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LOCAL SELF-GOVERNMENT: YEAR 2014 – FOURTH REFORM?

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Based on the analysis of the draft law amending the Federal Law "On General Principles of Organization of Local Self-government in the Russian Federation", the author notes that the draft law introduced to the State Duma, on the one hand, reduces the ability of population to influence on municipal structures (due to the decrease of cases of the municipal elections), on the other, obviously reduces the autonomy of local government by increasing the powers of the State in this sphere.

In addition the author notes the following shortcomings: two-tier system of local self-government in major cities will inevitably lead to a doubling of the authorities; division of a city into separate municipal formations may entail some difficulties in terms of preserving the unity of city economy; provisions of the draft law do not address the issues related to property, tax and generally any financial component of activity of intraurban areas; some provisions of the draft law are aimed at reducing the number of direct election of local self-government officials by the population.

Keyword: local self-government, local authorities, local self-government reform, legislation on local self-government.

One of the important issues, to which the President of the Russian Federation referred in his annual address to the Federal Assembly in 2013, was the current state of local self-government in Russia. Touching upon the low efficiency of the bodies of municipal authority and detachment of population from real participation in local self-government, he set the task of clarifying the general principles for organization of local self-government, development of a strong, independent, financially wealthy local authority, and such work is, in his view, had to be legally ensured "already next 2014 year, the year of the 150 anniversary of the famous Zemskaya Reform" [3].

It is clear that such words of the President of the Russian Federation in his annual address could be perceived only as a direct order to take action. Thus, it was clear that 2014 year could become the year of next – the fourth (if we consider the reforms of 1991, 1995 and 2003) in modern Russian history reform of local self-government. There remained only the question: will this reform be backed by a new law on local self-government or by fundamental amendments to the current one?

Correct answer, at least according to the situation at the beginning of March, was the second one. March 13, 2014 the working group on the reforming of local government, established at the decree of the President Vladimir Putin, completed its work and submitted to the State Duma amendments to the Federal Law "On the General Principles of Local Self-Government in the Russian Federation". The draft was introduced by the deputies of the State Duma V. B. Kidyaev, V. S. Timchenko, member of the Federation Council S. M. Kirichuk, deputies of the State Duma A. S. Delimkhanov, Z. D. Gekkiev, V. A. Kazakov, S. G. Karginov, P. I. Pimashkov, M. N. Svergunov, V. E. Bulavinov, I. L. Zotov, and further for the sake of brevity in this article it will be referred to as "draft law".

It must be said that, just having appeared, the draft law has already sparked criticism of the Committee of Civil Initiatives of former Russian Federation Minister of Finance Alexei Kudrin, who, in turn, suggested a number of his own ideas concerning the reform of local self-government. According to the experts of the Committee, the concept of local self-government reform, prepared by the working group headed by the Chairman of the All-Russian Council of Local Self-government Vyacheslav Timchenko, would give neither political nor economic effect and even more aggravate the existing problems (the State Duma was introduced a law abolishing the elections of mayors of major cities [8]).

What did cause such a criticism from the experts? To answer this question it seems feasible to analyze the text of draft law as of today.

First of all, it should be noted that the changes planned by its authors look really quite serious, though, at the same time, you cannot, in our view, call them revolutionary.

When referring to the draft law, in the first place the reform of organization of local government in urban districts catches the eye. Its main conceptual idea is to consolidate the possibility to form independent municipalities on intracity territories of urban districts in cases established by laws of the subjects of the Russian Federation. Today, as we know, the splitting of cities into intracity municipalities is provided for only in respect of cities of Federal significance, in case of adoption the draft law these municipalities can appear in hundreds of Russian cities.

This idea is completely in line with the annual address of the President of the Russian Federation, in which, inter alia, he noted that "the local authority should be structured so – since this is the closest power to the people – that any citizen, figuratively speaking, could reach it with its hand".

Indeed, the idea of the separation of a city into intracity territories having the status of a municipality is not new and has both its pros and cons. The main argument in its favor (and in favor of the considered draft law) is the fact that at the scale of a large metropolis a single body of local self-government just physically cannot solve all the local problems, i.e., the very idea of local authority, autonomy of population in decision of local issues is discredited [2, 232].

From this perspective, approximation of municipal authority to the population, laid as the basis of the draft law, can only be welcomed. At the same time, some of its provisions raise questions.

First, the introduction, in fact, of a two-tier system of local self-government in major cities will inevitably lead to a doubling of the authorities.

As can be judged from the text of the draft law, representative body of an urban district with intracity division should be formed from the composition of representative bodies of intracity areas in accordance with equal regardless of population representational quota. At that, the number of deputies of a representative body of city district with intracity division and intracity area shall be determined by the law of a subject of the Russian Federation.

However, despite this, some increase in the number of deputies in major cities, in the case of implementation the proposal under consideration, is very likely. Usually there are between 5 to 10 areas in large Russian cities (for example, in Omsk – 5, in Saratov – 6, in Kazan – 7, in Samara – 9, in Novosibirsk – 10), so even with a minimum actual number of representative body members of an intracity district 5-7 deputies (still, it is hard to imagine a representative body of three

members for an area with dozens or hundreds of thousands of residents) the total number of deputies of municipal level in a city will be more than 50, some portion of which will inevitably carry out their duties on a full-time (paid) basis. And it is not a fact that the subjects of the Russian Federation will accept this minimum number of members.

In addition, the formation of representative bodies in each area will uniquely require the formation of a numerous apparatus of these bodies and, therefore, increase of the number of municipal servants. The same, albeit to a lesser extent, applies to the local administrations

All this will inevitably have an impact on the increase of expenditures of local budgets to support managerial apparatus, which can hardly be welcomed in the economic situation existing in the Russian Federation today.

And here we can recall that in recent years in the legislation on local self-government we were observing just opposite trends associated with reductions of two-tier system in municipal managerial structures (see, for example, the Federal Law No. 315-FL from 29/11/2010 "On the Possibility of Refusal of Establishing Local Administrations in the Settlements that are Administrative Centers of Municipal Districts").

Secondly, the division of the city into independent municipalities could lead to certain difficulties in terms of preserving the unity of the city economy. As has been noted above, today this separation exists only in the city of Moscow and St. Petersburg, and, in order to overcome such a situation, the local self-government in intracity territories of these cities is exercised with taking into account a number of features established by article 79 of FL-131. For example, this article provides for a rule, according to which the list of issues of local significance, income sources of local budgets are defined by the laws of the corresponding subjects of the Russian Federation on the basis of the need to preserve the unity of city economy.

Also, according to article 12 of the Tax Code of the RF, local taxes in the cities of federal significance Moscow and St. Petersburg are established by the Tax Code of the RF and the laws on taxes of the mentioned subjects of the Russian Federation. The feasibility of this norm is also clear: within one city it is not acceptable when there are different rates of local taxes in its different areas.

All of the above provisions are intended to preserve a city as a single economic complex when creation on its territories intracity municipalities. However, the considered draft law does not provide for such requirements. However, it points out that "the powers of local self-government bodies of an urban district with intracity division and intracity areas to address determined in accordance with this Federal

Law issues of local significance of urban district with intracity division and intracity areas are delimited by the laws of a subject of the Russian Federation and, in accordance with them, by charter of such urban district". But from the above norm it is rather difficult to understand: how this will be resolved in practice. In addition, provisions of the draft law do not touch upon the issues related to the property, tax and financial component of intracity areas activity.

At the same time, it should be emphasized that the draft law (at least in the version prepared for introducing to the State Duma) did not assume coercive separation of large cities into intracity areas, as it was quickly announced by some network MEDIA (in response to the draft local self-government reform Kudrin suggested to revive pre-revolutionary counties [9]). As follows from the norm, which should enter in article 10 of the Federal Law "On the General Principles of Local Self-Government in the Russian Federation", in urban districts, in accordance with the laws of a subject of the Russian Federation, local self-government may also be exercised on the territories of intracity areas.

Moreover, the draft law specifically establishes that the change in the status of city district in connection with the vesting it the status of urban district with intracity division or deprivation of its status of urban district with intracity division is carried out by the law of a subject of the Russian Federation with taking into account the opinions of population of the corresponding urban district. Deprivation of a municipality the status of urban district with intracity division, in turn, entails the abolition intracity areas.

Thus, the subjects of the Russian Federation must themselves decide: in which districts it is advantageously to introduce a two-tier local self-government, and in which – not. This fact slightly smooths those questions to the draft law, which have been designated by us above.

But a number of its other provisions, although, at first sight, are somewhat lost at the background of possible creation of intracity municipalities, actually may have far more serious consequences, so much so that they are supposed to be implemented on a mandatory basis.

So, the draft law supposes to complement article 14 of the Federal Law "On the General Principles of Local Self-Government in the Russian Federation" with part 2 to read as follows: "Issues of Local Significance of a Rural Settlement Include Matters Provided for in Paragraphs 1-3, 9, 10, 12, 14, 17, 19 (except for the use, protection, preservation and reproduction of urban forests, forest of specially protected natural sites located within the boundaries of settlements), 21, 28, 30, 33 part 1 of this article. Other local issues provided for in part 1 of this article, on

the territories of rural settlements are handled by local self-government bodies of corresponding municipalities".

Thus, using just two phrases the authors of the draft law significantly redistributed local issues between rural settlements and municipal areas in favor of the latter. If the law is adopted in this edition the existing delineation of the issues of local significance will be preserved only for urban settlements, rural ones at one time will be deprived more than half provided for by the current law.

On the one hand, there is a certain logic. It is no secret that rural settlements in the Russian Federation in the vast majority are simply unable to adequately provide solutions to all of their local issues because of the lack of necessary material, financial and human resources. The explanatory note to the draft law rightly notes that "currently municipal areas actually carry out not intersettlement powers in respective territories, but resolve instead of settlements a considerable range of their local issues, including through the conclusion of agreements on the transfer of implementation most powers of local self-government bodies of settlements to local self-government bodies of municipal areas" [4].

Entrusting of rural settlements powers to an area looks quite reasonable, the more that the President of the Russian Federation in his Address noted the their insufficient volume of the latter: "area level is actually emasculated. Its powers in the area of education, health, social protection are transferred to the regions».

On the other hand, the remaining powers of rural settlements are so small that inevitably raises the question: is there in such a case a special sense in the support of settlements' managerial structures?

In addition, the transfer to municipal areas in the territories of rural settlements of a number of very significant issues of local significance (arrangement of electricity, heat, natural gas and water supply, water removal, fuel supply within the boundaries of a settlement; road works on the roads of local significance within the boundaries of settlement, and ensuring road safety on them; ensuring residential premises to poor citizens living in settlement, organization of construction and maintenance of municipal housing stock, etc.) does not involve the simultaneous increase of revenues of local budgets (at least, it does not follow from the submitted draft law). After all, the budgets of municipal areas are also not endless.

One more draft law novelty touches upon municipal areas. In accordance with it, it is proposed to make amendments to the part 4 article 35 of the Federal Law "On the General Principles of Local Self-Government in the Russian Federation" and to read it as follows: "Representative body of a municipal area consists

of the heads of the settlements within the municipal area, and of deputies of representative bodies of these settlements, who are elected by representative bodies of settlements from its members in accordance with equal regardless of population representational quota defined in the manner prescribed by the law of a subject of the Russian Federation and the Charter of municipal area".

Thus, municipal areas are offered the only possible way to form the representative bodies of municipalities, which now is alternative and, moreover, not major. By the way, we must say that it had been repeatedly criticized by various specialists [7, 60; 6; 5] as not fully corresponding to the European Charter of local self-government, but finally was recognized by the Supreme Court of the Russian Federation not inconsistent with this document [1].

By itself, the method of forming representative body of municipal areas from delegates of settlements has significant advantages, that is why it is in demand by many municipalities. First, it greatly reduces the price and simplifies the process of forming local self-government bodies in municipal area, allowing them to completely do without municipal elections. Second, it provides a direct interaction between area and settlement authorities, since the representative body of the area includes the heads of settlements and the most active of their deputies, which, as a rule, are actively involved in the implementation of municipal management in the settlement and know its problem well. Third, it reduces the costs of managerial apparatus of representative bodies in area as a whole.

Probably, if the above method would not have flaws – it would be used by all or most municipal areas of the Russian Federation. But there are such flaws. They are due to possible conflict of interest of deputies, who are forced to defend the needs both of area and settlements (not in all cases coincide), lack of time (if settlement head has a main job in the settlement, activity in the role of area deputy will be, likely, perceived by him on leftovers). Not the last role is taken by demographics: the specificity of the majority of Russian municipal areas is that in the administrative center of an area, as a rule, lives a sizeable part of the population (in some cases over 90%). The requirement of equal regardless of settlement population representational quota leads to the fact that the interests of the majority of inhabitants are absolutely represented by deputies' minority.

It is not surprising that only about 10% of municipal areas of the country use the considered method of forming representative bodies. Against this backdrop, the desire of authors of the draft law to impose it to remaining 90% looks strange enough.

Perhaps, the desire of the authors of the draft law to eliminate municipal elections in municipal areas (officially these amendments are offered "in order to strengthen the position of urban and rural settlements in the organization of ensuring the activities of municipal areas, to improve the efficiency of intermunicipal cooperation in municipal areas" [4]) has outweighed all obvious shortcomings of the proposed method. Anyway, the grounds for such conclusion may be given by some other provisions of the draft law, which also aim to reduce the number of cases of direct election of local self-government officials by the population.

So, in article 36 of the Federal Law "On the General Principles of Local Self-Government in the Russian Federation" is offered to enshrine the following provisions:

- the head of municipal area is elected by representative body of the municipal area from its members, exercises the powers of its chairman;
- the head of urban district with intracity division is elected by representative body of the municipality from its members, exercises the powers of its chairman;
- the head of urban settlement is elected by representative body of the settlement from its members, exercises the powers of its chairman;
- the head of intracity area is elected by representative body of the intracity area from its members, exercises the powers of its chairman.

Proceeding from this, it is assumed preserve the direct elections of the head of municipality (except for the cities of federal significance) only in urban districts without intracity division, as well as in rural settlements (where they are currently being carried out very rarely). This position seems to be not meeting the task, which has been put in the Annual Address of the President of the Russian Federation, concerning approaching of local self-government to the population; rather it recalls next "tightening of nuts" and strengthening the vertical of power.

Finally, the last of the most significant – in our opinion – amendments proposed in the draft law concerns the formation of the tender committee in carrying out the contest to fill the position of the head of local administration. If the current legislation provides for certain participation of the representatives of public authorities in formed in municipalities tender committees, the considered draft law suggests strengthening of this participation.

In particular, it contains the following provisions.

In a municipal area, urban district, urban district with intracity division, intracity municipality of a city of federal significance a half of the members of tender committee is appointed by the representative body of corresponding municipality,

and the other half – by the highest official of a subject of the Russian Federation (head of the supreme executive body of State power of a subject of the Russian Federation).

In the case of contest in a municipal area, in which is considered to form local administration of municipal area, which bears the duty to exercise the powers of local administration of settlement that is a center of the mentioned area, one quarter of the members of tender committee is appointed by the representative body of the municipal area, one quarter – by the representative body of the settlement that is a center of the municipal area, and a half – by the highest official of a subject of the Russian Federation (head of the supreme executive body of State power of a subject of the Russian Federation).

In general we can say that the draft law introduced to the State Duma, on the one hand, reduces the possibility of the population to influence on municipal structures (due to the reduction of municipal elections), on the other hand, clearly reduces the independence of local self-government by increasing the powers of the State in this area. Even in those few cases where, under the current legislation, municipalities still have the opportunity to make a choice on the structure and method of forming their bodies, it is offered to deny them this choice.

At that the draft law, as has been noted above, does not mention the financial component of local self-government, while the President of the Russian Federation in his Address directly acknowledged that "the scope of responsibility and resources of municipalities, unfortunately, and you know it well, are not balanced". The explanatory note to the draft law states only that its provisions "do not touch upon any issues of improvement legal regulation of the financial-economic foundations of local self-government. These issues will be regulated by other legislative initiatives". Perhaps it will be so. However, it is all too reminiscent of the situation 2002-03, when during the consideration of a new draft law on local self-government representatives of the President and the Government assured the deputies of the State Duma that after its adoption would be amended tax and budget codes that would give local self-government a sounded financial footing. These amendments were eventually made, but the reality proved to be extremely far from the promised, as a result the local self-government in Russia remained non-independent and financially dependent on the State.

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