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## **CONSTITUTIONAL FOUNDATIONS OF THE FUNCTIONING OF LOCAL SELF-GOVERNMENT**

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### **Abstract**

The article deals with the constitutional and legal foundations of the activities of local self-government. Today, municipal power is one of the foundations of the development of modern society and statehood, so it is considered a key constitutional and legal structure. Problems and main directions of the development of the modern system of local self-government, theoretical concepts, features of legal regulation, as well as issues of the implementation of the municipal paradigm in practice, today are among the main objects of scientific understanding. In relation to them, diverse points of view and dilemmas not only in the Russian legal space but also foreign legal thought exist. The purpose of the present work is the analysis of constitutional and legal regulation of powers and competences of local self-government bodies and the assessment of the necessity of its revision and improvement based on the received conclusions.

### **Keywords**

Local self-government bodies – Constitutional foundation – Public authority – Municipality

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## Introduction

A relevant problem for every state is the effectiveness of its governance and its functioning, as well as the activities of the state and society at the state and local levels. At the local level, in addition to state bodies, management tasks are solved by local governments or municipal authorities. Today, local self-government is an integral element of any developed society. This is due to the trend of decentralization of power from state authorities to public self-government, from the state to civil society. The necessity and benefits of having developed local self-government have long been recognized in all democratic states and, therefore, it has a special place in the power structure. The manifestation of the sovereignty principle in the form of local self-government allows citizens to directly participate in solving such important problems as housing and utilities, education, health care, improvement of public services, etc. Thus, local self-government acts as a form of optimization of management processes, since there is an approximation of the managing entity to the managed object at this level of management. In this sense, local self-government is the most important form of expression of independence and freedom of citizens, their responsibility for their destiny, quality of life and many other aspects of their existence.

World practice has accumulated many years of historical experience in the organization and functioning of local self-government; there are several models of this institution existing in legal science. Problems of the constitutional foundations of the organization and activities of local self-government are reflected in works of many researchers. Works by N. L. Peshin, T. K. Kovaleva, N. N. Kuleshova, K. N. Lomakina and others should be distinguished among successful works that have been published recently. However, in general, a systematic, integrated approach to the organization of public administration and local self-government as a single system of governance, carried out within the foundation of constitutional and legal regulation in Russia, has not yet been formed. The subject of this study is the constitutional and legal foundations for the functioning of local governments in Russia and several foreign countries, as well as some aspects of assessing the effectiveness of their work.

## Methods

The basis of this work is the dialectical method, in which each legal phenomenon is considered in development, in constant motion. Based on it, the method of system analysis of the constitutional mechanism for the implementation of the right to local self-government was actively used. A comprehensive analysis of the problems of constitutional regulation of local self-government is used as a methodological basis of the system approach applied in the course of the study. A comparative method was also used in the process of the study, which revealed the main trends in the development of regulation of the right to local self-government at the national level (in the constitutions of various states of the world) and at the international level. The scientific validity, consistency and logic of the analysis of the considered problems were achieved through the use of the deduction method, i.e. the movement "from the general to the particular", as well as the use of such research methods as sociological, formal-logical, structural, etc. At first, the general provisions and regularities of an issue were investigated and then – specific forms of its manifestation. The method of legal analysis was applied in the work. This allowed revealing certain patterns and trends in the development of the institution of local self-government in constitutional law, identifying the main contradictions and possible ways to resolve them.

The normative base of the research included the Constitution of the Russian Federation, constitutions of foreign countries and international legal acts.

The theoretical basis of the research consisted of works by Russian and foreign scholars in the field of constitutional law, municipal law, as well as the theory of law and the state. The study also used the materials of practice.

## Results

Local self-government in constitutional law is traditionally considered one of the elements of the constitutional system and, for democratic legal states, – one of the foundations of the democratic system of government. In legal science, it is generally accepted that local self-government is an obligatory sign of the democratic nature of the organization of public power in society along with the separation of branches of state power<sup>1</sup>. At the same time, local self-government represents one of the forms of people's realization of their power. Thus, local self-government is a decentralized form of government, assuming a certain autonomy and independence of local governments, which act as bodies of self-governing communities of people on a certain administrative-territorial formation of the state.

Local self-government, as a special socio-political institution, is provided with legal consolidation given the constitutional foundations of the Russian Federation. In particular, in the Russian Federation, local self-government shall be recognized and guaranteed. Local self-government shall be independent within the limits of its authority, according to Article 12 of the Constitution of the Russian Federation<sup>2</sup>. Thus, in the expression of I. E. Ulyashkina, the wording of Article 12 of the Constitution of the Russian Federation sets the vector for separate consideration of local self-government from the system of state power<sup>3</sup>.

The development of constitutional and legal relations in the field of local self-government with the advent of the Chapter on local self-government in the Constitution of the Russian Federation in 1993 became one of the most important prospects for the further constitutional development of Russia. The Constitution of the Russian Federation is relatively young among the majority of existing constitutions of other states. Thus, developing the constitutional norms on local self-government in 1993, the authors had the opportunity to take into account the positive foreign experience in the legal regulation of local self-government, including international norms that enshrine the basic democratic principles of the organization of local self-government (for example, the European Charter of Local Self-Government).

The Constitution of the Russian Federation not only recognized local self-government as one of the foundations of the constitutional system but also allocated the norms on local self-government in a separate, eighth Chapter. The Constitution of the

<sup>1</sup> L. A. Velikhova, "Neposredstvennaya demokratiya na munitsipalnom urovne", *Materialy Afanasevskikh chtenii* num 9 (2017): 66-71.

<sup>2</sup> The Constitution of the Russian Federation: adopted by national vote on December 12, 1993 (as amended by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation dated December 30, 2008 No. 6-FKZ, dated December 30, 2008 No. 7-FKZ, dated February 5, 2014 No. 2- FKZ, dated July 21, 2014 No. 11-FKZ). Collection of the legislation of the Russian Federation, 2014, 31, Article 4398.

<sup>3</sup> I. E. Ulyashkina, "Konstitutsionno-pravovye osnovy funktsionirovaniya organov mestnogo samoupravleniya v Rossii", *Tavrisheskii nauchnyi obozrevatel*, num 6 Vol: 23 (2017): 34-42.

Russian Federation of 1993 fixed purpose of local self-government, principles of the territorial organization (Article 18, 32, 33, 130), the right of citizens to local self-government and guarantees of its realization (Article 133), competence of local self-government on separate issues (Article 132), etc.

The federal law No. 131-FL "On General Principles of the Organization of Local Self-Government in the Russian Federation" was adopted on October 6, 2003 (Federal Law of October 06, 2003) based on the development of these constitutional norms. In fact, this law details the constitutional provisions, defining an exhaustive list of powers of public authorities of different levels in the field of local self-government, enshrining the principles of legal regulation of local self-government powers, regulating the mechanisms of execution of financial obligations arising in connection with the implementation of local self-government of certain state powers, etc.

There are several problems of both theoretical and applied nature in the field of local self-government in Russia.

The publicity of the municipal power recognized by the majority of Russian researchers raises doubts about its independence. As some authors point out, an increasing number of substantive decisions are made by the center, which leaves it to the local representative bodies to implement them unconditionally. This means that local representative bodies become a mechanism for implementing the directives of the central government, in addition to the national administration<sup>4</sup>. The state is beginning to extend its control to all areas of local government activity, not limited to delegated authority. This leads to the transformation of the dualistic model of mutual relations of the state power and local government into the administrative one<sup>5</sup>.

This situation makes some researchers doubt the effectiveness of modern local government. The opinion is expressed in the scientific literature that "the approach to local self-government as a kind of public, but at the same time not state power inherent in the Russian constitutional law, on the one hand, contributed to the transformation of local self-government authorities into virtually powerless institutions and on the other – weakened the control powers of higher authorities in relation to local self-government"<sup>6</sup>.

The inconsistency between the requirements of constitutional norms and the actual state of affairs in this area prompts a search for a solution to this issue, turning to foreign experience in constitutional regulation and analyzing constitutional norms that enshrine local self-government in the constitutions of various states, using the comparative legal research method. A comparative analysis of the constitutional consolidation of local self-government in countries where it is recognized as successful will help to answer the question of the need to amend or revise the Constitution of the Russian Federation in order to make the constitutional norms on local self-government more thorough and detailed, thereby improving the situation of local self-government in Russia.

<sup>4</sup> G. V. Barabashev, *Mestnoe upravlenie i samoupravlenie v zarubezhnykh stranakh* (Moscow: Moscow University Press, 1996).

<sup>5</sup> N. L. Peshin, "Munitsipalnaya vlast: prodolzhenie gosudarstva ili institut samoorganizatsii obshchestva?" *Vestnik Voronezhskogo gosudarstvennogo universiteta. Seriya: Pravo* num 2 Vol: 37 (2019): 38-50.

<sup>6</sup> S. O. Pagieva; I. A. Tautieva y A. V. Tadaeva, *Sravnitelnyi analiz mastnogo samoupravleniya v Rossii i SShA. Problemy ekonomiki, organizatsii i upravleniya v Rossii i mire. Materialy V mezhdunarodnoi nauchno-prakticheskoi konferentsii* (Prague: World Press 2014): 235-239.

## Discussion

Let us consider the constitutional regulation of municipal government in the United States considered one of the most effective in the world.

The Declaration of Independence, adopted in 1776 in the United States, authored by Thomas Jefferson, a supporter of natural human rights, secured citizens' right to self-government. Two years later, the Constitution of the new state was adopted, which is the oldest one of the written constitutions currently in force. The United States Constitution itself does not contain provisions on local government. The right to local government is delegated to the states in the text of the 10th Amendment to the United States Constitution, which establishes that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Adopted in 1968, the Dillon Act consolidated the subordination of local governments to state authorities<sup>7</sup>.

Thus, constitutions of individual states provide the legislative basis for local self-government.

However, the aforementioned does not at all lead to the conclusion that the federal government in the United States has no leverage over the influence of municipal power.

The United States Constitution, transferring issues of local government organization to the state level, nevertheless, fixes several important provisions that create a formal opportunity for the federal government to not only regulate the status of local entities but also include them in the national mechanism. Section 8 of Article 1 of the United States Constitution, establishing the right of the Union to spend for the purpose of promoting the "general welfare of the people", became the basis for the existence of numerous federal programs of financial assistance to states and local authorities. Thus, if in 2015, the states and local authorities received 628 billion dollars within the foundation of federal programs for providing financial assistance, then this figure was already 652 billion in 2016 and reached 678 billion in 2017<sup>8</sup>. It is important to note that now, the nature of tasks in the provision of financial assistance has become determined by the Declaration of National Priorities and local authorities are considered as participants in the solutions of national tasks formulated and determined by the federal government. However, the current situation allows researchers of modern trends in the development of intergovernmental relations to call state and local governments "administrative agents of national programs" and the current system itself – "administrative federalism"<sup>9</sup>. Practice shows that the modern model of the functioning of intergovernmental relations is distinguished by a rather high economic efficiency and is adopted by local entities and local communities.

Next, let us consider the European experience of the formation and functioning of local governments.

<sup>7</sup> K. R. Nabiullina, "Innovatsionnye praktiki upravleniya gradostroitelnyim razvitiem v SShA", *Obshchestvo: politika, ekonomika, pravo* num 11 (2018): 51-54.

<sup>8</sup> T. K. Kovaleva, "Osnovnye tendentsii razvitiya mestnogo samoupravleniya v SShA: poisk optimalnoi modeli organizatsii i deyatelnosti mestnykh vlastei", *Ekonomika: vchera, segodnya, zavtra* num 7 Vol: 10A (2017): 50-58.

<sup>9</sup> D. F. Kettl, *Federalism: Battles on the Front Lines of Public Policy. Principles and Practice of American Politics* (Washington, DC: CQ Press 2004).

The Belgian Constitution of 1831 played a significant role in spreading the ideas of local self-government in European states. It contained a special article on community-based management. Along with the legislative, executive and judicial authorities recognized the fourth power – municipal<sup>10</sup>.

In the 1978 Constitution, local government in Spain was recognized as one of the main elements of government. The principle of autonomy was proclaimed as indispensable for local governance in accordance with the self-interest of the population. In the main legislative act of the country, autonomy is defined as the ability of the subject (in this case, local authorities) to self-regulation and self-determination. Orientation to the needs of the regions, their clear understanding and satisfaction were put forward as the initial principle of the provisions<sup>11</sup>. The Spanish Constitution is an example of the detailed regulation of local self-government at the highest legislative level. Section 8 of the Spanish Constitution contains rules governing local self-government down to the elements of economic importance.

The model of municipal self-government in Germany, from the point of view of political scientist V. S. Avdonin, is considered one of the strongest and most effective in Europe<sup>12</sup>. Therefore, familiarization with the principles of its creation and functioning, achievements in practical work, as well as solutions to institutional, financial, economic, political, social and other problems in itself is useful.

The guarantee of the right to local self-government is regulated very succinctly in the Basic Law of Germany: "Municipalities must be guaranteed the right to regulate all local affairs on their responsibility within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government following the laws" (Part 2 of Article 28)<sup>13</sup>.

The provisions of the basic law on finance provide additional legal opportunities for municipalities and municipality unions. According to Article 106, Paragraph 5, municipalities are entitled to part of the income tax and, according to Article 106, Paragraph 5a, they are also entitled to part of the value-added tax. Article 106, Paragraph 6 specifies that municipalities or, depending on land law, associations of municipalities, levy land and craft taxes, as well as local consumption and luxury taxes. Municipalities are given the right to establish a progressive scale of land and craft taxes within the foundation of the law. Following Article 106, Paragraph 7 of the Basic Law, an overall percentage of the land share of total revenue from joint taxes, to be determined by land legislation, shall accrue to the municipalities or associations of municipalities<sup>14</sup>.

<sup>10</sup> N. M. Kytmanova, Zarubezhnyi opyt organizatsii mestnogo samoupravleniya i vozmozhnost ego primeneniya v Rossii. 2015. Available: <http://shkola-munitcipalnogo-politika.ru/istoriya-mestnogo-samoupravleniya/zarubezhnyy-opyt-organizatsii-mestnogo-samoupravleniya-i-vozmozhnost-ego-primeneniya-v-rossii/>

<sup>11</sup> E. Yu. Komlev, "Soderzhanie printsipa avtonomii-osnovnogo printsipa deyatel'nosti mestnykh organov v Ispanii", *Administrativnoe i munitsipalnoe pravo* num 3 Vol: 111 (2017): 60-71.

<sup>12</sup> V. S. Avdonin, "Razvitie mestnogo samoupravleniya v Germanii i Rossii: istoriya, problemy, perspektivy", *Politicheskaya nauka* num 3 (2008): 88-111.

<sup>13</sup> The Basic Law of the Federal Republic of Germany. May 23, 1949. Available: [https://www.1000dokumente.de/?c=dokument\\_de&dokument=0014\\_gru&l=en&object=translation](https://www.1000dokumente.de/?c=dokument_de&dokument=0014_gru&l=en&object=translation)

<sup>14</sup> W. Blumenthal, *Kommunale Selbstverwaltung – Schule demokratischer Mitgestaltung. Politik und Gesellschaft in Deutschland – Grundlagen, Zusammenhänge, Herausforderungen* (Koeln: Verl. Wiss. u. Politik 1994).

The constitutions of the constituent entities of the federation – lands – not only duplicate the basic principles of local self-government enshrined in the federal constitution but also introduce new norms into the system of legal regulation<sup>15</sup>.

Essential distinctive features of the organization and legal registration of municipal self-government in Germany are as follows: definition of local self-government at the national level as a fundamental right and legal institution with the assignment of the most important tasks of its regulation to the land level; consolidation of the dual nature of municipal self-government as part of the system of public administration and as a relatively independent form of local democracy; development of municipalities and cities as corporations of public law; division of the subjects of local self-government into its own and transferred by the state.

The high level of development of the whole system of local self-government in Germany is, of course, determined by historical traditions that have developed based on experience and mentality, which ensured the evolution of the institution of local self-government into a basic element of society, its foundation and support<sup>16</sup>.

The importance of local self-government as one of the foundations of the constitutional system is also noted in international legal acts. At present, the basic ideas common to European countries regarding the organization and functioning of local self-government are reflected in the European Charter of Local Self-Government, which was signed on October 15, 1985 and entered into force on September 1, 1988<sup>17</sup>.

The European Charter establishes a kind of ideal model for the development of local self-government in Europe, including Russia. Therefore, this model is interesting not only as a normative legal act but also as a legislative manifesto, a declaration defining the ideology of local self-government as a form of democracy.

One of the democratic principles shared by all member states of the Council of Europe is the right of citizens to participate in the management of public affairs. As stated in the Preamble, the Council of Europe builds Europe on the principles of democracy and decentralization of power, so, of course, the development of a democratic Europe is inextricably linked with the development of local self-government, since it is precisely the right of citizens to participate in the management of public affairs that can directly be exercised at the local level<sup>18</sup>.

Following this Charter, states undertake to consolidate and apply those legal norms that guarantee the administrative, financial and political independence of municipal corporations. Testifying that local self-government is the basis of the constitutional system, the Charter enshrines the need for constitutional regulation of the autonomy of local self-

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<sup>15</sup> H. J. Wolff, *Verwaltungsrecht: Besonderes Organisations-und Dienstrecht* (München: Beck, 1994).

<sup>16</sup> K. N. Lokshina, *Osobennosti konstitutsionnykh garantii kommunalnogo (mestnogo) samoupravleniya v Germanii. Aktualnye voprosy istorii, filosofii, prava i pedagogiki. Sbornik statei Natsionalnoi nauchno-prakticheskoi konferentsii s mezhdunarodnym* (Ryazan: Sozvezdie, 2019).

<sup>17</sup> European Charter of Local Self-Government. October 15, 1985. Available: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_20361/](http://www.consultant.ru/document/cons_doc_LAW_20361/)

<sup>18</sup> N. N. Kuleshova, "Institutsionalnye osnovy munitsipalnoi demokratii kak osnovy sokhraneniya konstitutsionnogo printsipa samostoyatel'nosti mestnogo samoupravleniya", *Vybory: teoriya i praktika* num 1 Vol: 49 (2019): 5-12.

government. The principles set out in the Charter should apply to all types of local government. In the first part of the Charter and particular Article 2 states that it is necessary to constitutionally and legislatively regulate public relations in the implementation of local self-government and also notes the constitutional and legislative basis of local self-government<sup>19</sup>. This article reads as follows: "The principle of local self-government shall be recognized in domestic legislation and where practicable in the constitution".

This principle seems to be fully implemented in the Constitution of the Russian Federation. Despite the small number of articles devoted to the characteristics of local self-government (compared to the total volume of the text), they form a separate Chapter of the Constitution "Local Self-Government", which emphasizes the importance of this component in the system of public administration. The consolidation of local self-government in the Constitution of the state as a special level of public power also inevitably involves the definition of its goals, tasks, functions and competence. In other words, it should be determined by the law, which issues of public nature are resolved at the level of local self-government and what powers are vested in its bodies. Such an approach to regulating the powers of state authorities at various levels in the field of local self-government and directly local self-government authorities allows ensuring that there is a detailed constitutional principle at present in Russia at the legislative level for distinguishing between objects of competence and powers between different types and levels of public authority.

## Conclusion

Thus, a characteristic feature of the constitutional and legal norms that enshrine the foundations of local self-government is the foundation, on the basis of which municipal relations arise, change and cease since they proceed from the general principles of the political, social and economic structure of public power. The existing norms of municipal law detailing the relations connected with the formation and activity of local governments are grouped around the corresponding constitutional norms. At the same time, the constitutional norms enshrining the independence of local self-government have a direct effect and can themselves regulate the relevant relations at the municipal level. Therefore, the independence of local self-government, based on the principles of constitutional independence of the municipal government, acquires a pronounced constitutional significance in the light of the formation and development of municipal management relations.

Of course, the implementation of control powers by public authorities is necessary and should be carried out in full if local authorities are vested with separate state powers with the transfer of material and financial means necessary for their implementation. Such a transfer of material and financial resources to local self-government authorities is a manifestation of the constitutional guarantee to local self-government (Article 133), as it is compensation for additional costs incurred as a result of decisions made by public authorities.

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<sup>19</sup> I. R. Aminov y A. M. Mirvaleev, K voprosu ob osnovakh mestnogo samoupravleniya v Rossiiskoi Federatsii. Sbornik: Aktualnye voprosy prava, ekonomiki i upravleniya sbornik statei VII Mezhdunarodnoi nauchno-prakticheskoi (Penza: Nauka i Prosvetshenie 2017).

The feasibility of the constitutional reform of local self-government in Russia may be evidenced by some of the relevant problems of the constitutional regulation of local self-government in Russia.

The existence of these problems in local government makes it necessary to eliminate them, which should be carried out through the development and implementation of appropriate public policy, on the basis of existing mechanisms of constitutional and legal regulation, as well as taking into account the practical experience of countries where local self-government is recognized as successful. Thus, there is no need to change or supplement the norms of the Constitution of the Russian Federation in terms of regulating the foundations of local self-government, the existing rules allow using all the necessary political, legal and economic levers of influence on the municipal sphere to improve the efficiency of local self-government.

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