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ИССЛЕДОВАТЕЛЬСКАЯ СТАТЬЯ

ОСНОВЫ КОНСТИТУЦИОННОГО СТРОЯ РОССИИ КАК БАЗИС, ВЫСШИЙ ИМПЕРАТИВ ПРАВОВОЙ ДЕЯТЕЛЬНОСТИ ОРГАНОВ МЕСТНОГО САМОУПРАВЛЕНИЯ

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Аннотация: Статья посвящена раскрытию механизма обеспечения и надзора за легитимностью деятельности органов местного самоуправления. Легитимность деятельности муниципалитетов связывается с безукоризненным соблюдением системы нормативно-правовых требований, ядром которых являются основы конституционного строя России. При помощи метода дедукции и индукции проводится делимитация и демаркация рамок правовой легитимности функционирования муниципальных органов, фиксируются маркеры формулы права, закрепленной в Федеральном законе «О прокуратуре Российской Федерации»: «Верховенство закона, единства и укрепления законности», а также формулы права, указанной Ю.А. Тихомировым: «Цель – регуляторы – действия – результаты».

В статье отстаивается следующая точка зрения: нормы, положения первой главы Конституции РФ, которые являются непосредственно действующими, неправомерно считать исключительно целями, определяющими организацию и функционирование органов местного самоуправления, а также декларативными нормами. В статье дана трактовка правовой легитимности в деятельности органов местного самоуправления как деятельности, находящейся в конституционном правовом поле. Обозначены основные правовые дефекты деятельности органов местного самоуправления. Раскрыта роль таких формул права, как «Верховенство закона, единство и укрепление законности», «Цель – регуляторы – действия – результаты», в качестве механизмов правовой дефектологии.

Ключевые слова: органы местного самоуправления, основы конституционного строя, формула права, правовая легитимность, надзор

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FUNDAMENTALS OF THE CONSTITUTIONAL SYSTEM OF RUSSIA AS THE BASIS, THE HIGHEST IMPERATIVE FOR LEGAL ACTIVITIES OF LOCAL SELF-GOVERNMENTS

RESEARCH ARTICLE

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Abstract: The article discusses the mechanism for ensuring and supervising the legitimacy of local self-government activities. The legitimacy of municipalities is associated with strict compliance with legal and regulatory requirements, the basis of which is the foundation for the constitutional system of Russia. Using the method of deduction and induction, the author delimits and demarcates the framework of legal legitimacy for the functioning of municipal authorities, fixes the markers of the formula of law enshrined in the Federal Law “On the Prosecutor’s Office of the Russian Federation”: “The rule of law, unity, and strengthening of the rule of law”, as well as the formula of law stated by Yu.A. Tikhomirov: “Goal – regulators – actions – results”.

The author argues that the current norms and provisions of the first Chapter of the Russian Constitution cannot be considered as sole objectives or declarative norms governing the organization and functioning of local self-government. The article interprets the legal legitimacy of the local government activities as an activity within the constitutional and legal fields. The author examines the main legal problems in the activities of local governments. The materials of the article reveal the essence of such formulas of law as: “The rule of law, the unity, and strengthening of the rule of law” and “Goal – regulators – actions – results” as mechanisms for legal defectology.

Keywords: local self-government bodies, foundations of the constitutional system, formula of law, legal legitimacy, supervision

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Introduction

The Constitution of the Russian Federation and the Constitutional Court of the Russian Federation defines the norms of Chapter 1 of the Constitution as the basis, the highest imperative for legal legitimacy of the local self-government functioning. They are supplemented by other provisions of the Constitution of the Russian Federation, directly or indirectly related to the activities of municipal authorities, which are updated according to the development of social relations (2008, 2014, 2020). The most significant changes to the Constitution took place in 2020.

A significant part of the amendments introduced into the Constitution of the Russian Federation in June 2020, previously formulated in the Presidential Address to the Federal Assembly on 15.01.2020¹, are innovations that reflect the development of social relations concerning the activities of local government (municipalities). Since their introduction into legislation, a significant number of federal laws aimed at improving municipal operations have already been enacted².

Legal context

Particular attention should be paid to Federal Law No. 414-FZ "On general principles for organizing public power in the constituent entities of the Russian Federation", all norms of which must be met by all municipal legal acts as of January 1, 2023. Before this term, existing acts can be applied only in cases where they do not contradict this Federal Law.

Part 6 and part 8 of art. 2 of the Constitution legalize the coordinated functioning and interaction of public authorities of all levels, the delimitation of their competencies and powers. Article 52 defines the procedure for the transfer-assignment to municipal bodies with a range of state powers of the Federation and its constituent entities, as well as material and financial support.

Among the reasons for changing the constitution, many authors cite the historically established tradition of the Russian state in the relationship between public power and the population, centralization and decentralization, the unity of public power and organizational detachment, autonomy, independence, differentiation of functions between state and municipal public authorities, the effectiveness of their interaction in ensuring the interests of the population and the state.

The reasons for changes concerning local government are socio-economic, national, cultural, territorial, and other features of the country, as well as problems in health

care, education, social welfare, quality of life, security, etc. At the same time, it is necessary to thoroughly study the interrelationship of Chapter 1 of the Russian Constitution with the legal legitimacy for activities of municipalities and local self-government bodies.

When focusing on the constitutional component that defines the meaning of local government activities, the entire set of adopted legislative acts can be represented by three directions: constitutional state – constitutional local government, democratic state – democratic local government, social state – social local self-government body with the corresponding efficient economic activities.

As for **strengthening the constitutional state** and constitutional local self-government, this means including in the jurisdiction of the Federation "the organization of public authority" (paragraph "d" art. 71); entrusting the President of the Russian Federation to ensure coordinated interaction of public authorities (part 2 Art. 80); forming the State Council of the Russian Federation (paragraph "e.5" art. 71); including local self-government "into the system of public authority" (part 3 art. 132) [Elkina, Faizullin, P. 77].

It should be noted that the Constitutional Court of the Russian Federation (hereinafter the CC RF) has long recognized local self-government as a public authority³, emphasizing its powers based on the constitutional system of the Russian Federation⁴. In the same way is built the unified system of state power, the delimitation of its competencies and powers [Osipov, 2021. P. 73; Korsun, 2021. P. 133]. Thus, the systems of state and public authority are based on the constitutional system.

The Constitution of the Russian Federation and federal legislation have been supplemented both by a norm on the system of public authority, of which local self-government has become an integral part and by the need to assess the regulatory impact of draft municipal acts.

Amendments to the Constitution of the Russian Federation specify the status of the CC RF and the Prosecutor's Office of the Russian Federation (Chapter 7). The CC RF is defined as "the highest judicial body protecting the foundations of the constitutional system" (part 1 article 125). The Prosecutor's Office of the Russian Federation is defined as "a system of bodies supervising the implementation of the Constitution and other legal acts by local self-government bodies". The law establishes the mandatory execution of the prosecutor's request within the prescribed period, as well as the obligation to conduct supervision.

Significant laws are No. 376-FZ of 30.11.2021 and No. 194-FZ of 13.07.2020, which define the specifics of the organization of local self-government and the exercise

1 The Presidential Address to the Federal Assembly of 15.01.2020. The official website of the President of the Russian Federation. <http://kremlin.ru/events/president/news/62582>

2 Federal Laws: No. 236-FZ of 20.07.2020, No. 241-FZ of 20.07.2020, No. 370-FZ of 09.11.2020, No. 445-FZ of 22.12.2020, No. 454-FZ of 22.12.2020, No. 462-FZ of 29.12.2020, No. 518-FZ of 30.12.2020, No. 170-FZ of 11.06.2021, No. 304-FZ of 02.07.2021, No. 414-FZ of 21.12.2021, etc.).

3 Resolution of the Constitutional Court of the Russian Federation of 24.01.1997 No. 1-P (paragraph 6, clause 4). Collection of Legislation of the Russian Federation, 03.02.1997, No. 5, Art. 708.

4 Definition of the Constitutional Court of the Russian Federation of 04.11.1999 No. 165-O (paragraph 5, clause 3). Collection of Legislation of the Russian Federation, 20.12.1999, No. 51, Art. 6362.

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of certain powers in the federal territories and the Arctic zone of Russia.

The adopted amendments eliminated the competition of norms of Chapter 1 (art. 12, part 2 art. 3), Chapter 3 (art. 71, 72, 73) and Chapter 8 (part 1 art. 130, 131, 132, 133) of the Constitution [Kolesnikov, 2020. P. 45]. According to the Provision of the CC RF, local self-government should be considered not only as “a form of public-territorial self-organization of the population”, but also as “an integral part of the general mechanism of state administration, operating in interaction with the bodies of state power”⁵.

The development of **democratic state** – democratic local self-government, according to part 1 article 131 of the Constitution, the local population determines (establishes) the structure of municipal bodies, the norms of law-making initiative, meeting, citizens’ survey, nomination, preparation, selection and implementation of initiative projects, etc.

The CC RF characterizes local self-government as a public power defined by the foundations of the constitutional system and the principles of democracy and decentralization⁶ derived from it, while at the same time stating that its activities establish the imperatives of a democratic state governed by the rule of law⁷.

As for the **social state** – social local self-government and its corresponding efficient economic activity, the Constitution of the Russian Federation refer to “the most effective solution of problems in the interests of the population inhabiting the relevant territory” (part 3 Art. 132), and the Federal Law “On the State Council of the Russian Federation” contains “observance and protection of human rights and freedoms, formation of conditions for socio-economic development of the state”.

Amendments to the law No. 131-FZ introduced new norms for the functioning of health resorts and local spas, forest management, decision-making on the creation (abolition) of forestries and also approved the rules of improvement and control over a single heat supply organization (Law No. 303-FZ of 02.07.2021) as well as guarantees of compensation for additional expenses on the implementation of **public functions** together with the state authorities (Law No. 170-FZ of 11.06.2021).

Also, municipalities are responsible for identifying norms related to excessive duties, limitations on the adoption of municipal acts that contribute to unreasonable costs, etc.

According to the Resolution of the CC RF, the pub-

lic-law system of local self-government is aimed at “fulfilling the tasks of the social state”. This system is a part of “state policy aimed at implementing the constitutional principle of the social state”⁸.

Significant changes in the Constitution are associated with the legitimization of legal foundations for the newest stage of building local self-government [Stepanov, 2021. P. 36]. At the same time, the adoption of federal laws aimed at specifying new constitutional norms has brought to the forefront the search for a legal mechanism to identify the legal legitimacy of local government activities in the context of revised legislation. The difficulty lies in the accelerating rate of growth of the regulatory framework governing the activities of municipalities, the unresolved competition of norms, as well as the presence of some objective and subjective factors that in some cases go beyond legal legitimacy of the local government activities.

Delimitation (determination of the common position and direction) of the local government legal activity⁹, as the primary level of public authority, is defined by several hundred domestic legal acts, generally recognized principles and norms of international law, as well as Russian international treaties describing legal boundaries and principles for municipalities’ operation. It is constitutionally established that in this system of legal acts, the leading role belongs to the Constitution of the Russian Federation¹⁰, consisting of 137 articles. The leading law-making status belongs to the provisions of Chapter 1 of the Constitution of the Russian Federation “Fundamentals of the Constitutional System”, which, following part 2 of article 16 of the Constitution, cannot be contradicted by other provisions.

The formula of law

To ensure legal legitimacy, as well as constitutionalized control and supervision over the activities of local self-government [Badretdinov, 2019. P. 24], the main point is to guide both the formula of law “the rule of law, the unity and strengthening of the rule of law” acting as an institutional formula of law¹¹, and the formula highlighted by Yu.A. Tikhomirov: “Goal – regulators – actions – results” [Tikhomirov, 2020. P. 5].

The mentioned legal formulas play a fundamental role in balancing state, regional, ethnic, and local in-

5 Resolution of the Constitutional Court of the Russian Federation of 18.07.2018 No. 33-P (paragraph 2, clause 3). Collection of Legislation of the Russian Federation, 30.07.2018, No. 31, art. 5063.

6 Definition of the Constitutional Court of the Russian Federation of 04.11.1999 No. 165-O (paragraph 5, clause 3). Collection of Legislation of the Russian Federation, 20.12.1999, No. 51, art. 6362.

7 Resolution of the Constitutional Court of the Russian Federation of 29.03.2011 No. 2-P (paragraph 3, clause 2). Collection of Legislation of the Russian Federation, 11.04.2011, No. 15, art. 2190.

8 Resolution of the Constitutional Court of the Russian Federation of 11.11.2003, No. 16-P (paragraph 3, clause 2; paragraph 1, clause 5.1). Collection of Legislation of the Russian Federation, 17.11.2003, No. 46 (part 2), art. 4509.

9 Federal Law No. 131-FZ of 06.10.2003 “On the General Principles of Organization of Local Self-Government in the Russian Federation”. <http://www.consultant.ru>

10 The Constitution of the Russian Federation (with comments of the Constitutional Court of the Russian Federation). Moscow: Prospekt, 2021. P. 120.

11 Federal Law No. 2202-1 of 17.01.1992 “On the Prosecutor’s Office of the Russian Federation”. <http://www.consultant.ru>

terests [Boev, 2017. P. 94]. They should be considered as a specific form and content during the process of enforcing constitutional imperatives. As a form, these formulas of law represent a mechanism for ensuring an organic combination of external (vertical) governance and internal self-organization of the population [Bondar, 2008]. The content is specific constitutional norms enshrined in Chapter 1 of the Constitution of the Russian Federation.

Formulas of law express the socially significant necessity for a unified process to legally regulate social relations. This need affects the interests of both local governments, the entire society, and the state. It encompasses the mandatory legal form (framework) and content of law-making, law-exercising (executive-administrative activity) of local self-government bodies.

The application of formulas of law is necessary for the organization and activities of municipalities since they are a legal mechanism that provides legal legitimacy to the actions of local self-government, expresses patterns of functioning and development, indicates the most important guidelines, the framework of required and demanded behavior at the local level [Boev, 2018. P. 101]. The use of these formulas forms a particular law enforcement practice, which serves as an imperative for the constitutional state, and is reflected (manifested) in the forms and content of law enforcement activities of control and supervisory bodies of public authority.

The use of the formulas of law “The rule of law, unity and strengthening of the rule of law” and “Goal – regulators – actions – results” to promote the legal legitimacy for the activities of municipalities is bound to the observance of several conditions. The initial step in this process is the demarcation (clarification, designation of legal boundaries) of the legal field of local self-government. Its task is to fix the markers of the formulas of law in the provision of Chapter 1, namely, the norms of the first 16 articles of the Constitution of the Russian Federation.

Understanding the legal framework

However, before recognizing the provisions of Chapter 1 of the Russian Constitution as markers of formulas of law, it is necessary to resolve specific difficulties concerning issues of delimitation and demarcation of the local self-government legal framework. For example, this includes the centuries-old issue when there is no uniform interpretation for many concepts. In this case, legal scholars point to the non-formation of “the concepts of the constitutional system and its foundations” [Lebedeva, Ogurtsov, 2017. P. 87]. Additionally, a logical-linguistic examination showed that the terms “foundations of the constitutional system” and “constitutional foundations of the system” are not equivalent or identical entities.

The essence and the content of constitutionalism are understood differently in various sources, as written by Western experts in the field of constitutional law, arguing that it is a necessary symbolic and normative basis [Wet, 2006]. For example, if we look at Art. 28 of the Consti-

tution of the Federal Republic of Germany, where the constitutional system is defined by the **principles** of the republican, democratic and social state of law [Maunz, Dürig, et al., 2021], we can see that Part 1 of Art. 1 of the Constitution of the Russian Federation uses a formulation that is subject to more criticism from the perspective of changing the desired and actual, the proper and the real.

A.V. Borisov and K.V. Agamirov argue that the lack of an exact formulation is due to the oversaturation of “domestic law with declarative norms” [Borisov, 2010; Agamirov, 2017]. Some researchers say that “many principles of the constitutional system have declarative nature...” [Lebedeva, Ogurtsov, 2017. P. 88].

V. N. Zhadan believes that some norms of the Constitution of the Russian Federation “should not be interpreted as an achievement, but rather as a goal for the formation and development of a democratic federal state of the law with a social orientation” [Zhadan, 2020. P. 370]. V.E. Chirkin has a different point of view. He believes that “a democratic, law-based, social state is partially an essence and mainly a duty, the goal of development” [Chirkin, 2018. P. 54].

The universal formula of law¹²: “Goal – regulators – actions – results” can help us solve this problem. Based on the provisions of the theory of combinatorics and using the formula of law by Yu.A. Tikhomirov, we can consider the foundations of the constitutional system either as goals to strive for or as regulators, through which we achieve the goals or as goals and regulators simultaneously. All of the remaining 21 possible options (determined by the combinatorics formula $1 \times 2 \times 3 \times 4 = 24$) do not match the solution of the problem.

If we consider that the provisions of the articles of Chapter 1 of the Constitution of the Russian Federation are goals to strive for, the meaning of Part 1 of Art. 15, which states that the Constitution of the Russian Federation “has direct action and is applied throughout the territory” [Pushkarev, 2021. P. 61], as well as numerous conclusions of the CC RF on the direct action of the constitutional norms, becomes unclear. In this regard, V.N. Zhadan says the following: “Not everything that is written in the law, in the Constitution of the Russian Federation, can be perceived and interpreted unambiguously” [Zhadan, 2020. P. 366].

12 A formula of law is a specific way of expressing the essence and regularities of the social system (law and order), a requirement for legal activity, a form of obligation, a rule. The first known collection of legal formulas is considered to be a work published in the IV century B.C. in Ancient Rome by Gnaeus Flavius. I.A. Pokrovskij, Professor, Doctor of Roman Law (1868–1920), associated the development of the formulaic process with the laws of Ebucius and Augustus, who formalized and expanded the formula of law. V.S. Nersesyants, Doctor of Law, Professor, Academician of the Russian Academy of Sciences (1938–2005), characterized the formula of law as an instrument expressing something general, the structure of this world and order in it, an ideal image of how things should be, in what framework legal tasks should be solved.

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If we consider that the provisions of Chapter 1 of the Russian Constitution are regulators (principles), then the goals for which they are enshrined become unclear. None of the 16 articles in Chapter 1 identify these goals and do not use the term “purpose” or “goals”. All 16 articles of Chapter 1 are written in the stating, imperative sense, rather than the subjunctive sense (assumed, possible, desirable).

However, there is a third option: the provisions of Chapter 1 of the Constitution of the Russian Federation are both goals and regulators at the same time [Chirkin, 2018. P. 52]. It turns out that the criteria for “ensuring the rule of law, the unity and strengthening of the rule of law”, as well as ensuring the required actions and results is the degree of their compliance with the norms enshrined in Chapter 1 of the Constitution of the Russian Federation.

It follows that the definitions of Russia as a legal, democratic, secular, federal, and social state, specified in the Constitution of the Russian Federation as the basis of the constitutional system, are not a set of its characteristics but a single distinctive feature of the legal system, where the primary feature is the legal state (part 1 art. 1 of the Constitution of the Russian Federation). The main essence of the rule of law V. S. Nersesyants defines as: “the rule of legal laws and legal legality expressing the ideas of the rule of law” [Nersesyants, 2005. P. 104].

In Russia, it is the supremacy of legal laws in the sphere of local self-government, which are in legal unity with the foundations of the constitutional system and the provisions of the updated Chapter 8 “Local Self-Government” of the Constitution of the Russian Federation (Art. 130–133).

For the formulas of law prescribed in Chapter 1 of the Constitution of the Russian Federation to become a valid rule of verification of the local governments’ legal activities in practice, they must be demanded at the level of legal consciousness and law-abiding behavior of municipalities, state authorities, as well as state bodies engaged in control or supervisory law-enforcement activities.

The application of the provisions of Chapter 1 of the Constitution of the Russian Federation as initial indicators of the formulas of law will make it possible to prevent offenses that have become or are in the process of becoming persistent, to effectively solve the problems of ensuring constitutionality and legitimacy of local self-government functioning. For example:

Prevent cases when corporate rules set by IT giants in social networks were higher than the law [Nesterov, 2021. P. 42].

Comply with the principle of legal certainty in the law-making process of local self-government bodies. Participants of legal relations should unambiguously interpret the decisions of the CC RF represented in the norms of law, consequences, and results of their actions.

Eliminate the non-systemic approach, contradictions, conflicts, destructive and corruptive elements in municipal legal acts, as well as significant differences in the list

of local acts for selective legal expertise in the regions, violations of legal technique in the preparation and adoption of municipal acts [Rogovaya, 2017].

Thus, the meaning and the central role of formulas of law is to provide legal legitimacy to the norms of constitutional law at the municipal level while considering the interests of the local population, society, and the state. Accordingly, all laws and regulations of all public authorities affecting the municipal sphere should be based on the articles of Chapter 1, “Fundamentals of the Constitutional System”, and the above formulas of law.

Conclusion

It turns out that the legal legitimacy of the activities of municipal authorities should meet the imperative requirements of the formulas of law. The application of these formulas of law allows the public authorities to comply with the norms established in Chapter 1 of the Constitution (including part 2 art. 15), the uniform application and interpretation of constitutional and municipal law, and other branches of law by municipalities and bodies exercising constitutional control and supervision.

If the requirements of the formulas are observed, the provisions enshrined in Chapter 1, “Fundamentals of the Constitutional System”, together with other norms of the Russian Constitution, standards and principles of municipal law will become a universal means, a legal algorithm, a law form of objective expression of the essence of a legal, democratic, social, secular state.

Thus, the formulas of law: “The rule of law, unity and strengthening of the rule of law” and “Goal – regulators – actions – results” is a valid way of goal-oriented development of law, a highly effective legal mechanism to ensure efficient interaction of public authority through the provisions established in Chapter 1 of the Constitution of the Russian Federation.

The use of formulas of law based on the provisions of Chapter 1 of the Constitution of the Russian Federation allows, first, the most rational and efficient constitutional control and supervision, organization of legal monitoring, correction of legal legality; secondly, to promptly introduce innovations into the system of legal regulation of municipal activities; thirdly, to eliminate the issues of dominant “interpretation of purely ‘textual’ law”, inconsistency between the goals, results achieved and actions taken as well as more comprehensively consider “the dynamics of legal consciousness and behavior” [Tikhomirov, 2020. P. 8].

When using these formulas of law, it should be considered that to comply with the norms of Chapter 1 of the Constitution of the Russian Federation, the requirements of the CC RF regarding the formal and substantive components of legal legitimacy should be considered, thereby ensuring the priority of requirements of a substantive nature. These include “observing and respecting human rights and freedoms, respecting justice and reasonableness in the application of the law” [Rostovtsev, 2012. P. 45].

While using these formulas, as well as other historically justified formulas of law, we can achieve the law without the possibility of its implementation into the realized law (*nudum jus - amet jus*, in Latin), as well as to

strengthen the legal system, identify legal defects, gaps, collisions, destructive elements, corruptive norms, and develop new directions of legal defectology.

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