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TÍTULO: Aspectos de discusión de la regulación legal del procedimiento para la elección de jefes de municipios en la Federación Rusa.

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RESUMEN: En este artículo, el autor considera los problemas problemáticos del procedimiento para elegir a los jefes de los distritos municipales, distritos urbanos, distritos urbanos con división intraurbana, formaciones municipales intraurbanos de ciudades de importancia federal por parte de organismos representativos entre los candidatos presentados por la comisión de competencia en función de los resultados de la competencia. El documento presenta un análisis de la legislación actual que regula la participación de los ciudadanos en la formación de los gobiernos locales, como parte del estudio del problema, la práctica del Tribunal Constitucional de la Federación de Rusia y se presentan materiales analíticos que confirman la relevancia del tema elegido.

PALABRAS CLAVES: Gobierno local, jefe del municipio, democracia, comité de competencia, autoridad pública, sufragio, elecciones.

TITLE: Discussion aspects of the legal regulation of the procedure for the election of heads of municipalities in the Russian Federation.

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ABSTRACT: In this article, the author considers the problematic issues of the procedure for electing the heads of municipal districts, urban districts, urban districts with intracity division, intracity municipal formations of cities of federal significance by representative bodies from among the candidates submitted by the competition commission based on the results of the competition. The paper presents an analysis of the current legislation regulating the participation of citizens in the formation of local governments, as part of the study of the problem, the practice of the Constitutional Court of the Russian Federation and analytical materials confirming the relevance of the chosen topic are presented.

KEY WORDS: Local government, head of the municipality, democracy, competition committee, public authority, suffrage, elections.

INTRODUCTION.

Behind 16 years from the date of adoption and partial entry into force of the provisions of Federal Law dated 06.10.2003 No. 131-FL “On General Principles of the Organization of Local Self-Government in the Russian Federation”. However, the issues of legal support and legal regulation of local self-government even before the adoption of the aforementioned act, and at the present time

remain the subject of numerous discussions, disputes, which are reflected both on the pages of scientific publications, various media, and on the sidelines of various practical and scientific events. This is not surprising, since it is obvious that the formation of local self-government in Russia, so far, has not only not been completed, but, in our opinion, will be far from the final stage for a long time to come.

Many researchers note that the development of local self-government, at present, is breaking with the practical implementation of the institution of popular democracy in general and municipal democracy in individual municipalities (Zakharov et al., 2019; Kovalenko, 2019) Gadzhiev et al., 1998).

The practical implementation of the institution of people's democracy is largely influenced by the state of existing legislation governing the organization of local self-government. The legislator's desire to find the most optimal model for the development of local self-government in the Russian Federation is manifested in systematic legislative changes. We calculated that for the period from 2003 to the present year 2019, the indicated legal act was amended and supplemented 164 times, and only in incomplete 2019, 6 federal laws were already adopted, amending Federal Law dated 06.10.2003 No. 131-FL "On the general principles of the organization of local self-government in the Russian Federation".

A significant number of changes concern the list of issues of local importance, the powers of local governments, as well as the procedure for the formation of local governments. On July 25, 2017, President of the Russian Federation V.V. Putin, at a meeting with the Council of Legislators, called the rush in adopting laws one of the main reasons for poor rule-making. The President of the Russian Federation noted, that despite the fact that today a stable system has been created that meets the modern criteria of parliamentarism, "it has not yet been possible to achieve a comprehensive, systematic approach to creating and adjusting the legislative framework: bills do not always have a

deep, comprehensive study, are not taken into account scientific and expert evaluations" (Putin, 2017).

DEVELOPMENT.

Methodology.

The methodological basis of the research consists of general scientific, private scientific and special methods of cognition. The analysis method was used in the interpretation of regulatory legal acts, the study of special legal literature and the study of materials of judicial practice.

Discussion and results.

It should only agree with V.V. Putin that after two years, a significant number of changes to the legislation on local self-government do not find a positive expert assessment and are a source of numerous studies (Putin, 2017). In this study, we would like to touch on only one of the discussion topics - this is the introduction of variability in the formation of local governments, in particular, the election of the highest official of the municipality.

Modern practice shows that the provision guaranteed by the Constitution of the Russian Federation on the independence of the population in determining the structure of local self-government is increasingly becoming a legal "fiction" (Kovalenko et al., 2019). This was facilitated by the practice of the Constitutional Court of the Russian Federation. Thus, the Constitutional Court of the Russian Federation has repeatedly pointed out the fact that the Constitution of the Russian Federation does not directly identify the head of a municipality among the directly elected public authorities and officials and does not determine any other specific procedure for filling this position, which implies the need for legislative regulation, in which, in particular, the establishment of the possibility of electing the head of a municipality in accordance with the charter of a municipality

A single entity in the municipal election or by a representative body of the municipality from its composition cannot be regarded as incompatible with the constitutional foundations of local self-government and violating the constitutional rights of citizens, including the right of citizens of the Russian Federation to elect and be elected to bodies enshrined in article 32 (part 2) of the Constitution of the Russian Federation local government, as well as participate in a referendum (Decision of September 29, 2011 No. 1319-O-O).

The Constitutional Court of the Russian Federation also repeatedly emphasized in its decisions that the Constitution of the Russian Federation, proclaiming free elections along with a referendum as the highest direct expression of the power of the people and securing the electoral rights of citizens of the Russian Federation and the right to participate in a referendum (Article 3, Part 3; Article 32, parts 1 and 2), however, does not consider elections held on the basis of universal equal and direct suffrage as the only permissible mechanism for the formation of all public administration at each level of its organization (Decree No. 13-P of December 21, 2005).

At the same time, one more legal position of the Constitutional Court of the Russian Federation should be mentioned: “determination of various methods of forming local self-government bodies - since this issue by its nature relates to the general principles of the organization of local self-government and is directly related to the regulation of the right to local self-government, including its possible limitations , - constitutes, within the meaning of the Constitution of the Russian Federation, its articles 12, 32 (parts 1 and 2), 55 (part 3), 71 (paragraph “c”) and 72 (paragraph “n” of part 1), the prerogative of federal law givers, while the legislator the subject of the Russian Federation shall have the right to carry out a secondary, derivative regulation in this area; at the same time, organizational and legal means and procedures cannot be used that would make the actual formation of the composition of the local government or the replacement of a municipal post dependent on the will of the public

authorities ”(Decree of November 3, 1997 No. 15-P, dated December 1, 2015 No. 30-P et al.; definitions of June 11, 1999 No. 105-O, dated January 14, 2003 No. 21-O, etc.).

Thus, the supreme body of constitutional justice actually established legislative freedom for the federal and regional legislators to remove the population of municipalities from independently determining the structure of local authorities and the procedure for its formation (Gadzhiev et al., 1998; Frolov, 1980; Belkin, 1997).

In the current version of the Federal Law dated 06.10.2003 No. 131-FL “On the General Principles of the Organization of Local Self-Government in the Russian Federation” (hereinafter referred to as the Federal Law) in paragraph 1 of Part 2 of Article 36 it is said that the head of the municipality in accordance with the law of the constituent entity of the Russian Federation and the charter of the municipality is elected one of the three proposed election options: in municipal elections; representative body of the municipality from its composition; the representative body of the municipality from among the candidates submitted by the competitive commission according to the results of the competition. The last option of empowering the head of the municipality according to the results of the competition causes the greatest number of disputes and discussions in the public environment. The reason for this is legal uncertainty as to how and whether the opinion of the population living in the territory of the municipality will be taken into account when choosing the option to elect the head of the municipality.

Obviously, the federal legislator, intentionally, does not directly regulate this issue, creating a favorable ground for a double interpretation of legal norms. Indeed, initially, when the changes introduced were at the stage of the bill, the legislator argued the need for their adoption by the fact that the practice of direct elections of the heads of municipalities showed their imperfection. The heads of municipalities, who received a mandate from the population itself, are often ineffective and do not have the necessary professional skills of a manager. However, no studies have been made that

with the introduction of a different election system for the head of the municipality, the management system will become better. On the contrary, the changes introduced by the legislator may well serve as a kind of impetus to building relations between regional and local authorities not only on a legal basis, but on personal relations, and as a result, the growth of the corruption component, characterized by high latency. Unfortunately, there are plenty of examples of such manual management of the heads of municipalities by regional authorities throughout the Russian Federation (Avakyan, 2004; Baytin, 2001).

Confirmation of a high degree of corruption in the election of the head of a municipality through a tender committee is provided by the content of Part 2.1 of Article 36 of the Federal Law, which determines the composition of a tender committee for the selection of candidates for the position of head of a municipality. Thus, it was established that in the municipal district, urban district, urban district with intracity division, in the intracity municipal formation of a city of federal significance, half of the members of the competitive commission are appointed by the representative body of the corresponding municipality, and the other half - by the highest official of the subject of the Russian Federation (the exception is settlements, intracity areas and closed administrative-territorial formations).

Freedom granted to federal authorities by the regional legislator, which allows indirectly imposing on municipalities a way to organize power, not taking into account the opinion of the population itself, in the context of an increasing vertical alignment of all power, causes irreparable damage to local self-government, as the level of power closest to the population, as well as civil society institutions, which are increasingly negatively considering the model of “merging” of the administrative apparatus of the regional and municipal levels. The situation is aggravated by the fact that the federal law’s alternative to choosing local authorities is effectively leveled by the regional legislator; so, for example, in most municipalities of the Sverdlovsk region, the method of electing

the heads of municipalities as representative bodies from among the candidates represented by the competitive commission based on the results of the competition is established as the only possible for the heads of municipal districts, city districts, with the exception of cases established by the Regional Law, as well as for heads of rural and urban settlements as one of three possible ways. This method of electing heads of municipalities located in the Sverdlovsk Region is enshrined in the charters of 86 municipalities, including in 66 urban districts, 5 municipal districts, 5 urban settlements and 10 rural settlements.

In the remaining 8 municipalities, the charter provides for a mechanism for electing the head of a municipal formation in municipal elections on the basis of universal equal and direct suffrage by secret ballot. It is worth noting that before the adoption of the Federal Law of 03.02.2015 N 8-FL, such an election system that justifies the constitutional principle “the people are the only source of power” was in effect in almost all municipalities located in the Sverdlovsk region. In the whole of the Russian Federation, after analyzing the data of information and analytical materials of the Ministry of Justice of the Russian Federation as of March 2018 of the total number of municipalities in the constituent entities of the Russian Federation (as of January 2018 - 21,945), the competitive system for electing a senior official operates in 7,653 territorial units (34 %). The above data indicate that the active and passive suffrage of citizens in the system of local self-government is dynamically replaced by other forms that are not related to the direct will of citizens in matters of forming local governments.

According to our opinion, the current system negatively affects the formation of the legal culture of the population, presented in this context as the degree and nature of the legal and political development of citizens, which causes the population to be alienated from participation in municipal administration, in view of the impossibility to influence the organization of government bodies.

Speaking about local self-government, as the level of public authority closest to the population, it must be understood that the exclusion of the population living in a certain territorial unit from the formation of the structure of local self-government bodies from participation in solving local issues also causes political absenteeism, primarily among youth; an example is the clash between residents of Yekaterinburg, mainly young people, with government and law enforcement officials over the construction of a temple on Drama Square. Therefore, subjecting the mechanisms of population participation in the formation of local self-government bodies to rash reforms, the legislator also aggravated the problem of developing the legal culture of the electoral process, casting doubt on the effectiveness of the implementation of the constitutional principle of democracy.

Elections, as a mechanism for the formation of government bodies at any level, are an integral element of democracy. The election results rightly serve as the basis for legalization (legal certification) and legitimation (recognition of the legitimate, justified in the representation of the population) of public authority.

CONCLUSIONS.

At the end of this study, I would like to note that the reform of the legislation on local self-government, carried out in the last 5-7 years, has pronounced features of continuing the administrative reform aimed at creating a single vertical of power from the federal to the local level, which is accompanied by "legitimization" of forms of control and unreasonable interference of each higher level in the formation of the lower level of public authority, especially this trend is noticeable at the local government level Niya.

In this regard, it is appropriate to recall the position of the Constitutional Court of the Russian Federation set forth in its resolution of November 30, 2000 N 15-P "On the case of the constitutionality of certain provisions of the Charter (Basic Law) of the Kursk Region as amended by the Law of the Kursk Region of March 22, 1999 "On Making of amendments and addenda to the

Charter (Basic Law) of the Kursk Region”, in accordance with which the establishment of such regulatory provisions is not allowed in the Russian Federation, which creates the possibility of arbitrary expansion of the limits of state control over the activities of local self-government in addressing their local issues, including do not exclude judicial procedures are not mediated effects on local governments to repeal, modification or suspension of the measures they have legal acts.

The competitive mechanism for electing the heads of municipalities, which was introduced into the legal system of the Russian Federation as a priority, cannot be fully called democratic, because in practice it is “often” turned into a simple formality, a kind of “ritual” with previously known results.

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