

## Current Trends in the Legal Regulation of Local Self-Government: Extension of Publicity

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### ABSTRACT

Relevance of the research is caused by requirement of modern local government for creation of the stable legal base answering to the nature of the local government based on openness and publicity of local activity. The research objective consists in the analysis and assessment of the operating constitutional and legal regulation of institute of local government, identification of problems in this part and offers of their elimination. The leading approach of researching this problem is legalistic one. Its use allows to consider a research subject in a complex, to formulate determination of necessary definitions, to specify the revealed legal gaps. The results of the research are the substantiated conclusions about the current state of legal framework for local government; proposals about the perspective of its further improvement. The practical importance of conducted research is the possibility of taking into account the results obtained in the legislative process at the federal, regional and municipal levels, as well as in the enforcement of municipal formations.

### KEYWORDS

Local government, legal regulation, publicity,  
municipal formations

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### Introduction

Local self-government in the Russian state mechanism plays a significant role because Russia declared itself a democratic state of law. The researchers note that the institution of local self-government with its own traditions gained wide legal registration (Mikheev, Mikheeva & Mokoseeva, 2015). However, the position of modern local government is not as stable as it seems at first glance. The conclusive evidences of this fact are numerous changes to the Federal law "About general principles of local self-government in the Russian Federation" (Federal Law №131, 2003). The current state of municipal government causes rough disputes; at the same time the opinions of lawyers are sometimes opposite. For example, D.S. Mikheev (2014) expressed a lack of theoretical elaboration of the principles of local self-government creating legal algorithms for its organization. It is necessary to give the point of view of the young

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researcher R. Prudentov (2014) about obvious crisis of local government. At the same time O. Salov (2001) believes that Russia's problems are not exclusive. They are a manifestation of common for most countries trends. It should be also noted the ideas reasonings of the famous theorist N. S. Timofeev (2014) on searches of solutions of the collected problems in the municipal sphere and forecasts of development of local government. He believes that in state policy of development of local government the ideas of dialogue character based on aspiration to achievement of rapprochement of local state interests and, respectively, unity of actions have to be put. It should be noted also the ideas by known theorist N.S. Timofeev (2014) about finding ways to solve the accumulated problems in the municipal sector and forecasts of development of local self-government. He believes that the public policy of the local government have laid the idea of the nature of the dialog based on the desire to achieve the convergence of local government interests and, consequently, unity of action.

Noted polemic demonstrates that modern realities in system of local government demand theoretical judgment, the analysis of the legislative base and the offers of legal conditions which could provide sustainable development of the studied institute. The authors think that the most important conditions should be the reasonable legal regulation of local government creating base for the organization and implementation of local authorities. The aim of this study is to analyze the existing legal acts regulating local self-government and recent legislative innovations from the point of view of their adequacy to the challenges in the municipal sphere. Recently it is regularly made amendments relating to changes in the election of local government models, that indicates the searching of legal policy in this question (Kudryavtzev, Mikheeva & Mikheev, 2016). That's why the analysis of the legislation regulating the explored sphere became one of tasks of scientific work. It was solved in a complex because the legal massif was estimated at the same time from positions of the right of citizens for local government, openness and publicity of the solution of questions of local value. This problem is logically connected with the other one - offer practical recommendations to improve the legislation. The study is based on a study of the national legal framework, enforcement practices, including the municipal level.

### **Materials and methods**

The group of methods were used for the solution of research problems. The central place among them is taken by general scientific methods, including, a dialectic way of knowledge. Application of the analysis, synthesis, analogy allowed to estimate the current state of the studied problem. The structural and system method gave the chance to constitute a general characteristic of legal regulation of local self-government. Doctrinal, comparative and legal methods were used in the work. The doctrinal method allowed to reveal opinions of scientists-jurists on the discussed problem. Among the special legal means used in a research the legallistic method was applied. It allowed to analyse regulatory legal acts, to reveal their completeness and sufficiency (insufficiency) for the organization and activities of local self-government, manifestation of publicity of these activities. This method, in a complex with legallistic rules, allowed to formulate the new definitions which are absent today in the legislation, to specify the existing precepts of law. The domestic legislation, scientific works of

the leading scientists, practical examples of municipalities became initial material for a research of the lifted problem.

## Results and Discussion

Some norms of the Federal law "About the general principles of the organization of local self-government in the Russian Federation" subjected to recent changes were analyzed on the basis of legalistic approach.

The local government has firstly received normative consolidation as the independent level of the public power on an equal basis with the government in the Constitution of the Russian Federation (article 3) in 1993. Although N.S. Timofeev (2012) speaks quite critical on this subject. He notes that the constitutional recognition of local government as one of levels of democracy doesn't demonstrate his full realization. This norm has found further development in the article 12 recognizing and guaranteeing local government, fixing its independence within the scope of its powers. There was a provision on not entry of local governments into system of public authorities which has caused a lot of controversy and conflict situations. We gave examples in early scientific publications when some governors approved regulations about an order of carrying out certification of municipal employees, the provision about an order of holding qualification examinations of these employees (Mikheeva, 2002). It is easy to see influence of the major international legal act, the European charter of local government, in the mentioned article 12 (The European charter, 1985). In 1985 it has proclaimed that democratically created local governments use considerable independence concerning powers, the order of their implementation and means which are necessary for performance of their functions.

Norms of the Constitution have received refraction in the plane of formation of some local governments and their officials. Lets refer to the recent changes in the called law, evaluate them from the standpoint of compliance with today's challenges and to strengthen the ability of local authorities. The changes in a territorial basis of local government providing creation of new municipalities – the city district with intracity division and the intracity area became one of the central legislative innovations. However innovations don't exclude preservation of the traditional city districts remaining still one of views of municipalities.

Decision making about creation of new municipalities is referred to competence of subjects of the Russian Federation which have the right to make change of the status of the existing municipalities.

Now it is obvious that not all territorial subjects of the federation will use the right to create intracity areas as it is urgent only for the large cities. It is represented that small city districts, which are majority in Russia, will hardly decide to be transformed in the nearest future.

Let's emphasize as advantage of the law that it doesn't provide categorical mechanical district division in the cities. And though scientists express reservations about need of similar innovations, we will emphasize that the existence of local government in intracity areas, creation of system of own local governments in them mean preservation of larger municipality – the city district with intracity division. Similar way in the organization of local government is already known. These are municipal districts with the settlements entering them. Integrity of management of the city with creation of intracity areas remains.



It is necessary to notice obvious pluses in formation of a regional municipal link in city districts. One of them is nearness of local government to citizens. President of Russia V. V. Putin emphasizes that local government is the closest power to people, figuratively speaking any citizen can reach it easily (the Message of the President, 2013). Today many residents of the city district have a vague idea of the deputies of city meetings, chambers. At best they know only a surname of the mayor and location of local administration. However this problem adjoins to another one very closely, s.s. activity of citizens, local communities, other structures of civil society. The tasks of local government can't be objectively solved without civil participation (Mikheev, Dudko & Mikheeva, 2015). It is impossible, of course, to push civil structures to activity by the strong-willed, imperious decision, but it is necessary to create the clear legal algorithms allowing the population to interact with local governments and to be heard by them. It is impossible to forget that local governments are only the tool of the population in the decision of their daily problems (Mikheev, 2012). To our opinion adoption of legislative rule about a possibility of creation of so small municipalities as the intracity area brings municipal authority closer to citizens, creates conditions for activity of citizens.

Other changes, in particular, concerning forming of local government bodies in again formed municipalities are closely connected with the discussed short story of the law. So, the representative body of the intracity area has to be formed from the deputies elected on municipal elections. The representative body of the city district with intracity division can be elected on municipal elections or be formed by delegation from structure of representative bodies of intracity areas according to rate of representation, equal irrespective of population of intracity areas. However the rate of representation of intracity areas in representative body of the city district can be established from population of intracity areas. The similar order of formation of representative bodies, for example, is widespread in a number of the French cities (Kudryavtzev & Mikheeva, 2015).

We believe that the last norm brings legal orderliness regarding the number of the deputies delegated from intracity areas to representative body of the city district. The creation of the intracity areas should be based on factors such as traditionally developed administrative-territorial areas in the cities, habitual for the population districts, created by geographical (northern, southwest, over the river, etc.), economic, infrastructure and other characteristics (for example, industrial, park, student's, etc.). They can be different area, population. That's why we consider the possibility of unequal numerical representation of areas in a city meeting is reasonable. By the way, the similar norm will be widespread also now on the level of municipal districts, in which representative bodies the equal number of deputies from number of settlements was provided

Legislative approaches have undergone changes as well regarding formation of officials of municipalities. For example, heads of municipalities have not only two ways of election on municipal elections: by the population or from deputies of representative body. They can be elected also by representative body of the municipality from the candidates presented by the contest committee by results of a competition. At the same time in settlements where powers of representative body are carried out by a descent of citizens, the head of the

municipality is elected at the meeting of citizens and executes powers of the head of local administration.

It should be noted the legislative provisions regarding formation of the contest committees in electing the head of the municipality through a competition. A half of members in the municipal district, the city district is appointed by representative body of the municipality, other half – by the highest official of the territorial subject of the federation. A half of members of the contest committees is appointed by representative body of the called municipalities, and other half – by the head of the respective municipal district, city district with intracity division.

By the way, the similar order of formation of the contest committees is provided also in electing the head of local administration with difference that a half of members of the contest committee is carried out by representative body of the municipalities in settlements and intracity areas, and other half – by the head of local administration of the municipal district, city district with intracity division. Everything is logical here. Heads of the called administrations, as well as heads of administrations of settlements and intracity areas, present executive and administrative structures of municipal (we notice of not state) power. Life support of the population, functioning of regional or municipal economy in general depends on their activity and activity of the administrations headed by them. The question is natural: why the head of administration of the municipal district (the city district with intracity division), integrated with heads of administrations of settlements (intracity areas) through the solution of general tasks can't be heard by matching candidates for these positions? We should emphasize once again that it is about appointments of officials under the contract for accomplishment of the certain managerial functions requiring necessary knowledge, both professional skills and experience.

Discussions are caused by other norm – about formation of the contest committees for appointment of heads of municipalities and heads of administrations of municipal districts, city districts, city districts with intracity division. The representative (legislative) body of the subject of the Russian Federation is excluded from the called procedure. A half of members of the contest committee is appointed by the highest official of the subject (chief executive), the second half – by representative body of the respective municipality. In this regard fears express that the mayor elected by deputies on representation of the governor actually becomes his subordinate and is built in system of the government (Kostukov, 2014).

It is possible to estimate offered innovations differently, but what we see objectively? Firstly, heads of subjects directly don't appoint either heads of municipalities, or heads of local administrations. It is carried by the law to competence of the relevant representative body of the municipality.

Secondly, powers of the head of the subject regarding purpose of a half of members of the contest committee are really expanded, but its second half is appointed by representative body of the municipality, and in further procedures of selection, estimates of the presented candidacies to the corresponding positions both parts of members of the contest committee are allocated with equal powers. Then the person is appointed to position by results of tender from the candidates provided by the contest committee by representative body of the municipality.



Thirdly, there is a wish to remind about the domestic historical experience connected with appointment of chairmen of territorial justices (executive bodies of a zemstvo). According to article 48 of the Regulations about provincial and district territorial organizations, January 1, 1864 the chairman of a district justice elected by territorial meeting was confirmed to the post by the chief of the province, and article 56 fixed statement as the chairman of a provincial justice by the Minister of Internal Affairs of the Russian Federation. We don't stand up for entering of similar today, but we should remind of these organizational procedures estimating 150 years' experience of the Russian zemstvo.

Direct appointment of chief executives of municipalities (mayors, burgomasters) representatives of the state isn't a rarity in the states with various municipal systems. So, in Belgium the burgomaster is appointed by the king from among members of municipal council, in Holland the burgomaster is also appointed by the royal decree (Kutafin & Fadeyev, 2008) etc. Similar practice isn't perceived neither as folding of local government, nor as dictatorship of the state. Though we already noted preference on election of heads of local administrations on direct elections in a number of early works (Mikheeva & Kudryavtzev, 2015). A. S. Prudnikov (2007), L. A. Velikhov (1996), S. V. Pronkin and O. E. Petrunina (2001) adhere to a similar position. Though there are domestic scientists – S. A. Avakyan (2012), and foreign scientists – Gabardi Wanye (2001) who don't divide this approach about formation of the head of local administration.

## Conclusion

Assessment and judgment of some constitutional precepts of law regulating local government in Russia allows to draw some conclusions.

1. The considerable break after adoption of the Constitution of Russia of 1993 has been made in the history of the Russian local government. It is necessary to conclude that for the first time after the Territorial reform of 1864 which laid the foundation for creation of local government offices in Russia, the Constitution set an algorithm to modern development of institute of local government on the new principles of its organization, establishment of guarantees of the right to local self-government. It has formed a legal basis as for further development of the legislation about local government, and for formation of law-enforcement practice at the local level

2. Contrary to statements of some theorists it is necessary to recognize the constitutional model of the Russian local self-government urgent and not interfering development of the adequate legislation regulating municipal legal relationship.

3. Though provisions of the basic law about local self-government are often and sometimes contradictory changed they reflect in general requirements of institute of local government. Moreover changes in the Federal law "About the General Principles of the Organization of Local Self-government in the Russian Federation" demonstrate search of optimal solutions, aspiration to enhance questions of the organization of local government. These changes aren't dictated by desire to establish dictatorship of the state over local government and administrative control of activity of his bodies.



4. Further improvement of the legislation is represented in the direction of the solution of problems of expansion of publicity and openness of municipal authority, establishment of closer dialogue of local governments with the population and other civil institutes of local communities. The solution of questions of life support of local communities in modern conditions is impossible without participation at management processes of citizens and the bodies created by them (Mikheeva & Likhoshva, 2016).

Materials of article are of scientific interest for the scientists dealing with problems of the constitutional and municipal right. Separate conclusions can be used by legislative bodies of federal, regional level and in law-making of local governments. At the same time law enforcement officials can also obtain for themselves useful information regarding formation of local governments

### Disclosure statement

No potential conflict of interest was reported by the authors.

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