UNCERTAINTY OF THE POSITION OF EXECUTIVE BODIES OF LOCAL SELF-GOVERNMENT IN THE SYSTEM OF EXECUTIVE POWER IN THE RUSSIAN FEDERATION

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INTRODUCTION

Research on the organization and activities of Executive authorities is devoted to the scientific works of N.Y. Khamanueva, O.E. Kutafin, V.V. Grib, L.Y. Grudtsyna, L.P. Rasskazov, V.E. Chirkin and a number of other authors. The problems of formation and functioning of local governments are analyzed in the scientific works of N.S. Bondar, I.V. Babich, S.A. Avakyan, N.L. Peshin and a number of other scientists. These works create the basis for the analysis of the theoretical content of the executive branch at both the state and municipal levels, in relation to its social essence. However, the share of research devoted to the study of modern problems associated with the uncertainty of the position of executive bodies of local self-government in the Russian Federation is insignificant. In this regard, the main purpose of this research is a comprehensive study of modern problems associated with the uncertainty of the position of executive bodies of local self-government in the Russian Federation, and the subject of the research is the regulatory framework for the formation and functioning of the executive power system in Russia at the level of local self-government interaction with public authorities, as well as scientific views on problems and prospects for improving the principles of organization and activities of executive bodies of local self-government in the Russian Federation.

METHODOLOGY

This article in the process of cognition of state-legal phenomena were used: a) General scientific methods (formal-logical, systemic, structural-functional, concrete-historical); b) General logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); c) private scientific methods (technical and legal analysis, specification, interpretation, etc.) (ZALESNY, GONCHAROV, 2019: 129-142; ZALESNY, GONCHAROV, 2020: 1-6).

RESULTS

A significant problem in the formation and functioning of the system of executive power in the Russian Federation is the uncertainty of the position of executive bodies of local self-government in the system of executive power in the country. Being, along with state power, a form of the people exercising their power, local self-government at the same time is the simplest and most effective form of self-organization of the population for independent resolution of local issues. It is this combination of public and public principles, according to some scholars, which is the result of a complex process of finding a compromise, harmonizing the interests of society in the face of territorial communities and the state, which allowed to determine modern principles and forms of local self-government (KAVERZIN, 2003, 13-19).
Due to its public nature, local self-government is endowed with the Constitution of the country and the current legislation with certain powers, limited by the spatial and subject limits of jurisdiction (ABOUT, 2003, 3822). In the Russian Federation, the redistribution of sources and resources of public authority in favor of local self-government is being systematically carried out as the country’s power system is strengthened (BESOV, 2004). As rightly noted B.N. Topornin, only the central authorities of fairly prosperous federations with a high level of economic development, a developed political culture and a consensus in society regarding basic democratic values, including the inalienable right of the population to local self-government, can afford not to interfere in local governance issues (FEDERALISM, 2001).

The legislation on local self-government in Russia has undergone a long evolution in terms of detailing and expanding the powers of local self-government, reaching a climax with the adoption of the Federal Law "On General Principles of the Organization of Local Self-Government in the Russian Federation" dated 06.10.2003 No. 131-FL, in which an attempt was made reconcile the two most important concepts regarding the legal nature and essence of local self-government in the system of public authority in the country. If one of these concepts consists in essence in the nationalization of local self-government, its transformation into the local level of state power, which undoubtedly contradicts the legal nature of this institution, which assumes the most simple and effective implementation of the principle of democracy by the population directly, then the other, on the contrary, assumes the maximum remoteness of the state mechanism from the system of local self-government, which is due to the weak budgetary provision of local authorities and the absence of many years of in-vestigations traditions of formation and functioning of this institution, can only lead to its stagnation and formal existence, which leaves open the question of the definition of the foundations and limits of local government (TIMOFEEV, 2008).

Nevertheless, it seems that the definition of the constitutional legal status and model of local self-government in the Russian Federation, according to a number of scientists, is impossible without an analysis of the relationship between the state mechanism and the local self-government system (UVAROV, 2008; PESHIN, 2007; BABICHEV, 2009: 37-44). In accordance with the current legislation, the contacts of local authorities with the legislative (representative) and judicial state authorities are limited, relating, for example, to the issues of participation of local authorities as subjects of legislative initiative at the regional level, as well as their request to the constitutional and statutory courts (BONDAR, 2008).

At the same time, the most important for the formation and functioning of local self-government are issues of the relationship of state executive authorities and local executive bodies, especially in terms of delimiting their powers in the field of public administration (VOLKOVA, 2009: 41-44). According to some scientists, today the question of determining the place of executive bodies of local self-government in the system of separation of powers, the mechanism of state administration (Soboleva, 2006: 67-69), as well as in the system of state (SOLOVIEV, GLADKIKH, 2008: 27-30) and municipal government remains open (CHIRKIN, 2008).

If Article 77 of the Constitution of the country stipulates that, within the jurisdiction of the Russian Federation and its powers in matters of joint jurisdiction with the regions, the Federal executive bodies and executive bodies of the constituent entities form a single system of executive power, then with regard to local self-government, Articles 130 and 132 of the Basic Law do not even contain classifications of local authorities (in these articles it is only stated that local government is carried out by citizens, including through elected and others self-government bodies). Nevertheless, the executive bodies of local self-government have enormous powers in accordance with the Federal Law "On the General Principles of the Organization of Local Self-Government in the Russian Federation", regional charters and constitutions, and charters of municipalities. They also have certain state powers transferred to them in accordance with Part 2 of Article 132 of the Constitution of the Russian Federation. Moreover, the transfer of such decisions is carried out simultaneously with the transfer of material and financial resources necessary for their implementation from the Federal budget.

Such constitutional vagueness of the position of executive bodies of local self-government, their non-inclusion in the single system of executive power of the country, "poverty", and
sometimes “poverty” of municipal budgets, creates a lot of problems in the interaction and cooperation of executive bodies of local self-government with government bodies that are part of a unified system of executive power system in the Russian Federation.

Firstly, a rather big problem in relations between the state and municipal executive authorities is the uncertainty of the volumes and limits of Federal and regional intervention of executive authorities in issues of local importance (SOLOVYOV, 2005: 40-43). Despite the fact that Article 75 of the Federal Law “On the General Principles of the Organization of Local Self-Government in the Russian Federation” regulates in sufficient detail the issues of temporary exercise by the state executive authorities (federal and regional) of certain powers of the executive bodies of local self-government (due to the impossibility of exercising the relevant powers to due to an emergency due to improper exercise of powers financed by subsidies, and the introduction of temporary financial administration), according to some scientists, a number of issues remain unclear, such as how they will be the formation of the budget of the municipality of temporary financial administration (ANDRICHENKO, DOMRIN, SIVITSKY, CHERTKOV, 2005: 100-126).

Secondly, the great problem in the relations between the state executive power and the executive bodies of local self-government is the lack of a clear coordination and management mechanism, especially regarding the control of individual state powers delegated to local self-government. Of course, the possibility of introducing an interim administration (as an adequate response to their ineffective or illegal activity, or inaction) is a rather effective means of influence and intimidation on the part of a single system of executive power in relation to executive bodies of local self-government. However, in most cases, the construction of a power executive vertical line with respect to the executive power of municipalities is carried out by regional leaders through the use of administrative resources rather than legal forms (for example, “ineffective” heads of municipal administrations in the Krasnodar Region in 2004-2005, the regional leadership “urged” to submit the governor urged the Krasnodar Mayor N.V. Priz to do so publicly in the local media, and against “doubters” in a “miraculous” way criminal cases were found).

Thirdly, a significant problem in the relationship between state and municipal governments is the absence in the current legislation and in practice of a clear mechanism for the financial provision of individual state powers delegated by state executive bodies to local government bodies. In practice, situations are not excluded when the financing of delegated powers by the Federal or regional budget for some reason may not be carried out. This, however, does not give local governments the right to refuse to perform delegated powers. And in this case, financing the implementation of these powers will have to be carried out from the local budget. The executive bodies of local self-government, of course, have the right to apply to the court for recovering funds from state budgets, but this will require a certain amount of time (perhaps several months or even years). In addition, the question remains, how legitimate in this case are the actions of municipal authorities to use the local budget funds for other purposes. Thus, local governments are in any case at a disadvantage.

Fourthly, the independence and independence of the executive bodies of local self-government in their relations with the government is seriously undermined by the financial weakness and insolvency of municipal budgets, whose revenues are becoming increasingly dependent on financial influences from the federal and regional budgets, without which, in principle, the implementation of local issues is impossible values. The problem is aggravated by the fact that the powers of local governments regarding the search for new sources of revenue for municipal budgets are insignificant. Thus, the Constitution of the country and the Tax Code of the Russian Federation do not provide for the possibility of municipalities introducing taxes and fees, in addition to those contained in Federal legislation. Moreover, their size limits are also set by the Federal center. All this leads to the fact that every year the number of subsidized municipal budgets that are not able to adequately finance local issues becomes more and more. At the same time, in connection with the economic crisis (starting in 2009), the possibilities of the Federal, and especially regional budgets, are limited in terms of providing subventions to municipal budgets.

Fifthly, the lack of a mechanism for unifying a unified system of state executive power and the executive branch of local self-government significantly undermines the processes of centralization of state administration in the Russian Federation. At the same time, the emerging
process of local self-government becoming more and more dependent on the Federal and regional executive authorities is fraught with the danger of the transformation of the institution of local self-government into the local level of state power, moreover in a more undemocratic form than it was during the USSR, when the institute did not exist at all.

Sixthly, the development of the institution of local self-government in the Russian Federation requires a review of the scope and limits of authority of the executive bodies of local self-government. On the one hand, practice has shown that municipalities should be empowered with additional powers in order to most fully resolve issues of local importance and realize the right of citizens to self-organize within the boundaries of the municipality (for example, in the field of healthcare, education, law enforcement). But on the other hand, this will require even greater expenses, which is impossible at the current level of financial security of the budgets of municipalities.

Seventhly, a rather big problem is the practice of relations between the state executive branch and local government in Federal cities (Moscow and St. Petersburg) (ALPATOV, 2009). In these constituent entities of the Russian Federation, municipal authorities are quite limited in their rights. And the weakness of local self-government in practice translates into insecurity of residents from unlawful actions of the administrations of these cities (for example, when conducting spot developments of multi-storey buildings). Thus, the question of improving the constitutional model of interaction between the state executive power and the executive bodies of local self-government, especially at the regional level, remains open (ZHEREBTSOV, 2006; IGNATYUK, 1998: 57-65). They also require resolution and problems arising from the interaction of executive bodies of local self-government with other bodies within municipalities (BABICHEV, 2000).

**CONCLUSIONS**

It seems that the resolution of the above problems arising from the interaction of executive bodies of local self-government and executive authorities of the Federal and regional levels that are part of a single system of executive power will require a number of measures:

1) It is necessary to amend the current financial and tax legislation in terms of increasing the number of revenue sources of municipal budgets, first of all, by leaving local and a number of federal and regional taxes collected on the territory of the municipality (most of them). This will allow municipalities to address local issues more effectively, which will ultimately lead to an increase in the purchasing power of the population and an increase in gross domestic product. Moreover, the federal authorities use budget funds extremely inefficiently, continuing to place them in American and European securities (in particular, government bonds), which are of extremely doubtful reliability.

2) It should be legislatively established that certain state powers delegated by Federal and regional executive bodies are subject to exercise by local authorities only subject to the preliminary transfer of the corresponding state budget funds. In case of delay in transferring these funds to municipal budgets, the amount of financing should be specified in the direction of increase adjusted for inflation (moreover, this index should be no less than the refinancing rate of the Central Bank of the Russian Federation).

3) The types and forms of federal and regional interference in the competence of the executive bodies of local self-government require refinement and detail in the current legislation. In conditions of a total deficit of local budgets, it is necessary to incorporate into the Federal Law "On General Principles of the Organization of Local Self-Government in the Russian Federation" a mechanism that prevents the use of the institution of interim administration as a political means of pressure on disagreeable municipal leaders.

4) Due to the fact that the heads of Federal and regional executive authorities have considerable powers for the coordination of activities of executive bodies of local self-government (especially in terms of impeaching their leaders, the introduction of temporary administration), topical introduction to the legislative turnover the concept of a unified system of state executive power and executive bodies of local self-
government. This will allow you to centralize and streamline the practice of mutual relations of the executive authorities at the state and municipal level, providing a robust field of legal regulation.

REFERENCES


**Uncertainty of the position of executive bodies of local self-government in the system of executive power in the Russian Federation**

Incerteza da posição dos órgãos executivos do governo autônomo local no sistema de poder executivo da Federação Russa

Incertidumbre de la posición de los órganos ejecutivos del autogobierno local en el sistema del poder ejecutivo en la Federación de Rusia

**Resumo**
Este artigo é dedicado à análise dos problemas modernos associados à incerteza da situação dos órgãos executivos do governo autônomo local na Federação Russa. Nesse sentido, foi elaborado e justificado no trabalho um sistema de propostas para a solução desses problemas. Essas propostas irão otimizar a organização e o funcionamento do sistema de poder estadual e municipal em geral.

**Palavras-chave:** Órgãos executivos. Autogoverno local. Federação Russa. Análise constitucional.

**Abstract**
This article is devoted to the analysis of modern problems associated with the uncertainty of the situation of executive bodies of local self-government in the Russian Federation. In this regard, a system of proposals for resolving these problems has been prepared and justified in the work. These proposals will optimize the organization and functioning of the system of state power and local government in general.

**Keywords:** Executive bodies. Local self-government. Russian Federation. Constitutional analysis.

**Resumen**
Este artículo está dedicado al análisis de los problemas modernos asociados con la incertidumbre de la situación de los órganos ejecutivos del autogobierno local en la Federación de Rusia. En este sentido, se ha elaborado y justificado en el trabajo un sistema de propuestas para la solución de estos problemas. Estas propuestas optimizarán la organización y funcionamiento del sistema de poder estatal y gobierno local en general.

**Palabras-clave:** Órganos ejecutivos. Autogobierno local. Federación Rusa. Análisis constitucional.