members of the Council.

3) By the Order of the Head of Administration (Governor) of Krasnodar Krai No. 259-r of September 28, 2021 the Deputy Head of Administration (Governor) of Krasnodar Krai was appointed a member of the Council of the federal territory “Sirius”.

4) in accordance with the Resolution of the Territorial Electoral Commission of the federal territory “Sirius” No. 36/238-1 of September 20, 2021 On the establishment of the general results of elections of members of the Council of the federal territory “Sirius”, nine members were elected to the Council in three multi-member constituencies.

Thus, the Council of the federal territory “Sirius” consists of 16 members: seven are appointed by the President, the Government of the Russian Federation, and the Head of Administration (Governor) of Krasnodar Krai; nine are elected by universal, equal, and direct suffrage by secret ballot. And the 17-th member, the Head of the Administration of the federal territory is member *ex officio* of the Council. The authors are of the opinion that such a composition of this body allows to contemplate the combined nature of the powers of public authorities of the federal territory when the competence of these bodies will be a combination of certain powers of state (federal and regional) and municipal authorities.

By the Decree of the President of the Russian Federation No. 57 of January 30, 2021 On the Acting Head of the federal territory “Sirius” the Acting Head of the territory was designated (as of November 23, 2021). The status of the head of the territory — in conjunction with the articles of the special federal law on the procedure for enforcing the law (namely, on the establishment of a transitional period until December 31, 2025 for addressing organizational issues of this territory<sup>24</sup>) — indicates a significant adjustment of the entire public-power system of the territory in the nearest future.

It is well known that the federal territory “Sirius” is located in Sochi which necessitates cooperation with the municipality of Sochi Urban District and Resort. The profile law of this territory does not disregard this issue and provides for the possibility of redistributing powers between public authorities at all levels: federation, Krasnodar Krai, and Sochi (the latter being given more attention)<sup>25</sup>. The Law also stipulates that such a transfer of authority is formalized by agreemen<sup>26</sup>.

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<sup>24</sup> Article 47 of the Federal Law “On the federal territory “Sirius”. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439](http://www.consultant.ru/document/cons_doc_LAW_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439) [Accessed 8th November 2021].

<sup>25</sup> Article 47 of the Federal Law “On the federal territory “Sirius”. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439](http://www.consultant.ru/document/cons_doc_LAW_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439) [Accessed 8th November 2021].

<sup>26</sup> Article 47 of the Federal Law “On the federal territory “Sirius”. Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439](http://www.consultant.ru/document/cons_doc_LAW_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439) [Accessed 8th November 2021].

Realizing the significance of innovations in the field of public authority, the federal legislator also pointed out the need for a comprehensive adjustment of regulatory legal acts of all levels related to the federal law on the first federal territory<sup>27</sup>.

However, the small size of the federal territory "Sirius" (14.19 sq. Km.), the name *Urban-type settlement "Sirius"* used in official documents, the choice of *the newly established print and online media* for promulgation of normative legal acts and other official information<sup>28</sup> (Part 7 of Article 5 of the above-mentioned Federal Law) contribute to similarity with a municipality.

Noteworthy is the provision that bodies of public authority of the federal territory "Sirius" may issue legal acts that are not of a normative character<sup>29</sup>. But who will decide on constitutionality of the acts issued by the bodies of public authority of this federal territory and on their compliance with federal legislation? How will these norms be implemented if they are designed to regulate matters without any normative legal acts? Will there be state control (supervision) over the observance of the Constitution of the Russian Federation, implementation of federal constitutional laws, federal laws, constitutions (charters), laws of the constituent entities of the Russian Federation by public authorities of the given territory and by its officials, as well as over the compliance of the legal acts issued by them with the legislation of the Russian Federation? Please note that such control is carried out routinely subject to public authority bodies and officials of the constituent entities of the Russian Federation<sup>30</sup>.

What makes federal territories different from municipalities is that the President and the Government of the Russian Federation take part in the legislative process in such federal territory: for example, the Charter of the federal territory "Sirius" as well as any amendments to it, must be approved by the Government of the Russian Federation.

Given this direct participation of the federal center, there arises the question of how the law of Krasnodar Krai, where the Imereti Valley used to belong before the adoption of Federal Law No. 437-FZ of December 22, 2020, will be implemented.

Article 5 of this Law allows the bodies of public authorities of the federal territory "Sirius" to adopt normative legal acts binding in the territory in pursuance of normative acts of the federal level<sup>31</sup>, but the normative legal acts of the region level (in this case, Krasnodar Krai) are not mentioned.

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<sup>27</sup> Article 47 of the Federal Law "On the federal territory "Sirius". Available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439](http://www.consultant.ru/document/cons_doc_LAW_371784/59420b93ac26fa2328a49b69c671bda238cb82be/#dst100439) [Accessed 8th November 2021].

<sup>28</sup> Article 5 of the Federal Law No. 437-FZ of December 22, 2020 On the federal territory "Sirius".

<sup>29</sup> Part 8 of Article 5 of the Federal Law No. 437-FZ of December 22, 2020 On the federal territory "Sirius".

<sup>30</sup> In accordance with Article 29.2 of the Federal Law of 6 October 1999 № 184-FZ "On general principles of organization of legislative (representative) and executive bodies of state power of the constituent entities of the Russian Federation".

<sup>31</sup> In accordance with Article 29.2 of the Federal Law of 6 October 1999 № 184-FZ "On general principles of organization of legislative (representative) and executive bodies of state power of the constituent entities of the Russian Federation".

This Law, however, does not contain only questionable provisions.

Article 7 “Changing the boundaries of the federal territory “Sirius” is interesting in terms of the federal center intention to encourage development of this territory: Part 2 of this Article stipulates that “artificial lands (created in the adjacent to the federal territory “Sirius” internal sea waters and in the territorial seas of the Russian Federation) shall be included into the federal territory”. Given the size and cost of these projects, funds for their realization may be allotted only from the Federal Budget.

On the other hand, it is quite likely that the necessary funding will be raised from public-private partnership. Such assumption is made on the Information and Analytical Review On the development of public-private partnership in the Russian Federation, released by the Ministry of Economic Development of the Russian Federation in February 2020. Among the main conclusions made by the Ministry are those concerning insufficient investment into the infrastructure by awarding concessions, the underestimated potential of concession contracts and huge flow of investment (42%) coming from concession contracts concluded at the federal level (the data comes from the Information and Analytical Review of the Ministry of Economic Development On the development of public-private partnership in the Russian Federation).

In December 2020 the Federal Council of the Russian Federation called a meeting on the topic of Improving legislation in the sphere of public-private partnership and concessions. A. Kutepov noted the importance of regulating such relations and proximity to deliver the draft to the State Duma. Earlier (October 15, 2020) this draft law was discussed at the meeting of the Presidential Council for Codification and Enhancement of Civil Legislation. Therefore, it is a matter of course that passing the draft regulating public-private partnership — in relation to the issue under consideration — will entail the adoption of regulatory legal acts at all levels.

At the same time, we cannot but notice that Article 8 of the Federal Law No. 437-FZ of December 22, 2020 grants an extensive list of powers to public authorities of the federal territory “Sirius”. The authorities of the federal territory “Sirius” can exercise the powers of:

- *the Russian Federation* in the matters of the Russian Federation jurisdiction and joint jurisdiction of the Russian Federation and the constituent entities of the Russian Federation, *entrusted for implementation to public authorities of the federal territory “Sirius”*. In addition to federal laws and laws of the constituent entities of the Russian Federation, the list of normative acts that can be used to formalize such a transfer has been supplemented by acts of the Government of the Russian Federation and the Administration of the President of the Russian Federation,

- *state authorities of a constituent entity of the Russian Federation in matters of joint jurisdiction* of the Russian Federation and the constituent entities of the Russian Federation in accordance with federal laws and other regulatory legal acts, except for an extensive scope of powers<sup>32</sup>;

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<sup>32</sup> Specified in the Federal Law of 6 October 1999 № 184-FZ “On general principles of organization of legislative (representative) and executive bodies of state power of the constituent entities of the Russian Federation”.

- *separate powers of the bodies of Krasnodar Krai state authority* transferred for implementation to the public authorities of the federal territory “Sirius” by regulatory legal acts of Krasnodar Krai,
- *bodies of local self-government of the Urban District* (including on the matters of local relevance).

The federal law envisages joint financing of the transferred powers from the budget of the federal territory “Sirius” and Federal Budget including in the form of subventions.

Thus, the federal territory acquired the status of a public legal entity with a special structure of administration. At the same time, in other federal territories, the federal legislator will not necessarily adhere to the same principles of regulating public-power relations: there are no such constitutional and regulatory requirements, moreover, the features of these territories may vary or be completely different in each case.

However, substantial basis for new laws on federal territories has been established.

Evaluating possible options for organization and cooperation of state and municipal authority in federal territories, the authors think reasonable to turn to the Opinion of the Constitutional Court Judge Bondar N.S.<sup>33</sup> Although this opinion was given on a different matter, the below quotation is relevant to the situation in question because differences in federal regulation of public power organization in federal territories are also well-warranted. At the same time — and above all — there should be uniform, common for all federal territories, norms and principles stipulated by federal law, for example, on the general principles of organizing public authority in federal territories.

The provisions of such a normative act will form the platform for introducing new regulations, depending on characteristics of a particular territory.

In the absence of such a fundamental normative act, federal laws on federal territories may suffer from serious deficiencies. The reasons for the formation of such territories may be — and will be — different, but it is quite obvious that the first federal law adopted in this area did not prove to be of the best quality. At the same time, we think that constitutional feasibility to organize federal territories should not give rise to establishing such territorial entities in numerous instances: after all, territories should be withdrawn from the regional and municipal administration only in exceptional cases and implementation of individual projects may well be carried out on the basis of federal and regional interaction.

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<sup>33</sup> Opinion of the Constitutional Court Judge Bondar N.S. in the case of constitutionality of Parts 4, 5, and 5.1 of Article 35, and Parts 2 and 3.1 of Article 36 of the Federal Law “On general principles of organization of self-government in the Russian Federation”, as well as constitutionality of Part 1.1 of Article 3 of the Law of Irkutsk Oblast “On certain questions of formation of self-government bodies of municipalities in Irkutsk Oblast” with respect to the request of a group of members of the State Duma”.

No doubt, there must be a normative legal act (or several of those) regulating organization of public authority in the country as a whole. In support of this idea the first draft law appeared<sup>34</sup>, immediately raising a number of questions.

Attention should be directed to the fact that this draft contains:

1. terms and notions different from legislated on by the Constitution, such as “bodies forming part of the uniform system of public authority in the constituent entity of the Russian Federation” (Part 2 of Article 2),
2. propositions to incorporate and legislate on the working procedures already established in the work of state and municipal bodies (for example, the same Part 2 of Article 2 provides for the procedures of remote interaction of bodies),
3. provisions repeating those of the Constitution of the Russian Federation and relevant federal laws<sup>35</sup>;
4. Part 3 of Article 6 envisages phenomena of different characters (powers of supervision, exercised by bodies of state authority of constituent entities of the Russian Federation over *municipalities and bodies of local self-government*, as proposed by the writers). We can presume that amendments to the Constitution did not imply introduction of powers of supervision as the instrument of uniting the levels of public authority, especially since the title of the article refers to participation of such bodies of the constituent entity of the Russian Federation in resolving problems of local self-government.

But, apart from these provisions, some others evoked wide response in certain constituent entities of the Russian Federation. Members of the State Council of the Republic of Tatarstan did not support the draft law, for it obliges all Governors to be officially called Heads of Regions. At the present time, Tatarstan remains the only constituent entity of the Russian Federation with the Head called President. Significant amount of disapproval on the part of the constituent entities of the Russian Federation was also connected with the proposal to reduce the time period for submitting responses to draft laws considered in the State Duma from the original 30 to 15 days; this may result in (as was noted in the Stavropol Krai) actual removal of regions from the federal legislative process, since the legislative bodies in regions hold their meetings once a month and the time limit of 15 days is insufficient for proper work with draft laws. All in all, we can note a very general approach and excessive number of blanket rules of law in the above draft.

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<sup>34</sup> What is meant here is the draft of the Federal Law “On general principles of organization of public authority in the constituent entities of the Russian Federation”, brought in the State Duma by Senator Klishas A.A. and Member of the State Duma Krashennnikov P.V.

<sup>35</sup> For instance, Parts 1 and 5 of Article 5 concerning exclusively Russian citizenship for persons holding public office in the constituent entities of the Russian Federation, the prohibition to open and have accounts (deposits), keep cash and valuables in foreign banks; provisions on the possible establishment by federal law of the special procedures of cooperation between public authorities in the created federal territories. Available at: <https://sozd.duma.gov.ru/bill/1256381-7> [Accessed 30th May 2021].

## Conclusion

The draft law discussion showed that it needs to be finalized, inevitably proving that it will be thoroughly re-thought and re-designed eventually. The provisions of the law on the first federal territory also require further thorough improvement.

Thus, it is already clear how troublesome and versatile the implementation of the updated constitutional norms might be. It may well be the case that the Russian structure of public power interspersed with federal territories will have very significant differences from its foreign counterparts. Ultimately, constitutional consolidation of the possibility of organizing such territories by the federal law leaves the regional authorities outside the system: their opinion is actually not taken into account when withdrawing a part of the territory and transferring it under the jurisdiction of federal administration. Lack of any restrictions for setting up such territories allows us to assume a scenario in which, if not the quantity, then the area of the federal territories will finally prevail over the area of the constituent entities of the Russian Federation. Of course, at the moment this looks like day dreaming, but on the other hand — why not? Indeed, in the ultimate analysis, such a situation will ensure the unconditional nature of federal administration (specifically administration).

We should like to emphasize that only the difficulties in building of a uniform system of public authority in the Russian Federation arising from implementation of the amendments to the Constitution of the Russian Federation are outlined in the paper. In view of the aforesaid the uniform system of bodies of public authority is far from being a mere integration of bodies of state power and local self-government; implementation of public authorities in a unified manner may not always conform with the current legislation.

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