

New Tendencies of the Municipal Reform: Redistribution of Powers Between the Levels of Public Authority

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Abstract: This study examines the current trends in the reform of local self-government in Russia in connection with the advent of new Federal regulation which has led to the emergence of new types of municipalities and urban districts with inner division (existing as municipalities). Special attention focuses on the new opportunities of subjects of the Russian Federation on redistribution of powers between bodies of state power and local self-government. Based on the identified patterns a forecast is offered regarding further development of relations between state authorities and local self-government in Russia.

Key words: Local self-government, territorial basics of local self-government, redistribution of powers, regional authorities, forecast

INTRODUCTION

On 27 May 2014 the Federal law of May 27, 2014 N 136-FZ “On modifications to the Article 26.3 of the Federal law “On the general principles of the organization of legislative (representative) and executive authorities of subjects of the Russian Federation” and the Federal law “On the general principles of the organization of local self-government in the Russian Federation”.

Adoption of this Federal law pursued the two main objectives. Firstly, it is the introduction of new levels of local self-government the urban district with interurban division and (a special type of municipality) the interurban area. Thereby, in fact, regional (interurban) local self-government in some settlements is reconstituted (Shugrina, 2013).

But the other addition which causes fundamental change of the principle of relationship between state power and local self-government in the Russian Federation is of great interest. A federal legislator allowed subjects of the Russian Federation to redistribute powers between the regional and local levels of power. Such redistribution will be conducted by the laws of the subject of the Russian Federation. It should be noted that many subjects of the Russian Federation legislatively still do not provide new redistribution developments, so, for example, the legislation of the Republic of Buryatia has not fixed this institution. Thus, it is impossible to say that the ratio of powers of the territorial subject of the Russian Federation and local authorities are at the quite effective level.

MATERIALS AND METHODS

The redistribution of powers is allowed for a term of not less a term of powers of legislative (representative) public authority of the subject of the Russian Federation. Such laws of the subject of the Russian Federation will become operative since the beginning of the next financial year (Babickeh, 2014).

It is obvious that such redistribution can be bilateral: the subject of the Russian Federation will have the right to exempt local authority powers or the subject of the Russian Federation will have the right to devolve its powers to the level of local self-government. The concept of the devolution of power of the subject of the Russian Federation to local self governing authorities is already realized in the existing Federal Law. It is called “delegation of local self-government authorities with certain state powers”. This scheme will not essentially change with the adoption of the new law.

The other channel of the redistribution of local self-government powers is their withdrawal. It is a revival of the law. And it collides with the concept of (constitutional) independence of local government, the concept of the questions of local significance. Somewhat the authors of the law try to defuse this conflict and, in particular, impose ban on the withdrawal. So, powers of local self-government authorities in the spheres of the administration of municipal property, the formation, adoption and performances of the local budget, the

execution of the keeping of public order, the evaluation of the structure of local self-government authorities, territorial changes of the municipal formation and also powers provided by the points 1, 2, 7, 8 of the Part 1 of the Article 17 and the Part 10 of the Article 35 of the Federal Law of October 6, 2003 N 131-FZ "On the general principles of the organization of local self-government in the Russian Federation" cannot be referred to powers of state authorities of the subject of the Russian Federation. For example, the possibility of temporary execution of certain powers of local self-government authorities by state power of the subject of the Russian Federation is also provided by the Article 36 of the Law of the Republic of Buryatia of 7 December 2004 N 896-III "On the organization of local government in the Republic of Buryatia". However, except the reference to the federal legislation, this norm has nothing that gives the chance to speak about the search of an institution of temporary execution of certain powers of local self-government authorities by state power of the Republic at the initial level. Besides, the analyzed institution has been never put into practice in the Republic of Buryatia.

RESULT AND DISCUSSION

Having regard to the above, some basic moments concerning the organization of local self-government in the Russian Federation should be pointed out. The enacting clause of the current Federal Law "On the general principles of the organization of local self-government in the Russian Federation" says that it establishes the general legal, territorial or organizational and economic principles of the organization of local self-government. However, only the enacting clause in the standards of this Federal law is devoted to the questions of the general principles. All its other provisions contain quite full and detailed regulations concerning the organization of local self-government. For example, the questions of local significance are determined in the Chapter 3 in such a way that local self-government authorities have no chance to expand their number. The exhaustive list of types of municipalities is fixed, their competence is fixed with details and the list of local self-government authorities which each municipality must have is rigidly fixed.

A law-maker expanded the legislative framework fixed in the Federal Constitution, the point n of the Part 1 of the Article 72 of which refers the general principles of the organization of local self-government to the questions of joint jurisdiction of the Russian Federation and subjects of the Russian Federation. And the current Federal Law is not only responsible for it. The standards of the Federal

law of August 28, 1995 No. 154-FZ and the norms of special, earlier effective laws on local self-government on its financial bases, bases of municipal service and others were also beyond the general principles the same way. Moreover, it should be noted that there is a legal uncertainty concerning the question on what should be considered as the general principles of the organization of local self-government. Solving this issue, the opinion that only one general law on the general principles of the organization of local self-government should act at the federal level must be regarded and the whole main volume of standard regulation of local self-government has to be concentrated at the level of subjects of the Russian Federation.

However, practice went another way. Several laws on enforcement of constitutional rights of citizens to elect and to be elected to local self-government authorities, on the financial bases of local self-government, on the bases of municipal service and others, regulating the questions of the organization and activity of local self-government were adopted at the federal level. That means that state regulation of local self-government could not be limited only by the general framework in its regulation.

In general, regulation of the general principles of the organization of local self-government has to be based on the need to achieve two main goals by local self-government: solution of the questions of local significance and performance of certain state powers delegated by state power on the basis of the interests of the population of municipalities.

In general, the question concerning the ratio of state power and local self-government plays the special role in determining the general principles of the organization of local self-government and in regulating local self-government competence. A general approach to definition of the questions of interaction between state power and local self-government that is widespread in science of the municipal right is that all of them present state powers in the sphere of local self-government and the influence of state power on the structure of local self-government authorities, financial and material participation of the state and local self-government in affairs of each other and also any informational relations. Of course, the mentioned spheres of interaction are important. But they are not alone in predetermining the bases of interaction of the state and local self-government.

From the methodological point of view the principles of interaction of state power and local self-government must be pointed out first of all. It is known that the principles are the most general, starting positions that determine the most important foundations and bases of

the characterized object. In case with relationship between state power and local self-government, it is possible to claim, first of all that the principle in defining the bases of the existence and functioning of local self-government by the state refers to such key foundations. This principle is also realized by the entrenchment of the constitutional bases of local self-government and by the adoption of federal laws on the general principles of local self-government and by other federal laws and laws of subjects of the Russian Federation regulating the questions concerning the organization and activity of local self-government.

The other major principle is the principle of freedom of municipalities' actions in those limits which are outlined for them by state power. The realization of this principle is also connected with self-organization of local government and with local rule-making and almost with all main questions of activity of authorities and officials of local self-government.

The third fundamental principle is the principle of the population involvement to solution of the questions both of local and state significance (delegated to the level of local self-government). The sense of state power separation from local self-government is not connected with the need to isolate local self-government authorities from state power but the population could solve the most important issues of its activity at the certain level, proceeding from its own interests and at its responsibility, without receiving instructions by state authorities. This principle is realized in active use of the forms of direct democracy at the level of local self-government (Peshin and Nikitina, 2014).

The fourth basic principle of relationship between local self-government and state power is the principle of the restriction of local self-government distribution by municipalities. And the Constitution of the Russian Federation and the legislative acts of the Russian Federation and subjects of the Russian Federation accurately determine the territorial basis of local self-government.

The fifth basic principle is the principle of inner structuring of local self-government that also concerns vertical differentiation (the levels of local self-government execution) and horizontal (a set of forms of local self-government realization). The sixth principle is the principle of direct participation of state power in local self-government execution that is shown in realization of powers by state power in the sphere of local self-government and in interaction between state power and local self-government within delegated powers and in realization of the mechanisms providing the possibility for direct execution of certain powers of local self-government authorities by state power.

At last, the seventh principle is the principle of legality of relationship between state and municipal power institutes and their responsibility for made decisions. And only after that on the basis of the provisions of the Constitution of the Russian Federation and the Federal Law "On the general principles of the organization of local self-government in the Russian Federation" it is possible to determine the main spheres of interaction of state power and local self-government. They are:

- Determination of the general principles of the organization of local self-government
- Determination of state powers in the sphere of local self-government
- Delegation of certain state powers to local self-government authorities
- Control over activity of local self-government

Proceeding from these principles, local self-government powers include: own powers of local self-government, namely, those powers which are recognized by the state on the part of local self-government (for example, on the local budget adoption, the introduction of local taxes and so on). The majority of these powers is realized by local self-government authorities and therefore is a component of competence of local self-government authorities certain state powers which local self-government authorities can be vested legally with.

The Constitution of the Russian Federation and the standards of the Federal Law "On the general principles of the organization of local self-government in the Russian Federation" provide that in this case delegation of powers by the state has to be conducted with simultaneous transfer of material and financial means, necessary for their execution.

Now there is a new type redistributed powers. The Federal Law determines powers of local self-government authorities in the broadest strokes it includes the open list of the most significant powers, its basic feature is the fact that the list of the questions of local significance cannot be fixed by subjects of the Russian Federation only by the Federal Law. It is necessary for the realization of the principles of differentiation of powers between the levels of public authority. Local self-government authorities play the certain role in this matter they, generally can independently solve the questions which are not specified in the federal legislation to the maintaining but as it was already noted, the Federal Law does not refer these questions to the questions of local significance and allows them to be considered by authorities and officials of local self-government with certain conditions.

The possibility of the execution of certain state powers by local self-government authorities is provided in the Constitution of the Russian Federation. According to the Part 2 of the Article 132 of this statutory act, local self-government authorities can be legally vested with certain state powers with the transfer of material and financial means, necessary for their execution. The realization of delegated powers is under control of the state. The instability of relationship between state power and local self-government has led to the fact that the model, conceived as dualistic, began to be evolved in the direction of exclusively decentralized relationship of state power and local self-government that could not be adjusted by the state as such the model of relationship means almost the full loss of control over one of the levels of public authority.

The Federal Law also fixes the possibility of delegation to local self-government authorities of municipalities with certain state powers. Such the delegation is quite often both at the federal level and at the level of subjects of the Russian Federation. For example, in Irkutsk Region there were a number of laws by which local self-government authorities were vested with separate state powers adopted. So, local self-government authorities were vested with state powers on the regulation of passenger transportation rates by the Law of the Republic of Buryatia of March 14, 2008 No. 79-IV "On delegation to local self-government authorities of municipalities in Republic of Buryatia with certain state powers of the Republic on the regulation of passenger and baggage transportation rates by all types of public transport in urban and suburban communication (except railway transport)". And municipal regions were vested with state powers on the accumulation of information necessary for maintenance of ledger of municipal regulatory legal acts of municipalities of Zabaykalsky Krai with state powers on the accumulation of information in settlements entering the municipal area necessary for maintenance of ledger of municipal regulatory legal acts of Zabaykalsky Krai of March 29, 2010 No. 343-ZZK.

Delegation to local self-government authorities of municipalities with certain state powers without the transfer of material and financial means, necessary and sufficient for their execution is not allowed. Thus, it was necessary also to fix the provision on the transfer of material and financial means in time.

State power of the Russian Federation and state power of subjects of the Russian Federation are obliged to control the execution of certain state powers delegated to them according to the procedure established by the law by local self-government authorities. Besides, all control actions have to be coordinated with prosecution

authorities of the appropriate subject of the Russian Federation and should not be duplicated (Nikitina and Peshin, 2014).

The Federal Law places a general limitation: certain state powers can be delegated only to the level of municipal regions or urban districts. The settlements, thus have no right to take certain state powers on execution. The issue concerning delegation of powers to interurban territories of the cities of federal significance is solved by the laws of Moscow and Saint Petersburg (practice testifies to the fact that the specified territories are vested with certain state powers). It should be noted that the Federal Law in the Part 1 of the Article 19 absolutely accurately determined that any powers which are not referred by the Federal Law to the questions of local significance are certain state powers delegated to local self-government authorities to be executed. This norm interrupts current illegal practice of delegation to local self-government authorities with functions unusual for them (first of all, at the level of subjects of the Russian Federation).

Another procedure is the withdrawal of local self-government authorities' powers was not directly provided and the new Federal Law coins the term redistribution. Thereby, there is the question at the level of the theory of the municipal right whether state power must be included to the system of local self-government. The Article 12 of the Constitution of the Russian Federation, apparently, answers this question: local self-government is separated from state power. Therefore, state power cannot form any institutionally uniform power system with local self-government. However as the definition of the system of local self-government says, it is a set of organizational forms of local self-government executed not only by the population. And if local self-government is conducted by state power, state power must be recognized as certain elements of the system of local self-government. They must be as follows.

State power organizing a local referendum that considers the structure of local self-government authorities according to the procedure established by the Part 5 of the Article 34 of the Federal Law "On the general principles of the organization of local self-government in the Russian Federation"; State power repealing the municipal regulations according to the procedure established by the Article 48 of the Federal Law; state power temporarily conducting certain powers of local self-government authorities according to the procedure established by the Part 1 of the Article 75 of the Federal Law; State power carrying out temporary financial administration in the territory of the municipality according to the procedure established by the Part 4 of the Article 75 of the Federal Law.

It is obvious that the considered Federal Law simply expands this circle of authorities and includes the whole system of regional power to it. The first experience already shows that the laws of subjects of the Russian Federation, first of all, redistribute powers on managing the plots of land state ownership of which is not differentiated between local self-government authorities of the municipality and state power of Sverdlovsk Region. Such laws govern relations connected with the redistribution of powers on managing the plots of land state ownership of which is not differentiated.

The redistribution of such powers according to regional laws is carried out as a rule, for the term of five years; it completely belongs to state powers and is carried out by the executive authority of the subject of the Russian Federation and financed by the budget funds of the region. The standards of the above Federal Law of May 27, 2014 No. 136-FZ "On the general principles of the organization of legislative (representative) and executive authorities of subjects of the Russian Federation" and the Federal Law "On the general principles of the organization of local self-government in the Russian Federation" (further-FZ-136) become the formal basis for the adoption of such laws. This Federal Law has added the Article 17 of the Federal Law of October 6, 2003 No. 131-FZ "On the general principles of the organization of local self-government in the Russian Federation" ("Powers of local self-government authorities to solve the questions of local significance") (further-FZ-131) with new Part 1.2, according to which the laws of the subject of the Russian Federation conduct the redistribution of powers between local self-government authorities and state power of the subject of the Russian Federation can be carried out. The redistribution of powers is allowed for a term of not less a term of powers of legislative (representative) public authority of the subject of the Russian Federation. Such laws of the subject of the Russian Federation will become operative since the beginning of the next financial year.

As the matter concerns powers of local self-government authorities to solve the questions of local significance, it is necessary to specify which issues of local significance in this case are solved.

According to the Art. 12 of the Constitution of the Russian Federation local self-government is admitted and guaranteed in the Russian Federation. Local self-government within its powers is independent. Local self-government authorities are not a part of the system of state power. Thus, according to the Part 2 of the Art. 9 of the Constitution of the Russian Federation land and other natural resources can be by right of private, state, municipal and other forms of ownership.

According to the Part 2 of the Article 16 of the Land Code of the Russian Federation the differentiation of state ownership of land of the Russian Federation (federal property), of subjects of the Russian Federation and of municipalities (municipal property) is carried out according to the present Code and the Federal laws. This norm has a special formula used exclusively to non-delineated state ownership of land is apparently concluded. This non-delineated state ownership is divided in the course of the differentiation into federal ownership, ownership of subjects of the Russian Federation and municipal property that formally contradicts a terminological value of the concept state property. Therefore, it would be more correct to call it public property.

The lack of legal mechanisms allowing to provide the differentiation of state ownership of land results in the need for searching mechanisms providing managing such plots of land. According to the Part 2 of the Article 3.3 of the Federal Law of October 25, 2001 No. 137-FZ (operative being revised on March 8, 2015) "On the introduction of the Land Code of the Russian Federation" local self-government authorities manage the plots of land state ownership on which is not differentiated according to the general principles, except for some cases (Peshin, 2014). According to the standards of the Federal Law "On the general principles of the organization of local self-government in the Russian Federation" local self-government authorities:

- Exercise powers on solution of the questions of local significance (the Article 17, 18 of the FZ-131)
- Exercise certain state powers (the Article 19-21 of the FZ-131)
- Exercise rights on solution of the questions which are not referred to the questions of local significance of the proper level (the Article 14.1, 15.1, 16.1 of the FZ-131)

This list is exhaustive. As the provisions of the FZ-137, FZ-131 say, powers on managing the plots of land state ownership on which is not differentiated are not considered by a federal law-maker as certain state powers delegated to the level of local self-government. A federal law-maker defined the requirements for such delegation which, in particular include the adoption of the special federal law, the law of the subject of the Russian Federation which is directly providing delegation to local self-government authorities with certain state powers. It should be noted that such laws on the procedure of delegation in territorial subjects of the Russian Federation existed but before the adoption of the FZ-131. There are

no new laws on the procedure of delegation with certain state powers to local self-government authorities in territorial subjects of the Russian Federation adopted, being limited by the adoption of certain laws on the transfer of concrete powers.

Moreover such law is asserted a number of special requirements provided by the FZ-131. It should mandatorily specify the name of the municipality and contain a list of mutual rights and obligations of local self-government authorities and state power, a method of standard projections for the determination of the total amount of subventions conferred to local budgets of the execution of certain powers and so on.

As far as we see, the FZ-137 reflects no of the given positions. Owing to the obvious reasons this power does not also belong to the area of “the rights on solution of the questions which are not excluded from local self-government authorities’ administration”: the provisions of the FZ-131 regulating the specified rights (the Article 14.1, 15.1 and 16.1) do not contain this power and the local self-government authority has no right to accept it to its own administration by its own decision. At last, the regulation of the question concerning the redistribution of powers belongs to the contents of the Article 17 the powers on solution of the questions of local significance.

CONCLUSION

Thus, the realization of power on managing the plots of land state ownership of which is not differentiated is solution of the question of local significance. So, if the municipality is the urban district, the exhaustive list of the questions of local significance of the urban district is determined in the Art. 16 of the FZ-131 (the questions of local significance of the urban, rural settlement). The 44 questions of the closed list refer to them. But only one of them is connected with the possibility of disposition of land property is the Item 3 of the P.1 of the Article 16 “possession, use and disposition of land property which is in municipal property of the urban district”. Thus, a federal law-maker obviously recognizes that the plots of land with non-delineated state ownership of land potentially are municipal property and therefore, without the differentiation, the main competence of an owner (that distinguishes an owner a person having the rights to determine the further destiny of property, to despise of it; a tenant, for example has no such rights) the right to dispose the plots of land is transferred and more

precisely, admitted being in ownership of the municipality. However, in the regions this right can be apparently withdrawn from the municipality.

However, owing to the provisions of the FZ-136, the Part 1.2 of the Article 17 of the FZ-131, the Paragraph 2 of the Part 6.1 of the Article 26.3 of the FZ-18, powers of local self-government authorities in the spheres of the administration of municipal property, the formation, adoption and performances of the local budget, the execution of the keeping of public order, the evaluation of the structure of local self-government authorities, territorial changes of the municipal formation and also powers provided by the points 1, 2, 7, 8 of the Part 1 of the Article 17 and the Part 10 of the Article 35 of the current Federal Law.

The administration of municipal property in this case is the execution of competences of an owner, namely, the rights on possession, use and disposition of the plots of land state ownership of which is not differentiated. The municipal formation will be completely deprived of this right in full contravention of the standards of current federal legislation mentioned above.

Due to the stated, it is necessary to draw a conclusion that the provisions of such regional laws on the redistribution of powers on managing the plots of land state ownership of which is not differentiated, contradict the provisions of the Part 1.2 of the Article 17 of the FZ-131 and the paragraph 2 of the Part 6.1 of the Article 26.3 of the FZ-184 and in this regard are subject to cancellation.

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