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The Need to Enshrine the Principle of Transparency in Administrative Regulations of Local Self-Government Bodies

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Abstract: Local self-government bodies are the key members of public life due to the fact that they represent the level of power closely connected with the general population, it is there where everyday problems such as support of high quality of life, provision of basic services, local problems are solved. People assess the work of local self-government bodies and trust or mistrust them by the quality of services they provide. That is why normative legal acts regulating the order of municipal services are of great importance to law enforcement practice. In Russia, such acts are called administrative regulations. But in spite of good undertaking in regulating the work of local self-government bodies there are problems connected with the procedure of how municipal services are provided as far as information support is concerned. The researchers consider the law enforcement practice on the question under research and on the basis of the analysis suggest solutions to the problem. The also suggest that amendments should be made in some normative legal acts of the Russian Federation.

Key words: Transparency, administrative regulations of local self-government bodies, undertaking, municipal services, regulations

INTRODUCTION

It is difficult to overestimate the role of local self-government bodies in public, political and legal life of Russian society and in the development of democratic legal state institutions. In modern Russia, local self-government bodies are one of the foundations of the constitutional system. Since, the institutions of municipal bodies encompass almost all the sides of democratic organization of local life they allow decentralizing many functions of state power, transferring solution making on all the aspects of local life to territorial communities and thus stimulating citizens' activity and their real involvement in decision-making process.

According to President of the Russian Federation, the quality of municipal legal acts is one of the problems in the development of Russian local self-government bodies (Putin, 2013). Municipal legal acts are the final product of municipal law making process which form a specific system where an administrative regulation of local self-government bodies takes its own place it is a "novice" in the system.

The term "regulation" (from Latin «regula»-norm, rule and «regere»-reign, govern; from French «reglament»-rule, regulation) has been well known in the Russian administrative dictionary for a long time. As in other European countries it means rules and regulations in the work of state bodies, institutions and organizations. Russian explanatory dictionaries define regulation as rules regulating the procedure of some activity or sequence of work. Regulations actually belong to the state regulatory impact.

Administrative regulations which have recently appeared in the practice of Russian local self-government bodies have been widely used in everyday practice and they have been developed throughout the country. Now in Russia, there are a sufficient number of administrative regulations adopted by local self-government bodies. However, one cannot find significant scientific works on municipal regulations.

Administrative regulations were introduced to the Russian legal reality with the adoption of Federal law No. 210-ФЗ "on the organization of the provision of municipal and state services" of July 27, 2010 where the following

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definition to the notion was given: "an administrative regulation is a normative legal act establishing the procedure of the provision of state or municipal service and the standard of the provision of state or municipal service".

Unfortunately, there is no unified approach both in theory and practice to normative legal acts of this kind. The principles of their functioning, problems which appear in the process of their implementation are of great interest.

In Article 4 of the above mentioned Federal law such principles of the provision of state and municipal services as transparency in the work of the authorities providing state services as well as of those providing municipal ones and also organizations taking part in the provision of state and municipal services are enshrined. But the question is whether this principle is enshrined in administrative regulations of local self-government bodies.

Literature review: Davydov (2011) in his monograph "administrative regulations of the Russian Federation executive bodies: theoretical aspects" comes to the conclusion that "the institution of administrative regulations may be attributed to new and intensively developing phenomena of the administrative-legal reality".

Nozdrachev in his article "systemic regulation of administrative work" mentions that at present time administrative regulations are the main legal acts regulating the internal structure of the executive bodies, procedures in the performing of state and municipal functions and the provision of state and municipal services.

Works by V.V. Brizhanin, K.V. Davydov and V.O. Buryaga connected with the research on the legal position of administrative regulations in legal science consider an administrative regulation to be an act with the help of which the normative regulation of administrative procedures is performed. The unified administrative regulation of the executive body is considered as a combination of interrelated administrative regulations aiming at a detailed and coherent regulation of different sides in the work of the executive body, precisely, the procedure of work organization and its fulfillment, the procedures of cooperation with other public structures, procedures of performing of specific administrative actions within the framework of state functions performing and also the procedures of the given official of the executive body which objectively follows from the norms of the law in force (Brizhanin, 2010; Davydov, 2011).

V.M. Manokhin pointed out two peculiar features of the regulation: the first one which works up to the present time is that it regulates the procedure in the work of the state body and in some cases of its structural unit. As far as the second statement is concerned it is no longer a peculiarity taking into account amendments in the law in force; so it cannot be applied to all the regulations as it is intended only for the internal use it means that it regulates the relations only in the structural unit.

Shabadarova (2014) has a skeptical point of view on administrative regulations: "the possible adoption of this normative legal act undoubtedly evokes enthusiasm because before Federal law No. 210-ФЗ "regulation" together with the instructions on proceedings, internal rules and regulations, job description and other acts of the same type this act was considered to be exclusively belonging to the sphere of local law. On the other hand, this normative legal act does not have sharply defined terminological definition, specific legal regulating and the procedure of its adoption".

O.V. Buryaga writes that in its legal nature an administrative regulation is an act of management and its content is a managerial procedure. In this light, an administrative regulation is an act in which a detailed sequence of realization of positive managerial procedure is given.

A.F. Nozdrachev in his work "systemic regulations of administrative work: national doctrine and practice" put forward an idea of the necessity to 'reanimate' the project of the Federal law on administrative regulations whose objective would be "a regulatory activity of administrative regulations status, their subject (administrative procedures), the procedures of their development, adoption, application, amendments and abrogation responsibilities of the executive bodies of state power, their officials and civil servants, rights of people concerned, citizens and organizations in connection with the application of administrative regulations and responsibility for their violation".

Only a few researchers speculate on the quality of local self-government bodies' administrative regulations. Thus, A.F. Nozdrachev singles out the following criteria of administrative regulations quality on the whole: legitimacy, openness, transparency, accessibility, efficiency, concentration and obligation.

Researchers emphasize that transparency realization is closely connected with involvement of people in local self-government and with municipal bodies and municipal officials openness for citizens (Mikheeva and Likhoshva, 2016).

The principle of transparency suggested by the researchers is one of the most important requirements of

administrative regulations with the view of providing a high quality of municipal services. Transparency insures that citizens and legal entities successfully realize their rights and responsibilities.

On the whole, researchers point out that the principle of transparency has not been sufficiently developed in theory and practice of local self-government bodies organization. Thus, Mikheev (2014) notes: "consequently, modern states as a basic fundamental principle in the legal regulation of local government put the publicity at the forefront as a tool linking the local authorities with the residents of municipalities".

Axel Gosseries claims that by transparency, broadly understood we refer to the way that such institutions operate under public scrutiny. This will typically entail the possibility for (groups of) citizens to access documents produced by representatives or civil servants or the possibility of witnessing deliberative processes in action, e.g., in parliamentary assemblies. Yet the precise effects of transparency and the exact function it plays in such a democratic setting are still not entirely clear despite the fact that the public generally tends to consider transparency as having globally positive effects on democracies (Gosseries, 2006).

Grimmelikhuijsen *et al*. (2013) in their research "the effect of transparency on trust in government: a cross-national comparative experiment" consider transparency to be the key indicator of trust in government. What makes their research valuable is the fact that they consider transparency in terms of national traditions and culture, by comparing the effect of transparency on trust in government in the Netherlands and South Corea.

Another research worth mentioning is "the trouble with transparency: a critical review of openness in government" by frank bannister and regina connolly where the researchers examine the argument that transparency may in certain and not uncommon circumstances, be inimical to good government and good governance and suggests that the importance of understanding why this is so has increased as information and communications technology permeates government and society. It suggests that in an electronic age, the scope and nature of transparency needs to be carefully managed and that expectations of the benefits of ICT enabled transparency may be too high (Bannister and Connolly, 2011).

MATERIALS AND METHODS

The methodological basis of study is a systematic complex approach to the analysis of administrative regulations. In particular, legalistic method was used for the research of legal confirmation problems of administrative provision status in the system of municipal regulations, legal comparative method of different legal acts, theoretical forecasting method-in the preparation of the recommendations on the creation of mechanisms of municipal services transparency for the citizens in the country.

The material for the study of the topical issue brought up in the article was the Russian legislation works of Russian legal scholars and the results of foreign scientific studies in the field of local self-government

RESULTS AND DISCUSSION

The principle of transparency in the work of local self-government bodies is enshrined at the international level. Thus, "the charter of european sustainable cities and towns towards sustainability" of May 27, 1994, otherwise known as the Aalborg Charter in Part 1, paragraph 1.13 says: "we will base our work on co-operation between all actors involved. We shall ensure that all citizens and interested groups have access to information and are able to participate in local decision-making processes. We will seek opportunities for education and training for sustainability, not only for the general population but for both elected representatives and officials in local government".

The question of how the principle of transparency should be enshrined in administrative regulations of local self-government bodies still remains open as in Russia, this principle has not been even enshrined as the principle of local self-government bodies organization.

The law of the Republic of Belarus "on local governance and self-governance" of January 4, 2010, No. 108-3 is more successful in this case as the principle of transparency is enshrined in Article 4: "local governance and self-governance are implemented in accordance with the principle of transparency and consideration of public opinion, constant informing of citizens about decision-making on the most important local issues". The principle of transparency is mentioned in this law further in the text for example while describing the work of municipal councils. But in the Republic of Belarus in contrast to the Russian Federation the institution of municipal services is not enshrined, consequently the implementation of the principle of transparency can be applied only with reference to local self-governance.

Meanwhile, the principle of transparency in Russia is indirectly enshrined in the Federal law "on ensuring access to information on the work of government authorities and local self-government bodies" of February 9, 2009 which says that all public authorities including local self-government bodies shall be obliged to

place information about their work on the officials internet-sites beginning from January 1, 2010. A clear list of information includes 29 items.

Unfortunately, in spite of such positive undertaking there is a great deal of violations of this law in Russian law enforcement practice because local self-government bodies ignore placing information on their work in the Internet. Then, it becomes a case in court. For example, the prosecutor of Olkhovka district acting on behalf of interested people referred to the court with a claim to the rural administration of Kamennobrodsk settlement of Olkhovka municipal district in Volgogradskaya Oblast in which he required from the local self-government body to observe the law on ensuring access to information on the work of local self-government bodies.

In support of his claim the prosecutor informed that the prosecutor's office checked how the Federal law is implemented by the rural administration of Kamennobrodsk settlement of Olkhovka municipal district in Volgogradskaya Oblast and determined that the official site http://www.kamennobrod.ru/ has no required information. It was also determined that it was impossible to get information on municipal services on the official site of the rural administration. The prosecutor asked the court to make the defendant rectify violations of the law on the access to the information on the work of the local self-government body, availability of municipal services, information on the work and procedure of municipal services, using the internet resources place the information on the work of Kamennobrodsk settlement in the internet in accordance with the requirements of Article 13 of Federal law No. 8-ФЗ "on ensuring access to information on the work of government authorities and local self-government bodies" of February 9, 2009.

The first instance court satisfied the prosecutor's claim and came to the conclusion that the above mentioned inaction of the defendant indicates of a formal approach of the local officials to fulfill their responsibilities which may lead to corruption.

The claim to follow the law on ensuring access to information on the work of the local self-government body was satisfied as the defendant's site did not provide complete and up-to-date information on the normative legal acts which indicated of a formal approach of the local officials to fulfill their responsibilities.

According to experts, even in case local self-government bodies have their own sites, they as a rule partially execute the requirements: they only create their domain, place a picture of their building and place in the left column a number o f references which do not need up-dating. It means that instead of socially important information local bodies place information of their own social importance. Content of their sites meets neither the requirements of the law nor the needs and interests of target users; there is no feedback or it is not operational; there is no interactive communication where users would be able to communicate and meet current challenges, in addition, the sites do not have operative administrating.

In our opinion, this situation is caused by insufficient normative legal regulating. The fact that the requirement to publish information was enshrined in the law including the one on current administrative regulations and their drafts, municipal services provided through the internet and also the principle of local self-government bodies' openness is sure to contribute to the principle of transparency implementing. But the principle itself has not been directly enshrined in any laws. That is why, it is necessary to indicate the principle of transparency in the Federal law "on general principles of local governance in the Russian Federation" of October 6, 2003 as a fundamental basis of local self-governance.

The above mentioned example from the law enforcement practice also indicates of insufficient openness of local self-government bodies' administrative regulations to the general population. That is why, there is a need to make amendments to the formulation of an article of Federal law No. 210-ФЗ "on the organization of provision of state and municipal services" of July 27, 2010 by enshrining not the principle of openness but the principle of transparency of local self-government bodies' work and their officials providing municipal services.

CONCLUSION

We believe that the results of our research must be developed further in theory and practice of local self-government bodies and they are the following.

An administrative regulation is a normative legal act containing principles, rules and norms defining and regulating functioning of the subject of municipal governance. This act shall be issued strictly in accordance with the established procedure by an authorized body of municipal power or an official, contain norms of material and procedural law obligatory for public at large and nonexpendable on the territory of municipal governance.

An administrative regulation of municipal service provision is a normative legal act adopted by local self-government bodies providing a municipal service, containing successive description of administrative procedures necessary to realize all the elements of a municipal service and also a standard of a service provision which shall be executed and made directly available to the applicant by the officials who provide services or authorized persons.

At present time, administrative regulations of local self-government bodies do not fully rely on the principle of transparency, irrespective of its indirect enshrining in a number of normative legal acts. Meanwhile, the existence of norms on obligatory information of citizens connected with the provision of municipal services means that administrative regulations of local self-government bodies are only on the first stage of the principle of transparency realization in these normative legal acts.

Thus, we find it appropriate to include the principle of transparency as a fundamental basis into the work local self-government bodies in Russia.

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