Municipal Code of the Russian Federation as a Tool for Solving a Number of Legal Problems of Local Self-Government

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Abstract: The article investigates the causes necessitating the development of the Municipal Code in the field of systematization and codification of legal material, ordering the implementation of local government on the Russian Federation example. The article provides a historical analysis of current regulatory formation framework of the Russian local government, analyzed the main federal law technical and conceptual shortcomings, ordering the local self-government implementation in the Russian Federation. Some activities are offered for municipal legislation systematization and development of the Municipal Code of the Russian Federation and also are formulated a sequence of actions on a clear definition of the scientific doctrine of local government development as an example of the Russian Federation

Key words: Municipal and legal regulation • Systematization and codified regulations • Municipal Code of the Russian Federation.

INTRODUCTION

Law-making has always been, it is in nowadays and in the future will be one of the most important means of public control. A system of local self-government law-making is the primary means of ordering local public relations. Due to this, the question of choice of optimal regulatory streamlining local social processes have always been and will be critical in municipal areas of law.

If we consider the existing law-making mechanism in relation to the local government which is used at the federal level in the Russian Federation, it becomes obvious that last twenty years, the streamlining of community relations at the federal level is part of the following diagram:

- Adoption of a basic, framework Federal laws enshrining the general principles of organization of local self-government in the Russian Federation,
- To issue, in accordance with the basic law of specialized instruments for the regulatory streamlining individual areas of local government,
- Adoption of sectoral laws embodying the powers of municipalities in different areas of legal regulation [1].

It's clear that in the federal regulations system organize the implementation of the local self-government in Russia important role belongs to the Federal law "General Principles of Local Self-Government in the Russian Federation" [2], which is the fourth basic law in the sphere of Russian local government, when the Law of the USSR in 1990 was the first. "About the general principles of local self-government and the local economy in the USSR" [3]. Next legislator adopted the Law of the RSFSR in 1991 " About the Local Self-Government in the Russian Federation", Federal Law of 1995 " About the general principles of organization of local self-government in the Russian Federation."

As to V.I. Vasiliev, A.A. Kirillov, Á.Á. Ruden and many other scientists, the current version of the Federal Law "The General Principles of Local Self-Government in the Russian Federation" is a very significant phase for the development of local self-government, as one of the most important democratic institutions of public power [4- 6]. However, the same and the most of the scientists say that...
it's not perfect working in the field of municipal issues. And they add that it contains a lot of flaws, both technical and conceptual plan [7].

In this case, the obvious fact is that the technical flaws plan simply be eliminated by making appropriate changes. For example, for the period of time since the adoption of the Federal Law #131 to the present day, the list of local issues was adjusted 19 times in for each municipality (village, municipal and urban districts). The total list of powers established in Article #17 of this law was adjusted 9 times.

Correction of these flaws in the Federal Law #131-FZ are more complicated process, as their introduction of the concept must be clear of the existing law to prevent changes which "substantially change the concept of law and defy the logic" [8].

However, the conceptual well conceived of the Federal Law # 131-FZ induce many questions, the most important of them are necessary to consider below.

Firstly, it is obvious that the legislature should be clearly defined about the theoretical basis, on which the local government should develop in the Russian Federation. At present, based on the analysis of the Federal Law contents # 131-FZ, many scientists have concluded that this legal act is not clearly expressed the basic concept but found their embodiment most of the theories defining the nature of the local self-government [9, 10]. As a result, we have a theoretical "mishmash" of the main theories in this federal law. Such position of basic theoretical foundation of law, focused on the basic principles of organization local self-government in the Russian Federation. But it is quite controversial.

Secondly, in Article 1 Part 2, # 131-FL of the Federal Law, stipulates that local self-government in the Russian Federation is the form of implementation the people of their power providing within the limits established by the Constitution of the Russian Federation, federal laws and the laws of the Russian Federation, an independent and risk solution of population directly and (or) by local authorities of local issues for the interests of population, considering the historical and other local traditions.

The question arises due to this definition: How well this definition is elaborated theoretically in which the form is defined and the content is produced? Obviously we need to define the content of local government and then to determine the forms of its manifestation.

Thirdly, the word "decision" is used to define the basic definition of municipal law, "local government" in Article 1 Part 2 # 131-FL of the Federal Law (the solution of population directly and (or) by local authorities of local issues ) is multivalued and do not have a clear lexical meaning and therefore the content of "local government" definition can not be considered as well-defined. It's clear that this verbal unit is not optimal for the formulation of such key definitions like municipal law and must be replaced by a word with a clear lexical meaning.

Fourthly, the Federal Law # 131-FL has a sufficiently great number of non-specific legal rules, fuzzy wording weakly conforming to each other.

For example, that specified law does not provide a clear definition of such basic concepts as the "competence of the local government", "objects of local government", "the authority of the local government."

Fifthly, in Article 50 of the Federal Law #131-FL defined lists of property that can be owned by communities, municipalities and urban districts. At the same time, in practice municipal building, in many municipalities, there are problems related to the fact that the lists of local issues setting out in Articles 14-16 of the Federal Law #131-FL, not fully correspond with the list of property, which can be in the municipal belongings.

Sixthly, the Federal Law #131-FL has no clear separation of powers principles of state and local governments. Legislator could not exhaustively identify the local issues and the authority of its implementation, match them with the authority of state bodies in result of practice they often overlap. In addition the Federal Law #131-F does not contain definitions applied to "objects of reference" and "authority" of public power entities of local government, which often leads to their misuse in the texts of municipal regulations.

In the seventh, in Federal Law #131-FL there is an uncertainty about the procedures for the implementation of economic power and the powers of local self-government. The consequence is that today at the local government level was a mixture of power and economic power. This leads to the erosion of the power in local government, formation of inefficient economic system and the growth of corruption in municipal management positions. Moreover, the Federal Law "About the General Principles of Local Self-Government in the Russian Federation," there is no concept of the authority itself which leads to the award of individual powers of the authority to departments of local government [11].

In the eighth, nowadays it is possible to face the fact that the bodies of municipalities loaded authority of local issues decision which has not often local but public character. In this case they can not take these powers with its own insufficient income.
In this connection, we should define the scientific criteria of recognition of some local issues. It is clear that lack of science-based criteria for such recognition leads to instability of the competence of local government [12].

In the ninth, the Federal Law #131-FL has no standards for the maintenance of municipal property standards expenditure commitments which you can calculate the amount of financial resources with taking the number of residents of the territories, length of street roads, square meters of municipal housing stock, the extent drainage systems, water and other utility features of a particular municipality. Obviously, the absence of legislation standards is a major flaw of the legislator, caused by financial security solutions by local authorities in local matters.

Tenthly, the Federal Law #131-FL does not provide a clear definition of municipal regulatory and non-legislative acts. In addition in this legal act there is not clearly identified local government entities endowed with rule-making authority, there is no hierarchy in legal acts to be adopted at the level of the municipality. This gives rise to a number of municipal issues related to the application of legal acts.

The list of theoretical problems, illustrating the degree of conceptual elaboration of the Federal Law #131-FL can be continue for a long time. For example to stop the action of municipal legislation which is in Art. #48 of the Federal Law; an undeveloped communication technologies the voters to the deputies; the term "Head" has controversial use in law and relation to both the head of municipality and the head of local administration and other inaccuracies, described in detail in the special municipal legal literature [13].

However, all these shortcoming appear due to the shortage in Federal Law #131-FL and many these kinds of questions.

Today it is difficult to qualitatively describe conceptual-theoretical basis for building a municipal legal regulation in format of the Federal law. In recent years, the practice of creating complex codification acts expands, which are organizing and stabilizing factor for the corresponding array of legislation. In this regard more optimal is a form of organizing municipal regulatory material as codification [14]. It involves the allocation of common parts, aimed at consolidating the general and conceptual principles of legal regulation of the municipal sphere of social relations, as well as the separation of the special part that contains provisions specifically aimed to regulating practical issues arising in the municipal area of public relations.

It should be noted that for present state of law the codification is especially important, as the codification acts are the systemic acts which reflects the internal structure of the industry and covering its legal array [15]. At the same time codification requires to consider the dynamics of development of legislation in four main areas:

- Taking into consideration ongoing legislative project on local government;
- Introducing the concepts reflecting the perspective direction of municipal building;
- Taking into consideration to recognize the scientific concept of development municipal law(codification holding municipal legislation must precede the definition of the scientific concept of development of municipal law);
- Taking into consideration of international and foreign experience of municipal legislation [16].

The result of the codification of the federal law on local self-government should be the development and adoption of the Municipal Code of the Russian Federation, including a common part of standards in detail revealing:

- The theoretical foundations of local self-government in the Russian Federation.
- The list and the principles of local issues.
- The list, principles of distribution and criteria of powers in the sphere of local self-government between the state and municipal authorities.
- The concept and principles of empowering local governments with certain state powers.
- The concept and system of legal foundation for local self-government.
- The concept and principles of the territorial organization of local self-government.
- Concept and content of the forms of direct population of the local government.
- The concept of the system of organs and officials of local self-government.
- The list, principles of formation criteria of delimitation competence in the system of local government officials.
- The concept and principles of formation the economic basis of local self-government.
The concept and principles of inter-municipal cooperation.
The concept and principles and responsibility of local government officials, provided for the norms of municipal law.

Especially the part of the Municipal Code of the Russian Federation must include the specification of the general standards which currently is not codified and fixed in the Federal Law #131-FL and other federal statutes containing the standards of municipal law. Schematically, codification of the special part of Municipal Code of the Russian Federation may be based on the classification of specialized institutions of municipal law and is represented the following form:

- Municipal legal acts.
- Municipality.
- Forms of direct implementation the local government by population.
- Forms participation of population in local government.
- The representative body of municipality.
- Deputy of representative body of municipality.
- The head of municipality.
- Administration of municipality.
- Municipal service.
- Controlling body of municipality.
- The election commission of municipality.
- Endowing the local governments with certain state powers.
- Responsible bodies and officials of local self-government provided by the standards of municipal law.
- Legal guarantees to the rights of Russian Federation citizens for the local government.
- Pecuniary basis of local self-government.
- The financial basis of local government.
- Peculiarities of organization local self-government within the territories which have a special legal status.

Speaking on the need for the Municipal Code of the Russian Federation we should focus particularly on the fact that the system of classification which reflects objectively the existing system of municipal law and legislation must be based on the scientific doctrine of local self-government.

Therefore, as for developers the Concept of the classification system of legal acts the Russian Federation, it is appropriate to begin with the creation of a bibliographic database, reflecting the scientific doctrine (theoretical studies, legislation comments, the comments of legal practice, etc.). After accumulation of bibliographic material it will be able to create the information array [17] which includes the provision more broadly reflecting the scientific doctrine.

At the same time, the interest is the Austrian scientists experience, which are developed their own legislation meetings by the name of "Code", such as the Social Security Code [18], the Labour Code [19], Criminal Code [20] and "codes" in the other branches of Austrian law, with informal in nature, but it provides the systematization and convenience of using normative legal acts for the respective branches of law.

Having considered the issues related to the reasons for the need to develop the Municipal Code of the Russian Federation, as well as a number of theoretical and practical problems associated with its preparation it is necessary to bring it up and make some conclusions.

Firstly, the current version of the Federal Law #131-FL has a lot of flaws, both technical and conceptual. However, many flaws are the fact that in the format of the Federal law they could not qualitatively create conceptual-theoretical basics the building systems of municipal legal regulation.

Secondly, the most optimal form of organizing the municipal regulatory material is the codification which involves the allocation of general part, aimed to securing the general and conceptual principles of legal regulation the municipal sphere of social relations, as well as the standards specifically aimed to regulating the practical issues arising in the municipal sphere of public relations.

Thirdly, speaking on the need for the development the Municipal Code of the Russian Federation we should particularly focus that the system of codification objectively reflecting the existing system of municipal law and legislation must be based on scientific doctrine of development the local self-government.

Fourthly, the result of the codification of the federal law on local self-government, based on precise scientific doctrine of development the local self-government. should be the elaboration and adoption the Municipal Code of the Russian Federation, which consists of a general part made by theoreticians of municipal law and the special part made by practices of local government.
REFERENCES