

Problems of Constitutional-Legal Regulation of Connection of Public Associations with Local Government in Russia

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ABSTRACT

Relevance of the studied problem is conditioned by the necessity of performance of the constitutional-legal study and development of legal algorithms, providing efficiency of cooperation between the local self-government authorities and public associations. Goal of the study is to analyze the basics of constitutional-legal regulation of cooperation between the local self-government authorities and public associations, detect the gaps in regulation, as well as offer legal adjustments, aimed at its correction. Leading methods of this problem study is a formal-legislative method, which allows to analyze laws and regulations, determine into it the peculiarities of the mechanism of formalizing of cooperation between the local self-government authorities and public associations. In this article, we analyzed the provisions of international legal acts, as well as the norms of the Russian Federation Constitution, dedicated to cooperation between the local government authorities and public associations; insufficiency of regulation of these relationships is determined at the level of the Russian constitutional law; offers concerning the additions the RF constitution are developed, which purpose is to fill the gap. Authors' conclusions are aimed at the formalization in the Russian Constitution of public associations' right to take part in the execution of local self-governance and cooperate with the local self-government authorities, which shall allow to create a legal basis for the formation of legal mechanism of cooperation between the local government authorities and public associations in Russia.

KEYWORDS

Constitutional-legal regulation, cooperation, self-government authorities, public associations

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Introduction

Improvement of the efficiency of collaboration between the governmental authorities and civil society, represented by the different institutions, is an important problem of the today's world. This is conditioned by the fact, that this problem

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appeared together with the origination of the state and subdivision of the society into state and non-state spheres of human activity (Belousov, Gornev & Mikheeva, 2015). One of the traits of democracy is cooperation between the state and institutions of the civil society, setting up of direct and inverse relationships between them, the establishment of the dialogue between the government and public structures (Mikheeva, 2013). Russian researchers point out, that the civil society can't be interpreted as an antithesis to the state, as they are objectively interrelated and interdependent phenomena, a sort of a tandem (Grudtsyna, 2015).

Development of cooperation between the civil society and local self-government authorities acquires special significance. It is conditioned by the fact, that local government is the level of public authority, which is maximally close to the population; routine tasks, connected with the provision of high-quality life to the citizens, solution of the problems of local significance, are performed in the frameworks of municipalities. It is also emphasized, that local self-government authorities are considered to be a connecting link between the state and civil society (Vavilov, 2015). Key condition for the efficient development of the local self-governance as an independent level of public authority is its cooperation with the citizens and civil society institutions (Mikheev, Dudko & Mikheeva, 2015). Moreover, there exists a positive experience of the foreign countries, where public involvement to the local administration, support of the civil initiatives in the municipal sphere has been developed (Mikheev, Mikheeva & Mokoseeva, 2015).

Substantial amount of the civil society institution functions at the municipal level. Such institutions include non-governmental associations, mass media, public chambers, public councils, voluntary public and fire brigades, trade unions, charity organizations etc. Each of the above-mentioned institutions is a significant component of municipal civil society, but, one of the basic institutions of the civil society at the local level is public associations. Associations of the citizens are considered to be one of the most important components of the civil society, form of involvement of the state population into active political, economical and social-cultural activity (Maly, 2003), besides they serves as a linking element between the state and the personality (Belyasov, 2010).

Public associations, as a rule, perform its activities in socially significant spheres, and, in point of fact, solution of problems, connected with life necessities of local communities in the modern conditions is impossible without their participation (Likhoshva & Mikheeva, 2016). Here, we have to agree with T.N. Mikheeva (2014), who notes that the problem of gradual development of local self-governance is close to the activity of the citizens, local communities and other civil society structures.

It should not go unnoticed that nowadays legal regulation of cooperation between the local self-government authorities and public associations is segmental and chaotic, there is no systematicity and hierarchy principle in the regulation of such cooperation mechanism. To our opinion, it is connected with the absence (at the level of the RF Constitution (1993)) of the statute of law, empowering the civil associations with a right to take part in the execution of local self-governance by means of legal cooperation with the local government authorities in the frameworks of solution of the problems of local significance.

All stated above confirms the absolute relevance of the study subject, both from the theoretical and practical point of view.

Methodological framework

The methodology of the study covers general scientific method, for example, dialectical one. Besides, we used scientific cognition methods, specific for the legal

studies. A systematic approach was relevant in the course of analysis of cooperation between the public associations and local government authorities. Scientific objectivity principle allowed to perform comprehensive and objective analysis of the factual material, the whole combination of factors, influencing at the cooperation between the public associations and local government authorities. Usage of formal-legislative method allowed to analyze laws and regulations, determine into it the peculiarities of the mechanism of strengthening of cooperation between the local self-government authorities and public associations. Besides, in this study we used other methods, which allowed to study the problem and explore the topic.

Results

Mechanism of cooperation between the local government authorities and public associations can't be studied without the analysis of its legal regulation. Legal regulation of both local self-government institutions and public associations, as well as of the issues of its cooperation has been changed greatly within last 25 years.

A special place in the system of legal regulation of local self-government and public associations' cooperation mechanism is held by the European Charter of Local Self-Government (1985), adopted by the Council of Europe in 1985 and ratified in the Russian Federation in 1998 (1998). Legal status of above-mentioned international act is based on p.4 article 15 of the RF Constitution, in accordance with which, generally accepted principles and norms of international law and international treaties to which the Russian Federation is a signatory are considered to be an integral part of its legal system.

Russian scientists point out, that European Charter of Local Self-Government is the most important international legal document, defining legal development benchmarks of local self-governance (Mikheev, 2013). Within this framework, issues of cooperation between the local self-government authorities and public institutions shall be assessed in terms of the provisions of the European Charter of Local Self-Government, as a component of Russian constitutional legal regulation of these relationships.

It is noted in the preamble of the Charter, that local self-government authorities are one of the principle bases of any democratic system, and the citizens' right to take part in the administration of state affairs may be executed (most directly) at the local level. Specified provisions of the preamble of the European Charter of Local Self-Government do not contain any references to the right of the public associations to take part in the performance of local self-governance, as well as to the right for cooperation with local self-government authorities. But, as local public associations consist of citizens, then according to specified provisions of the Charter we may make a conclusion that the right of the public associations to take part into the performance of self-governance (inter alia, by means of interaction with the local self-government authorities) is attached at the international level.

P. 1 art. 3 of the European Charter of Local Self-Government contains a definition of the term "local self-governance", which means right and ability of the local self-government to regulate a significant part of the public affairs, as well as to administer it, acting in the frameworks of applicable law, in accordance with its competence and in favor of local population.

This right is exercised by the councils or meetings, consisting of the members, elected by means of free, ballot, direct, equal vote. Councils and meetings may have the executive bodies, which are accountable to them. This provision by no means excludes addressing to the meetings of the citizens, referendum or another form of direct

participation of the citizens, where is allowed by law. Analyzing the definition of the local self-governance, contained in the Charter, D.S. Mikheev (2013) notes, that the key place (from the position of study of self-governance publicity principle) in the delineation is held by the reference to the consideration of the population interest, which is impossible without communication of local self-government authorities with the members of local society. As public associations include representatives of the local population, then local self-governance should be also executed in favor of the local associations.

So, European Charter of Local Self-Government sets basic principles of legal regulation for the cooperation between local self-government and public associations, the essence of which is to settle the questions of local significance on the basis of the interests of the citizen groups and in cooperation with them.

The RF constitution plays a key role in the legal regulation of local self-government institutions and public associations, as well as mechanisms for its cooperation. A large number of enactments of main law of the Russian Federation is dedicated to above-specified issues, in particular 1, part 2 articles 3, article 12, part 4 articles 13, part 2 articles 24, article 30, part 1 articles 32, article 33, articles 130 – 133.

Analyzing the text of applicable Russian Constitution, we may find one of the legal bases of local self-government bodies and public associations functioning in Russia, as well as its' cooperation even in the first article, that is a reference to the democratic character of our country. Both local self-government, as a level of public authority, and public associations, as a civil society institution, represent a manifestation of democratic principles in the society and in the state.

Article 12 of main law of the RF determines the main principle of self-governance in the national law, its self-sufficiency in the frameworks of its powers and independence from the state government bodies. This norm has a basic meaning for the whole legal regulation of local self-government, as in accordance with p.2 art. 16 of the RF Constitution, provisions of section 1 have a priority in relation to the other provisions of RF basic law.

Section 8 of the RF Constitution is dedicated to more detailed regulation of the issues, connected with local self-governance. Article 130 determines, that local self-government in the Russian Federation provides an independent solution by the population of the questions of local significance. Local self-governance is performed by the citizens by means of a referendum, votes, other forms of direct expression of will, via electoral and other bodies of local self-governance.

The RF Constitutional Court ruling No. 7-P dated 02/04/2002 (2002) states, that subject of law for independent execution of municipal government is the population of municipal entity, which is entitled to protect its rights and liberties, realized at the level of self-governance, inter alia, by means of influence (in different legitimate forms) at the elective officials of local self-government. The RF Constitutional Court also noted, that population control over the activity, set as a premise of the following influence, represents one of the means of the population self-organization.

In this regard statement of the scientists concerning the fact, that the accountability of the local governments, as well as the openness of its decisions for the citizens, appear to be important conditions for its cooperation (Kudryavtzev, Mikheeva & Mikheev, 2016), should be admitted.

We shall agree with Yu.S. Yaichnikova (2011), who notes, that constitutional right of the citizens for self-governance also includes a possibility of realization by the population and other civil society institutions of the powers, connected with oversight

of self-government authorities. Moreover, we consider, that above-specified right includes a possibility of the citizens and local public association to cooperate (in different forms) with the local self-government authorities in the course of implementation of self-governance.

But absence of particular regulatory directive in the RF Constitution concerning the allowability of participation of the local public associations in the performance of self-governance and cooperation with the local self-government authorities causes legal uncertainty in the regulation of this questions, as well as slows down the development of federal and regional legislation on the part of determination of particular forms and mechanisms of cooperation between the local self-government authorities and public associations.

This gap in law may be settled by means of introduction of the following additions into p. 2 art. 130 of the RF Constitutions to read as follows: "Local self-governance is performed by the citizens by means of a referendum, votes, and other forms of direct expression of will, via electoral and other bodies of local self-governance. Local public associations are entitled to participate in the performance of self-governance by means of cooperation with local self-government authorities in the frameworks, set by law".

The closing of above-specified gap shall promote the formation and secure into the enactments of different level of the efficient and qualitative mechanism of cooperation between the local self-government authorities and public associations. In its turn, insufficient regimentation of self-governance institution in the RF Constitution has been repeatedly emphasized in the literature. In particular, T.N. Mikheeva (2003) pointed out the necessity of supplementation of the constitutional regulation of the local self-governance. A.A. Sergeev (2006) noted, that loss by the Constitution of the formal clearness and ambiguity in the assessment of its content devalue the Constitution. We suppose, that above-specified comments of the distinguished municipalist - scientists are equally extended to the interactions between the public associations and local self-government bodies, as the development of such interactions depends on the forming up of the civil society at the municipal level, which, in its turn, is considered to be a basis for the whole home state.

Art.30 of the RF Constitution, determining the rights of each citizen for the association, guarantees of liberty of the public associations' activity, as well as the prohibition against the enforcement to the engagement in any association, also requires examination. Constitutional right for associations is a basic provision for the whole mechanism of cooperation between the public associations and local self-government bodies.

Reasoning upon enforcement of the right for associations, T.V. Soifer (2012) points out, that the content and character of many individual rights provide its realization in a collective order by means of association of its holders into the communities. There are no doubts, that joint implementation of the civil rights in the frameworks of the public associations allows to achieve a better effect. It is particularly demonstrated in the process of realization of the rights, which are somehow connected with the actions or decisions of the governmental bodies.

P.4 art. 13 of the RF Constitution determines the principle of equality of the public associations under the law. The essence of this constitutional norm reflects (partially) the content of the principle of equality of the public associations for the cooperation with the local self-government authorities, the intention of which is on the equal access of the public associations to the legal forms of cooperation with local self-government authorities.

P.2 art. 24 of the RF Constitution, which entrusts upon the governmental bodies and public associations the obligations of the provision to each citizen of a possibility to get acquainted with the documents and materials, directly connected with its rights and liberties, requires separate scientific analysis. Considering this enactment, D.S. Mikheev (2013) notes, that it creates serious legal premises for the enhancement of the civil activity, engagement of the citizens of the municipal entities into administration process at the local level.

Provisions of art. 33 of the RF Constitution, in accordance with which the RF citizens are entitled to address in person, as well as to submit individual and collective petitions to the central and local authorities, are connected with above-specified enactment.

Above-specified constitutional provisions appear, in particular, in such form of cooperation between public associations and local self-government authorities, as petitions of the civil associations to the local authorities.

Art. 32 of the RF Constitution provides the citizens of Russia a right to take part in the administration of the state affairs both directly and via their representatives. Together with above-mentioned provisions of art. 30 of the RF Constitution, this enactment determines (at the constitutional level), inter alia, legal bases of participation of the public associations into the realization of local self-governance and legal cooperation with local self-government authorities.

So, analyzed international legal acts, as well as the provisions of Russian Constitution altogether provided a basis for legal cooperation between the public associations and local self-government authorities. But the authors observed insufficiency of constitutional legal regulation, which prevents the formation (in terms of legislation) of the efficient and integral mechanism of cooperation between the above-specified subjects.

Discussions

Study of the legal literature allows stating the absence of special investigations, dedicated to the problem of constitutional legal regulation of cooperation between the local self-government authorities and public associations.

In its turn, issues on cooperation between civil society institutions and state authorities are studied actively in the science. This topic was analyzed in detail by V.V. Grib (2010) in his monographic study. In his another work V.V. Grib (2011) offered (in prospect), in the course of adoption of new RF Constitution, to include into it an article "Cooperation between the state and civil society", regulating basic forms and mechanisms of cooperation between the governmental authorities and civil society institutions.

Problems of cooperation between the governmental authorities and public associations were also studied in the works of V.V. Lysenko (2001), D.E. Mereshkin (2006), I.S. Fatov (2008), A.S. Sheryazova (2011) and others.

Issues of the public control over the activity of the local self-government authorities were reflected in the monograph of Yu.S. Yaichnikova (2011), who offered to complement the RF Constitution with an enactment on the possibility of public control of the activity of municipal governmental bodies. According to Yu.S. Yaichnikova (2011), this shall allow making the activity of the local authorities transparent and open.

Conclusions of D.S. Mikheev (2013), made in the process of studying of the local self-governance publicity principle, are of special academic interest. In particular, D.S.

Mikheev (2013) offers to complete the RF Constitution with a reference to above-specified principle, as well as possibility of the municipal entity population to perform the public control over local self-government authorities' activity.

Some aspects of legal regulation of the civil society institutions' activity at the municipal level were analyzed in the work of N.S. Vavilov & T.N. Mikheeva (2016). The authors emphasized the forms of activity of the civil society institutions at local self-governance level, as well as the ways of the influence of above-specified subjects at each other.

Analysis of the legal literature demonstrates the undoubtful relevance of the study of constitutional legal aspects of cooperation between the civil society institutions and governmental bodies. As just noted, specified cooperation has a special meaning at the municipal level of the public authority, as it is maximally close to the population and is considered to be so-called foundation of the whole state. This is conditioned by the fact, that the most relevant problems of the citizens are settled in the frameworks of local self-governance.

But not all civil society institutions are efficient in the process of settlement of the questions of local significance, as well as a reflection of the local population interests. Those are public associations, which should play a special role here because such public associations are the most widespread and basic municipal civil society institutions. Other cooperation between the local government authorities and public associations is impossible without qualitative legal regulation. We consider, that such regulation shall be based on the statute of the law, determined in the RF Constitution, and providing public associations a right for participation into the performance of local self-governance by means of the forms, formalized in legislation.

Conclusion

Summarizing the constitutional provisions, which we discussed above, we would like to note, that Russian basic law (in the whole) provided a foundation for the further development of legislation on self-governance, public associations, as well as formalized key postulates, at which the mechanism of cooperation between the public associations and local self-government bodies is based. Constitutional principles and rules are traced in the major part of the forms and principles of cooperation between the civil associations and local governmental bodies, they play a role of the reference point for the development of the federal and regional legislation, as well as municipal legal acts in this sphere. But for the specification of constitutional provisions, the author offers some corrections of the content of the RF Constitution, aimed at the elimination of ambiguity and uncertainty in the regulation of cooperation between the local public associations and governmental authorities. So, the authors offer to complete p. 2 art. 130 of the RF Constitution to read as follows: "Local self-governance is performed by the citizens by means of a referendum, votes, other forms of direct expression of will, via electoral and other bodies of local self-governance. Local public associations are entitled to participate in the performance of self-governance by means of cooperation with local self-government authorities in the frameworks, set by law". Above-specified corrections of the basic Law of the Russian Federation shall prompt the development of the federal, regional and municipal legal regulation of the considered relations, which shall finally have an impact on the development of Russian civil society and improvement of the democracy level in the process of performance of the public authority.

Recommendations

Materials of the article may be useful for the lawmaking activities of the governmental bodies, for the academic lawyers, specializing in the sphere of constitutional and municipal law, students, masters, and PG students of law departments.

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