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Division of Powers in Local Self-Government In the Russian Legislation in the Years 1785-1870

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Abstract: Due to the reforms of the Russian legislation in 1785-1870-ies, the principle of powers division and the principle of checks and balances were consolidated. It was assumed that this will replace the state surveillance. The legislative acts of Catherine II were significant in the establishment of the municipal self-government, as they expanded forms of organization, competence and activities of elected bodies. However, the reform of Catherine II did not clearly distributed obligations even between the governmental and public agencies. An important stage in the evolution of the principle of power division at the level of public administration became the City regulation of 1870. It is also worth noting the evolution of relations between the state and local self-governance occurring in the studied period. Implementing the principle of division of state power into the executive, legislative and judicial branches, as well as in the formation of independent public associations of citizens, the state was forced to change its power structure and to some extent, limit their own power-valued functions. At that, the high degree of inconsistency in differentiation of executive and administrative authorities in the post-reform Russia should be noted.

Key words: The bodies of municipal government · Urban reform · Public administration · Class · Class societies

INTRODUCTION

As a form of self-organization, the local government has the same features as the state. Analysis of the institutions of local self-government and the state allows distinguishing a number of common features, common to both institutions:

- Each of them belongs to the category of institutions of social development;
- Each of them has a specific territorial organization and the only source of power, which is the people;

Each of them realizes public power. But in one case, it is the state government, which applies to the whole territory and in the other case, it is a municipal authority, which covers only the territory of the local self-government;

Each of them is engaged in providing public safety and order. But in one case, it is implemented by government agencies (law enforcement bodies and other law enforcement agencies) and in other cases they are self-governing structures (for example, in the modern conditions, these are municipal bodies of public safety) [1].

At the same time, according to V.Yu. Vinogradov, separation of public self-government bodies from the state government leads to the risk of development of political controversy in the community, which can lead to a bifurcation of power and violation of national integrity. If local governments have the right to establish local laws, there is a need in coercive power so that their activities remain effective. Depriving local government of coercive power significantly affects its authority [2].

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The concept of local self-government in the modern world as a rule involves two kinds of bodies: the local representative body, elected by the population of the corresponding administrative and territorial unit and taking decisions on the most important local issues and an executive body, meant first of all for implementing the decisions of the representative body and exercising the operational control.

Experts distinguish three models of local governance. In the Anglo-Saxon one some officers may be elected directly by the people. Committees of local representative bodies have extensive powers. The central government controls local authorities through the courts and ministries [3].

In continental Europe and some other countries, the French model is applied. Here there is a combination of direct public administration and local self-government. In the framework of this model, the representative bodies are created only in jurisdictions (administrative and territorial units) recognized by the law as the territorial groups [4].

In addition, in federal countries, the national Constitutions regulate only the general provisions on the local self-government, laying the legal regulation on the federal subjects [5, p. 83].

In unitary states, local control is regulated in different ways. As a rule, the central government sends its representative to the medium levels of government.

The competence of the local authorities first of all includes: "the adoption of a local budget, public services, environmental protection, cleaning of streets, sewers, schools, hospitals, protection of public order" [6]. The powers of local government are divided to the mandatory and optional.

The central government realizes general supervision through the local prefects, who are appointed by the Minister of Internal Affairs and administration of the head of the state [7].

The Main Part: In general, the local government can be considered relatively self-sustaining institution of civil society, which takes a separate place and performs its own role in the state and legal structure of Russian society.

With this in mind, consider the principles of power division in Russia as applied to the institution of local self-government.

V.M. Paliy defines the following main characteristic features of the relations between public authorities and bodies of local self-government:

- Division of local government into two subtypes: the rural and urban;
- Work of self-government structures at the national level;
- Existence of various types of government in the country (merchants, industrial, student, craft, etc.);
- The interrelation of public administration reform with municipal and district reforms;
- Formation of local self-government as stepped structures [8].

According to I.E. Andreevskiy, even at the moment of the reforms of Catherine II, Russian society was not yet ready for the introduction of local self-government. That was the main reason that the beginning of the "Institutions for managing the provinces of the Russian Empire" of 1775 became the centralization of the Russian system of provincial institutions. I.E. Andreevskiy also stressed that it was not the only failure of the Empress. All her good intentions: to carry out the division of powers, to introduce state bases to management and to introduce strict responsibility for officials, faced significant counteraction from the side of society, for the most part indifferent to public affairs [9].

V.O. Klyuchevskiy noted that, as a result of the adoption of "Institutions" in 1775 each province had the uniform structure: judicial and administrative. In the system of provincial administration the head agency was the provincial board with the governors (or governor) in the lead. This institution received the executive, police and administrative (administrative) roles. Thus, it informed the province population and executed orders and decrees of the highest government. Also, it "monitored correct proceedings in other institutions and urged them to pursue theri duties, watched the serviceability of government offices, order and peace in the province."

The lower district court was an executive police institution. The power of the police captain extended to the whole district (uyezd), except for the district town where this power belonged to the town chief of police. State chamber was engaged in financial management and was in charge of state dues and fees, construction and contracts. Under its supervision were also the provincial and district treasuries, keeping the state-owned revenues [10].

"The Charter on the rights and benefits for the cities of the Russian Empire" in 1785 gave organizational autonomy to the city's public institutions; at that the wide range of individuals, interested in one or another way, had the opportunity to participate in the solution of urban

affairs. But this document did not clearly specify the boundaries between the subjects of control of the urban governance and the subjects of management of class and governmental institutions. The Charter did not give the urban public institutions the financial independence impossible without the right of taxation and coercive power.

The place and role of the city government in the system of state management largely determined the limits of independence of the institute of local self-government. Thus, according to I.I. Dityatin, the powers of the general duma (council) were limited to election of the duma consisting of six councilors [11]. The reason was the nonobservance of the principle of power division. That is, the six-councilor duma supervised the same list of cases as the general duma. At that, the six-councilor duma had regular meetings and the general duma for three years after the election of the six-councilor duma had meetings solely to consider the problematic issues not directly regulated by law (Art. 164-166, 172, 174-175 of the Charter). It should be added that the law did not even clarify who had the right to call the meeting in this case.

The Charter provided the guarantee of judicial protection from imposing "taxes, or burdens, or services" on the city. The city magistrate submitted the complaints of municipal government in the provincial magistrate (Art. 7, 45). It also resolved the complaints on the actions of six-councilor and general dumas (Art. 176). Resolution by judicial institution, attended also by the assessors elected by the city community (Article 32), of the cases on privileges and similar conflicts, cases on disputed possessions and other things, "concerning the whole town" was an attempt to provide organizational self-autonomy of urban public facilities. In this case, influence of administration worked due to the fact that the executive branch had not yet been separated from the court, that is, provincial magistrate was subordinated to the provincial administration.

Questions of urban beautification and economy were not separated not only between the public subdivisions, but between the public and police institutions as well. In parallel to municipal self-government, there was the council of public order (blagochiniye or police), whose actions were regulated by the Charter of public order (police) of 8 April 1782 [12]. It consisted of city police captain and police officers, as representatives of the government, as well as two Aldermen (rathmann) elected by the City Council. Both the board and the council monitored the observance of moral and behavioral norms and order in the city and distributed houses and plots in the city territories, (Art. 3 of the Charter of public order, Art. 2 of the Charter). It should be added that only the state bodies had the coercive power [13]. At that the Charter of public order had to assist the city duma in performing its legitimate demands (Art. 178 of the Charter).

The researchers point out that the period of reforms coincided with the rise of interest in "public" theory of government. During the consideration of the City Provision in the State Council it was added with the Article 1, which defined the essence of urban reform. In accordance with this article, "management and supervision of the urban economy and beatification is entrusted to the city self-government and supervision of the lawful execution of this – to the governor based on the exact rules of this Regulation." The initial draft of the law began with listing of the subjects that were under the responsibility of the urban self-government. Initially, they were divided by the Ministry of the Interior in two categories: affairs of the government administration and "proper public" affairs (Art. 7, 8, 9). Grouping of affairs within public administration under a separate category on their nature was based just on the social theory of self-government. However, Second Department, being committed to state theory, refused to recognize their own competence as the one of public administration and therefore proposed to divide the subjects of responsibility of urban self-government to those whose execution was entrusted by law on public administration without fail and those that are defined by the directly by law [14].

In the final version of the law the subjects under responsibility of municipal self-government were divided into public issues, which had to do with urban beautification and local issues that were relevant to urban development. At that, the powers were also divided to state (and their implementation was controlled by the state) and proper (they were carried out by urban institution independently) (Art. 5).

Later, in the opinion of experts, the principle of division of powers was to some extent implemented in the system of district (zemstvo) institutions due to the Provision on the provincial and district institutions of 1864. The system of district (zemstvo) institutions included the district (uyezd) and provincial councils and the Assembly (Art. 12, 13, 50). At the same time the administrative authority and overall supervision of Zemstvo affairs were in the hands of Zemstvo meeting and zemstvo affairs were managed by the town board (Article 65). But the law did not specify the impossibility of combining the title of the member of the council and the

voting in the meeting. There was even a note that the resolutions of zemstvo meetings should be signed "by all attending members of the assembly, including members of the council" (Art. 98). When the members of the uyezd board received the right to be elected to the provincial assembly, this principle was violated [15].

It is notable that A. Solzhenitsyn assigned a major role in the social and political revival of Russia in 1990 exactly to Zemstvo. According to some Western scholars, zemstvo (the district council) for the Russian society became a base for forming experience of participation in the development of self-government, independence and civil initiatives [16, p.19].

Speaking of City Provision of 1870, it can be stated that the City Duma has received regulatory (administrative) functions and the city government - the executive ones. The main person in urban public management responsible to the government was Mayor. However, on the one hand, he was subordinate to the governors, similarly to other state officials. He also had to take care of the cases in which the government was interested. That is, through the Mayor the province authorities could monitor the work of urban public administration.

In this case, on the other hand, he had sufficient independence in economic affairs. Moreover, in a number of cases, the Mayor had the right to appeal against the decision of duma and if it refused to change the provision, he could present the case for the governor's consideration. Practically, in this case it is a violation of the principle of power division. In practice, it was head of the executive agency (Council) who revoked the decision of the administrative institution (City Council) [17].

Besides, an interesting point is holding simultaneously the position of chairman of the City Duma and the City Council, specified in the City Regulations of 1870. A similar possibility was legally regulated by the City Provision of 1846 - the law on the city self-government of St. Petersburg. The fact of combination was negatively perceived by progressive, but the liberal-minded public. In the report for 1881 the Governor of Samara A.D. Sverbeev noted that "being the Chairman of both administrative and subordinate executive agency, one and the same person can avoid the harmful effect on the course and resolution of the case only with complete impartiality and disregard of self-interest." The Emperor Alexander III agreed with this statement, after that on 25 October 1882 a report was submitted to the meeting of the Committee of Ministers. And in December of the same year in a report to the Emperor, the Minister of the Internal Affairs stated that the executive and controlling authorities should be separated from each other, so it was necessary to separate the posts of Heads of Duma and Council. However, this could lead to certain difficulties:

- Integration of these positions was established historically, therefore the introduction of the new order was expected to be perceived negatively;
- Division of power between the leaders of the City Duma and City Council inevitably led to clashes between them up to complete paralysis of both institutions;
- Control over one person was easier to implement than over two people [18].

The idea of the government decentralization, which formed the basis of urban reform in 1870, answered not only the interests of the citizens, but also the ones of the government. But, although the state delegated part of cases with which it could not cope to public administration, it feared to give citizens full independence, as there was a risk of urban society involvement in the political struggle.

According to most experts, the City Provision of 1870 was the most complete and balanced document regulating the city self-government in the period under review. The reform of 1870 implemented the principles of economic independence and self-government of the city. Self-government agencies had the right to independently address a wide range of issues. The exception was the particularly specified situations. In practice the city self-government and the central government were in equal relationships and their powers complemented one another. It can be stated that neither of the parties received any special benefits [19].

City regulations of 1870 gave financial independence to the public bodies of self-government. The right not only to fix taxes, but also to collect them, provided local public self-government with public authority. Obviously, in this case it was the choice of the "state" theory of the relationship between the state and public bodies.

That City Provision of 1870 has become the most important stage in the evolution of the principle of power division at the level of public administration in the considered period. According to this document the

administrative functions were transferred to the jurisdiction of the city duma and the city council received the executive functions. But even then there was a question about the powers of the Mayor: he had to report to the governors and at the same time could appeal against the decision of duma, that is, as the executive head of the institution, he could cancel the decision of administrative agency. The problem of combining the positions also remained unresolved.

Analysis of the classical principle of power division as applied to local government leads to the following conclusions. The division of powers can be implemented as separation of the state power from the local self-government. A concrete manifestation of this principle is distribution of spheres and authorities of local self-government and public agencies. In this case, within the limits of powers the local government is independent, but not completely independent of the state structure, as even the sovereign state cannot have absolute autonomy and independence. Thus, speaking of the power division in local government, it should be understood that it is the relative sense of the phrase, rather than its absolute value. That is, we are talking about the degree of independence within the legitimate competence of local self-governance.

In the post-reform Russia, the level of interaction between the bodies of municipal self-government and state power, approached by its nature to the legal standards required for economically actively developing nation. Practically competence of self-governance bodies was completely shifted to the sphere of purely economic activities. At that the high degree of inconsistency during differentiation of executive and administrative authorities should be noted.

The evolution of relations between the state and local governments occurring during the study period should be also noted. During the implementation of the principle of power division to the executive, legislative and judicial branches, as well as during formation of independent voluntary associations of citizens the state was forced to change its power structure and to some extent limit their own power functions.

CONCLUSION

Thus, due to the reforms, there was a consolidation of the principle of power division and the principle of checks and balances. On the whole, despite many reservations, reforms of 1785-1870-ies consolidated the principle of power division in the Russian legislation.

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