

Limits of competence of local representative bodies in the cross-border regions

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Abstract. The article examines the theoretical and legal aspects, which allow to conduct a comprehensive study of the limits of competence of the leading body of the municipality. The problem of determining the actual limits of the competence of the representative body is one of the key in the process of rational distribution and redistribution of competence between the structures of local public authorities. The solution to this problem is aimed at the effective implementation of local self-government. The authors analyze the regulatory acts of cross-border regions, enshrining the competence of municipal representative bodies. And on the basis of this, they raise the issue of the content of the competence of the leading bodies of municipal formations and conclude that it is necessary to expand this by adjusting the norms of law at the state and municipal levels.

Keywords: competence, limits of competence, municipality, municipal representative bodies, norm, law

1. Introduction

The representative body of the municipality has competence in accordance with paragraph 10 of Article 35 of the Federal Law on the General Principles of the Organization of Local Self-Government in the Russian Federation (hereinafter, the Federal Law of October 6, 2003). The competence of the representative body includes several elements. In fact, it is a permanent component of competence (exclusive competence) and other powers. Accordingly, today, the differences in the competence of the Russian representative bodies of municipalities of cross-border regions are due to the unequal set of other powers, as well as powers vested in the case of the transfer of certain state powers.

So, the Barnaul City Duma (Altai Region), as well as the Gorno-Altai City Council of Deputies (Altai Republic) have the same exclusive competence. However, other powers vary significantly. Thus, the Barnaul City Duma, along with its exclusive competence, took over the authority of 14 powers [1] of the 38 local issues identified in Article 16 of the Federal Law of October 6, 2003. The Gorno-Altai City Council of Deputies took over the authority of 22 powers, respectively [2]. The Orenburg City Council (Orenburg Region) had 56 powers [3]. But along with quantitative differences, the scope of these powers certainly differs due to a number of factors, such as the number of inhabitants.

More than that, the practical activities of the deputies of other powers of the representative body are not regulated by the Law. As a result, the leading bodies of municipalities of each type (in this study, urban districts of capitals of cross-border entities) do not have a theoretical and legal justification for determining the composition of other powers. This is due to the fact that local governments are not included in the system of state authorities. Therefore, either the federal legislator or the municipal

lawmaker must independently carry out such regulation. However, today, the municipal lawmaker does not carry out regulatory support for the selection of certain issues of local importance in accordance with the relevant articles of Chapter 3 of the Federal Law of October 6, 2003. Therefore, the issue of permissible limits of the competence of a local representative body, which allows it (the deputies of the representative body) to optimally determine the number of other powers, without expanding their powers by borrowing them from the population, is relevant.

2. Materials and Methods

The object of this study is a set of social relations arising in the process of determining the limits of competence of local representative bodies. The subject of the study consists of legal theoretical structures, regulatory legal acts relating to the study of the nature, content and the establishment of the limits of competence of municipal representative bodies of urban districts in cross-border regions.

The legal basis of the study includes the norms of the Constitution of the Russian Federation (hereinafter, the Constitution of the Russian Federation) and constitutional legislation, acts of municipalities of urban districts, materials of practice related to the establishment of limits of competence of municipal representative bodies in the cross-border regions.

The purpose of the study predetermined the use of appropriate research methods. The authors used general scientific methods: analysis, synthesis, modeling, dialectics, and private-scientific methods: historical, comparative legal, formal logical, statistical ones. This made it possible to comprehensively study the stated topic, draw appropriate conclusions, and make proposals aimed at optimally consolidating the competence of city representative bodies in the cross-border regions. In short, what is really needed to better ensure the livelihoods of municipal communities.

3. Results

The municipal body (as well as the body of state power) possesses such an important characteristic as competence [4]. The presence of exclusive competence of the representative body gives it the status of the leading body in the municipality. The list of exclusive powers of the representative body cannot be reduced or supplemented in the statute of the municipality or other municipal regulatory legal act. Exceptional powers are the minimum competence of the representative body [5]. In accordance with the Federal Law of October 6, 2003, it is the representative bodies that have considerable competence in the municipality. It seems to us expedient to proceed from the fact that the competence includes rights and duties (powers) and subjects of competence (the volume of public affairs). In fact, these are the powers in a certain field of activity [6].

The analysis of theoretical and legal provisions and materials of practical activities of urban municipalities in cross-border regions allows the following conclusions to be drawn. First, the competence of the population of the municipality is primary among the general competence of the municipality. Competence of the population is based on the provisions of Article 3 of the Constitution of the Russian Federation, according to which the only source of power in the Russian Federation is the people exercising their power through local self-government bodies. Accordingly, the competence of the population should not be reduced, which, nevertheless, is carried out, for example, by removing the population from adopting the charter of the municipal entity in a referendum. It is fair to note that to a certain extent, this is offset by the norms of clause 3 of Article 44 of the Federal Law of October 6, 2003. These norms reinforce the provision that the charter of a municipality in settlements, in which the powers of a representative body are exercised by a gathering of citizens, is adopted by the population directly at a gathering of citizens.

Second, the competence structure of the leading municipal authority is ambiguous. First of all, it includes the exclusive competence inherent in each type of representative body, including urban districts in cross-border territories. The exclusive competence of the representative body extends to issues related to the activities of the municipality. Exceptional competence covers the following questions: the adoption of generally binding rules on the terms of reference of the municipality stipulated by the charter, approval of the local budget and a report on its implementation, the adoption of plans and

programs for the development of the municipality, the approval of reports on their execution, the establishment of local taxes and fees, the procedure for managing and disposing of municipal property. It seems to us expedient to call it (exclusive competence) the basic part of competence. Along with the basic competence, the leading body of the city municipality has other powers that make up the second part of the competence, i.e. the variable part of the competence. It is formed by taking to the jurisdiction of the city municipality of certain issues of local importance, enshrined in Article 16 of the Federal Law of October 6, 2003. The variable part of the competence includes the following issues: the organization of electricity, heat, gas, and water supply of the population, water disposal, within the boundaries of the urban district and supplying the population with fuel within the limits of authority established by the legislation of the Russian Federation, the creation of conditions for the provision of services to the population and the organization of transport services for the population within the boundaries of the urban district and others. The basic and variable parts of the competence of the city representative body can be supplemented with separate state powers if the city government bodies are vested with them.

Third, the holders of competence in the municipality (entities with competence), along with the representative body and population of the municipality, are the head of the municipality, local administration, other bodies and the state, in the case of empowering local governments with separate state powers. The head of the municipality, local administration, other bodies also have a certain competence. However, the observance of a certain hierarchy in the definition of the primacy of competence is necessary. In a number of municipal bodies, the competence of the representative body of the municipal formation as the leading body with exclusive competence will always be a priority.

Fourth, the unequal set of powers of the variable part of the competence of city representative bodies in the charters of municipalities of cross-border regions is due to the insufficient material and financial base of modern municipalities and to the desire of deputies of municipal representative bodies to include in other variable powers only those that can be exercised in the municipality today.

Fifth, as of today, the federal legislator and the municipal legislator have real regulatory capabilities to determine the optimal limits of competence of the municipal representative bodies of municipalities. In fact, the federal legislator has determined the limits of the variable part of the competence. At the same time, the analysis of the norms of Article 16 of the Federal Law of October 6, 2003 suggests that the list of issues of local importance is subject to frequent changes. So, 7 questions are excluded from questions of local value of the urban district, from 2005 to 2018. The municipal regulator arbitrarily determines the range of other powers of the variable part of the competence, without having normatively substantiated criteria for the inclusion of certain powers in the list of powers of the city representative body.

Sixth, in accordance with paragraph 3 of Article 89 of the Constitution of the Republic of Kazakhstan, the organization and activity of local self-government in Kazakhstan is regulated by the Law on Local State Governance and Self-Government in the Republic of Kazakhstan [7]. As representative bodies in cities, *maslikhats* are defined. They are also bodies of local government and local self-government [8]. Their competence is regulated in article 6 of the aforementioned Law. The analysis of the norms of this article allows us to conclude that the legislator does not single out the exclusive competence of the *maslikhat*. Consequently, the variable component of the competence of the is not defined.

4. Discussion

Today, competence issues are the subject of constant debate. It is the competence that indicates the place and role of this or that body in municipal construction, indicates its real participation in the maintenance of the vital activity of the population of the municipal community. Accordingly, at the municipal level, discussions on the state and redistribution of powers between certain types of municipalities, the population, representative bodies, municipal heads, local administration, and other bodies are conducted.

However, individual issues require appropriate solutions.

First, criteria for including or excluding specific powers from the variable part of the competence of a representative body need to be developed. At the same time, it is necessary to take into account that

the leading body in the structure of local self-government bodies is a representative body. The analysis of the norms of the charters of municipal formations of urban districts (the capitals of the subjects of cross-border regions) suggests that their competence varies. Differences due to one or another set of powers of the variable part of the competence are included in the competence of a specific representative body of the municipality without any justification. The deputy corps solves these issues independently, without justifying the need to include or exclude a particular authority.

Second, it should be noted that when expanding the range of powers of a representative body, there are problems arising from different ways of forming a representative body (municipal district). Its members can influence the consolidation of certain new powers, based on their narrow interests, since they represent the interests of rural settlements. It is important to name clear features of the expansion of the terms of reference in settlements of up to 100 and from 100 to 300 people under certain conditions. Under certain conditions, the activities of representative bodies are carried out by citizens' meetings, which allows a larger number of citizens to participate in the selection of new powers.

Third, the question of the possibility of limiting the choice of new powers by deputies of city representative bodies arises. In theoretical and legal terms, it can be carried out by the population of the municipality, whose activity is based on the norms of constitutional legislation, securing the people as a source of power, as mentioned above. The introduction of such restrictions is also possible on the part of the federal legislator, who established, for example, 38 local issues in Article 16 of the Federal Law of October 6, 2003.

Fourth, in our opinion, the expansion of the competence of the city representative body is possible by amending the clause 10 of Article 35 of the Federal Law of October 6, 2003 (increasing the exclusive competence), and also to Article 16 of the Federal Law of October 6, 2003 (an increase in issues of local importance affecting the expansion of the variable part of the competence). Also, one could consider the following measures: the adoption of laws on the transfer of certain state powers by federal and regional legislators, the introduction of new norms in the charter of a municipality in connection with the increase in the basic and variable parts of competence.

Today, a comprehensive study of the theoretical, legal, and practical aspects that affect the definition of the competence limits of the representative bodies of municipalities is necessary. A comprehensive study of these aspects is necessary in order to establish the optimal limits of competence of representative bodies that actively influence the effective functioning of the municipality.

5. Conclusion

The representative bodies of municipalities (regional capitals) of the Russian Federation in the cross-border regions should use the real opportunity provided by the federal legislator. This possibility consists in expanding the variable part of the competence of the representative body by including the optimal number of powers of the variable part in the competence of the representative body. Of course, such activities cannot be carried out today by all municipalities due to the programmatic nature of the norms of Chapter 3 of the Federal Law of October 6, 2003, as well as insufficient material and financial resources for the implementation of these powers. At the same time, such a right is granted by the federal legislator, and the representative body of the city municipality must implement it fully with the support of local deputies.

References

- [1] Government of Altai Region 2018 *Charter of the municipal formation of the urban district – the city of Barnaul* (February 28, 2018 No. 78) Available at: <http://barnaul.org> (Access 19 03 2019)
- [2] Government of the Republic of Altai 2018 *Charter of the Municipality “Gorno-Altaysk City”* (March 22, 2018 No. 7–1) Available at: <http://gornoaltaysk.ru/dokumenty/ustav/> (Access 19 03 2019)
- [3] Orenburg City Council 2015 *The Charter of the municipality “The City of Orenburg”* (April 28, 2015 No. 1015) Available at: <http://www.orenburg.ru/> (Access 19 03 2019)
- [4] Mankovsky I Yu 2011 *On the question of the concept of a state body* In Materials of the All-Russian Scientific and Practical Conference: *Russian State and Law: Traditions, Modernity, Future* (pp 31-32) (Barnaul, Russia: Publishing House of the Altai State University)

- [5] Mankovskaya V I 2016 *Embedding the international standard of the priority of the representative body of a municipality in the Russian constitutional legislation* In *Actual problems of the relationship between international and national law in the modern world* (to the 70th anniversary of the United Nations, pp 38-39) (Barnaul, Russia: "C-Press" Publishing Group)
- [6] Blinova O A 2018 Some theoretical aspects of the interpretation of the concept of competence of local self-government *Izvestiya of Altai State University. Jurisprudence* **6**(104) pp 52-56.
- [7] Mazhilis of the Republic of Kazakhstan 2001 *Law of the Republic of Kazakhstan On Local State Governance and Self-Government in the Republic of Kazakhstan* (January 23, 2001 No. 148-11) Available at: <http://continent-online.com> (Access 19 03 2019)
- [8] Gabdualiev M T 2012 On the issue of determining the legal status of local governments: problem statement *Vestnik of the Institute of Legislation of the Republic of Kazakhstan* **2**(26) pp 46-48