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TÍTULO: La cuestión de la terminología utilizada en la legislación sobre autogobierno local en la parte de definición de nociones de los diputados, y también de personas, en sustitución de los cargos municipales.

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RESUMEN: El artículo analiza la terminología utilizada en la ley federal del 6 de octubre del 2003 № 131-FL «Sobre los principios generales de la organización del autogobierno local en la Federación de Rusia» en relación con las definiciones de categorías como «diputado», «oficial del autogobierno local», «persona elegida del autogobierno local» y «funcionario electo del autogobierno local». El autor concluye que la legislación sobre el autogobierno local con respecto a estas categorías debería simplificarse. Se ofrecen recomendaciones sobre la mejora de la regulación legal por parte de las personas nombradas.

PALABRAS CLAVES: gobierno local, autoridades locales, diputado, funcionario del gobierno local, funcionario electo del gobierno local.

TITLE: To the question of terminology, used in the legislation on local self-government in the part of definition of notions of the deputies, and also persons, replacing municipal positions.

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ABSTRACT: The article analyzes the terminology used in the Federal law of October 6, 2003 № 131-FL «On general principles of the organization of local self-government in the Russian Federation» in relation to definitions of such categories as «deputy», «official of local self-government», «elected person of local self-government», «elected official of local self-government». The author concludes that the legislation on local self-government in respect of these categories should be simplified. Recommendations on improvement of legal regulation in the part of named persons are offered.

KEY WORDS: Local self-government, local authorities, deputy, local government official, elected official of local self-government.

INTRODUCTION.

Recently, we witness development of legislation on local government. The Federal Law of October 6, 2003 number 131-FL «On General Principles of Organization of Local Self-Government in the Russian Federations» (hereinafter referred to as the Federal Law number 131) have been amended several times a year for more than fifteen years.

The original Federal Law number 131 has become a history. Perhaps there is a need to adopt a new Federal Law regulating the relations of local self-government, rather than introducing numerous changes to the original wording.

Different stages of the development of local self-government saw changes of legislator's understanding of different institutions. Thus, the legislators periodically changed their approach to such categories as: «elected official of local self-government», «member of elected body of local self-government», «person holding municipal office», «deputy holding position in representative body of municipality». Only the approach of the legislator to such categories as «deputy» and «official of local self-government» remained unchanged.

The very first edition of the Federal Law number 131 contains only four categories: «deputy», «official of local self-government», «elected official of local self-government» and «member of elected body of local self-government». Other categories began to appear since 2009.

The legislator's approach to such persons as a deputy and a member of an elected body of local self-government is not entirely clear. The Federal Law number 131 defines “deputy” as a member of the representative body of a settlement, a municipal district, a township with intracity division, an intracity district or an intracity territory of a city of federal importance. That is, simply put, a member of a representative body of a municipality.

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. The synthesis method was used to substantiate the conclusions of the conclusion of the work. The system-structural approach was

applied to the totality of the constitutional rights of people as a holistic system consisting of interacting structural elements.

Discussion and results.

The initial version of the Federal Law number 131 considered “member of elected local government” as an elected official of the local government formed as a result of municipal elections. Today, “member of elected local government” is a member of a local government body formed at a municipal election, which is not a representative body of municipality. Neither definition reflect reality.

According to Article 34 of the Federal Law number 131, representative body of municipality is the only elected body in the system of local self-government bodies. Therefore, it is not clear what the legislator had in mind when he established the category «member of elected body of local self-government». All the more surprising is the revised version of the definition of the concept being analyzed. Of course, it can be assumed that the chapter of the municipality can establish other municipal bodies, including elected ones (for example collegium).

However, in practice, there is no need and expediency to establish other elected bodies of local self-government at the municipal level. Taking this into account, we may say that today there is a need to abandon the category «member of elected body of local self-government» and keep the position of “deputy of representative body of municipality”.

An interesting approach is used by the legislator towards such persons as “official of local self-government” and “elected official of local self-government”.

The initial idea of «official of local self-government» has not changed. This position is defined as an elected or employed person endowed with administrative and executive powers to resolve issues of local significance and (or) to organize the activities of a local government body.

The definition of «elected official of local self-government» has changed after introduction of new models of election of municipalities' heads. Originally, the “elected official of local self-government” was understood as an official of local self-government elected on the basis of universal, equal and direct suffrage by secret ballot in municipal elections.

The amended Federal Law number 131 introduced the possibility of election of the head of municipality by, inter alia, a representative body of a municipality. As a result, the definition of the analyzed concept became as follows: an official of local self-government elected on the basis of universal equal and direct suffrage by secret ballot in the municipal elections, or by a representative body of the municipality from among its members. Subsequently, the number of models for the election of heads of municipalities began to increase.

Finally, the category of «elected official of local self-government» acquired the following definition: an official of local self-government, endowed with its own powers to address local issues, which was elected on the basis of universal, equal and direct suffrage by secret ballot at municipal elections, or by a representative body of the municipality from among its members, or by a representative body of the municipality from a number of candidates submitted by commission according to the results of the competitions, or at the citizens' assembly exercising the authority of representative body of municipality.

According to the logic of legislator, “elected official of local self-government” differs from “official of local self-government” only in that the official of local self-government has executive and administrative powers. Therefore “elected official” is a head of the representative body of the municipality, and “official” should be the head of the municipality.

However, Federal Law number 131 as one of the models for organizing local government provides possibility for the head of the municipality to exercise the powers of the head of the local administration. In such a situation, the head of the municipality is both an elected official of local

self-government and an official of self-government. Authors think that it is quite enough in Federal Law number 131 to keep the category «elected official of local self-government», indicating that it can exercise both representative and executive-administrative powers.

Non-elected officials of local self-government are not mentioned in the Federal Law number 131. And if we talk about the head of the local administration, he is not an official of the local self-government, but an official of an organ of local self-government.

According to I.V. Vydrin, the term «head of the municipality» was introduced in 1995 «to designate an elected official who heads the activities of local self-government» (Vydrin, 2005).

A.N. Kokotov and A.S. Salomatkin believe that «in the ordinary consciousness the head of the municipality is a superior to all structures of municipal government» (Kokotov et al., 2005). The same researchers confirm that «the head of the municipality is the highest official of the municipality...The office of the head of the municipality is among the elected officials of local self-government» (Kokotov et al., 2005).

Even more confusing is situation with the category «person holding municipal office». It was introduced in 2011. Federal Law number 131 initially understood it as a deputy, or a member of elected body of local self-government, or an elected official of local self-government, or a voting member of a permanent municipal electoral commission.

At the same time, the positions of chairman, deputy-chairman, and auditor of the municipal auditing body can be attributed to municipal positions in accordance with the regional law of the federal region of the Russian Federation. In our opinion, in those municipalities where the auditing body is a body of local self-government, its head and auditors must hold a municipal office, and not be just municipal employees.

However, not all regional legislatures of the Russian Federation adhere to such views. In the Novgorod and Tomsk regions, in the Republic of North Ossetia-Alania, in the Krasnodar Territory, lawmakers decided that the head and auditors of the municipal auditing bodies hold municipal offices. And, for example, in the Sverdlovsk region these persons are not endowed with a similar status.

As for the term «person holding municipal office», the author thinks that the legislator shouldn't have included into this category deputies of representative bodies of municipalities, regardless of whether they act on a permanent basis or on a non-permanents basis, and voting members of permanent municipal electoral commissions. The fact is that municipal office has organizational, administrative and economic functions.

In the opinion of the Supreme Court of the Russian Federation, the authority of an official must be related to the management of the working collective of a state body, state or municipal agency (or its structural subdivision) or individual employees under their authority, the hiring of staff and the definition of their job responsibilities, organization of service, the application of measures of encouragement or reward, the imposition of disciplinary penalties etc.

The organizational administrative functions include the authority to make decisions of legal significance and entailing certain legal consequences (for example, a medical worker issuing a temporary disability sheet, an employee of a medical and social assessment commission confirming disability of a citizen, a member of State examination board rating results of an exam etc.).

The administrative economic functions include the authority of an official to manage assets and finances of organizations, institutions, military units and subdivisions, as well as to perform other actions (for example, making decisions on payroll, bonuses, controlling the movement of valuables, determining the order of their storage, accounting and control over their spending).

The implementation of functions of an official under special powers means that a person performs the functions of a representative of authority, performs organizational-administrative or administrative-economic functions assigned to him by law, other regulatory legal acts, orders or instructions of a higher official or by authorized body or official (for example, the functions of a jury). The functions of the official under special powers can be carried out for a certain time or ad hoc and can also be combined with the main work.

A deputy, as well as a member of the electoral commission, who exercises his powers on a non-permanent basis, does not possess any organizational-administrative or administrative-economic functions.

It should be noted that on October 30, 2018, the legislator excluded non-permanent members of municipal electoral commissions from among “persons holding municipal office”. But the question of exclusion from this category of non-permanent municipal deputies remains open.

CONCLUSIONS.

To sum it up, the analysis of these categories allows us to conclude that often the federal legislator overloads legal acts with terms duplicating and overlapping each other. As a result, the proposed terminology does not correspond to reality and turns certain provisions of the laws into fiction, which is unacceptable. The law, like any other legal act, must “work” and reflect the relations actually existing in the state (in the broad sense of the word) and society.

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