

Legal Guarantees for Local Self-Government in Today's Russia

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Abstract. This paper analyzes the legal guarantees for local self-government in Russia as well as specific proposals made to tackle the related issues. The Russian Federation is currently trying to create a new and efficient model of public administration. Local self-government is an integral power of public authority. In an effort to create an effective government model, the legislators are predominantly guided by the interests of public administration, which is reflected in regulatory acts and nullifies many guarantees for local self-government.

'Narrowing down' the self-government is explained by the need to make public administration more efficient. It seems that in its centralization attempts, the state does not seek to fully utilize the potential of local self-government as a democratic institute and as a foundation of constitutionalism that is closely connected to the citizenry.

The emerging trends of statehood seem to contradict the constitutional and democratic ideas per se. With this thesis in mind, we should note the significance of guarantees for local self-government, which we expect to curb such trends.

Legal aspects of local public authorities have been rigorously analyzed by I.A. Alebastrova, I.A. Isayev and S.V. Narutto. The topical matters of improving the legislative framework for local self-government have been touched upon by A.N. Didenko. Territorial models for efficient local self-government have been researched by A.N. Rykov.

Guarantees for local self-government are of interest for law researchers in today's Russia. Some aspects of this broader topic have been covered by V.I. Vasilyev, N.V. Dzhagaryan, O.Ye. Kutafin, M.S. Shaykhulling, and O.Ye. Shishkina.

Legislative innovations need further research despite volumes having been written on the matter.

The authors hereof believe that changes in the legislative framework for the territorial arrangement of local self-government pertain to citizens' engagement in such self-government. It seems that many legislative changes on the way contradict the Russian Federation's constitution and international commitments, which requires detailed scientific analysis. What gives relevance to the subject matter of this research is that the guarantees it analyzes can actually serve to balance the state's interests and those of local communities.

The goal hereof is to identify the issues pertaining to the legal guarantees for local self-government and to make proposals on how to tackle such issues.

The subject matter hereof comprises Russia's current local self-government legislation.

Research dwells upon a group of homogeneous public relations that emerge, evolve, and cease in connection with the legal guarantees for local self-government.

The methodology applied herein is based on materialistics, dialectics, logic, historical and formal legal methods.

The output of this research might be of interest for a broad target audience of local self-government researchers as well as for public officers and servants in local self-government; besides, it can also have practical and didactic application.

1. Legal guarantees and territorial arrangement of local self-government

The word 'territory' comes from Latin and means a land space confined within formally or conditionally defined boundaries. Researchers point to the Latin word 'territorium' as a possible source [1]. According to the Russian Constitution, Art. 9 Cl. 1, land is fundamental to the life and living of the peoples it provides with habitat [2]. The concept of territory is not purely physical or geographic, as the term has a legal meaning behind it.

Territorial arrangement of local self-government is one of the methods of arranging a state's territory. The current legislation lacks clear definition of how this method interacts with its counterparts: administrative and territorial structure of the Russian Federation and its entities; urban planning; land formalities; and division into electoral districts [23].

V.I. Vasilyev believes the Russian Constitution adopted in 1993 effectively disconnected the administrative structure of the country from the territorial arrangement of local government [4]. Tampering with such concepts as 'administrative and territorial structure' and 'municipal and territorial arrangement' might result in violating human rights. For example, redefining the official boundaries of administrative and territorial entities does not have to be agreed with the citizens. However, changing the boundaries of a municipal entity is subject to the locals' approval. In some cases, the local community shall first confirm its agreement on such changes. The Constitutional Court of the Russian Federation has analyzed this issue many times; it has confirmed that 'administrative and territorial structure' is conceptually different from 'territorial arrangement of local self-government' [5].

Legislative uncertainty has given rise to a variety of interpretations. Noteworthy is the opinion of the local self-government practitioner and researcher A.N. Rykov. He argues that the territorial arrangement of local self-government must be reduced to a single-level system by excluding urban districts and municipalities from self-governmental jurisdiction [6]. This will transform urban districts and municipalities from municipal entities into government-powered administrative and territorial entities. Local self-government will thus only exist in towns and settlements. The idea seems rather counterproductive, as it will effectively deny local communities the leverage they currently have. Most importantly, such a reform will deprive local communities of their right to participate in planning the budgets of urban districts and municipalities. Administrative units will perform their budgeting with a focus on regional (entity-wide) interests. This will make rural settlements as well as the intra-urban boroughs in urban districts even more dependent on the state than they are now in terms of finance, organization, and tangible support.

Statutory recognition of territorial arrangement is connected with economic and political processes. It is of paramount importance to local self-government as a fundamental aspect of constitutionalism. Altering the territorial arrangement might effectively transform the constitutional institute of local self-government into a fiction.

Establishing the general principles for the territorial arrangement of local self-government is the Russian state's jurisdiction. While the state pursues legal regulation of the matter, it cannot take arbitrary action or focus on a constitutional state that claims to be a rule-of-law state shall follow its own constitutional norms of recognizing and guaranteeing local self-government. The legal guarantees in this context mean a legally provided framework for optimal territorial arrangement, which enables citizens to effectively resolve their local issues.

Since May 1, 2019 Russia has municipal districts, a novel type of municipal entity [7]. This new type is expected to combine the functionality of settlements and districts as governmental entities. Given how the related legislation is interpreted, a municipal district comprises settlements which do not constitute municipal entities in their own right. A municipal district can be granted governmental

powers. Having them means the legislators consider a municipal district to be on the second level of territorial arrangement, i.e. equal to municipalities, urban districts, and urban districts with intraurban division.

A municipal district comprises settlements. However, the law does not define a settlement per se. When Russian local self-government was at infancy in the 1990s, terms ‘settlement’ and ‘town’ were interchangeable, referring to any human-inhabited site. However, the current legislation does differentiate the terms.

In today’s legal practice, a settlement is a locality that has concentrated residential property within formally defined boundaries and provides permanent/predominant residence [8]. Settlements vary in terms of their infrastructural and socioeconomic development. Comparing a settlement within Greater Moscow to a remote and hard-to-access village in Far East or Far North would be questionable at best. Settlements do not face the same requirements as urban districts (infrastructural development, predominance of urban lifestyle, and high population density). Nevertheless, the Federal Law No. 131-FZ *On the General Principles of Local Self-Government in the Russian Federation* sets forth that multiple settlements may join to form a municipal district, which will be empowered [9]. The question is whether municipalities are ready to use such governmental powers they have never had before in addition to resolving their more usual local issues. This is especially applicable to entities where population density is low. Such municipal districts tend to lack human resources and to have lackluster logistics. Governmental powers might be unbearable for them. In fact, such localities are more similar to first-level municipal entities. The problem seems pressing for scarcely populated areas with lackluster transport infrastructure. Legislative innovation is unlikely to incentivize people to settle and stay there, let alone gentrify them.

The 1985 European Charter of Local Self-Government (Art. 9) sets forth that powers be aligned to the financial resources available to local self-government. Apparently, financial resources alone are not enough for the realization of powers. It is no coincidence that the European Charter defines local self-government as a right and actual ability to regulate and manage the bulk of public affairs [10]. Self-government becomes fiction when incapacitated. Setting forth the definition of municipal district, a new type of municipality, is an innovation that we believe is poorly compliant with the rationale of the international act; nor is it consistent with the best international municipal practices. Besides, it also contradicts one of the nation’s strategic priorities, which is to nullify emigration from Siberia and Far East.

Notably, with all the shortcomings they have, municipal districts as a type of municipal entity do indicate the general trend towards consolidating the historical territorial units. Several territorial entities have been consolidated (merged). Thus, Perm Oblast has been merged with Komi-Permyatsky Autonomous Okrug, which created Perm Krai [11]; Kamchatka Oblast has been merged with Koryak Autonomous Okrug, which created Kamchatka Krai [12]. Consolidation of municipalities is expected to help cut the administrative costs. Besides, a consolidated territory has consolidated budget. However, it becomes harder for the locals to access municipal services. Municipal authorities lose their touch with the citizenry. Political scientists have identified a correlation that proves this hypothesis: the smaller a municipal entity, the higher the turnout for municipal elections; and vice-a-versa.

Notable are the emotional and psychological aspects of belonging to a local community. We believe that the citizenry of a municipal entity (the local community) is not merely a formal or legal abstraction, and cannot be analyzed as such. A local community is strongly bonded to its location. These people are well-aware of such bonds. It is that awareness that gives them a sense of responsibility for local matters and instils administrative ideas pertaining to the local features such as nature and climate, terrain, actual population scatter, etc. We believe in generational responsibility for the maintenance and gentrification of these territories, which is important for civil consciousness and patriotism. Apparently, territorial arrangement of local self-government is not merely geographical, physical, or legal; it also has a socioeconomic aspect to it. Legislative amendments should also be analyzed in the light of cultural aspect.

The existing territorial arrangement of local self-government has been in place for less than thirty years. This timeframe cannot be deemed sufficient to create a fully viable administrative tradition, a generational continuity of the locals' sense of responsibility. Socioeconomic stability and legal guarantees are necessary for such traditions to emerge. Reforming the territorial arrangement of local self-government, as it seems, is not defensible unless absolutely necessary. Reshaping the borders of a municipal entity breaks people's social, personal, emotional, and psychological ties to the place. This might result in neglecting the needs of one's place of residence, and it will deteriorate soon. Locals no longer perceive their land as something fundamental to living. Russian and international experience shows that the legal framework of territorial arrangement must be as stable as possible.

2. Legal guarantees and locals' involvement in self-government

The nature of right to self-government derives from the constitutional character of local self-government as a type of public authority and as a special institute that brings together the various organizational components behind this right. The right to self-government is a logical consequence of the right to involvement in public affairs. The election rights and rights to referendum (Art. 32 Cl.1 of the Russian Constitution) applies to the local level. The constitutional provisions of Art. 32 Cl. 1 of the Russian Constitution must be considered in their connection to Art. 130 Cl. 1, which sets forth citizens' rights to self-government in appropriate forms.

Legal studies [13] and judicial practices [14] have evolved a single concept of right to local self-government as an individual and collective right. R.M. Usmanova systematically approached the matters pertaining to the parties entitled to self-government; she researched the specifics of local self-government in municipalities [15]. One distinguishing feature is that each resident of a municipality exercises their right to local self-government by virtue of residence. They also do so by virtue of residence in a settlement that belongs to the municipality. Thus, a settlement/town resident is effectively the person who enjoys the protection of municipality/settlement rights (the agent of rights).

Citizenry's involvement in local self-government is both a right and a duty under Russian law. In this context, 'citizenry' refers to a social and territorial community rather than a general population. If a court decides that a resolution adopted by the general assembly of the local community is neither their legislative initiative nor a statement/claim subject to mandatory review. Therefore, the court rules out that the assembly participants have no right to local self-government.

Legal guarantees for local self-government fall into international, constitutional, legislative, and judicial guarantees.

The international legal guarantees are set forth in international treaties and conventions. The 1994 Declaration of Principles of Local Self-Government in the Commonwealth Member States formulates a principle that non-compliance with the resolutions adopted by local self-government or by the citizenry through referenda or other means of direct democracy is punishable by law [17]. The 1985 European Charter of Local Self-Government sets forth that the citizens' right to involvement in public affairs is a democratic principle shared by all the Council of Europe member states [10].

The constitutional guarantees set forth in Chapters 1 and 2 of the Constitution are of special importance as they are subject to no amendment. M.S. Shaykhullin proposes the following classification of constitutional guarantees: (a) guaranteed right to local self-government; (b) guarantees to contribute to the emergence, development, and functioning of local self-government and its bodies; (c) guarantees of exercising the constitutional provisions on local self-government [18].

Legislative guarantees for local self-government are the conditions and means based on the 1993 Act of Foundation and set forth in the Federal Constitutional Laws, Federal Laws, and regional laws; these guarantees enable local self-government and protect it, including judicial protection. Such guarantees are implemented at two levels: federal legislative guarantees and regional legislative guarantees. Given that municipal law is perceived as a comprehensive branch of law in its own right, legislative guarantees are also expected to be comprehensive. The baseline regulatory act here is the Federal Law No. 131-FZ *On the General Principles Behind Self-Government in the Russian Federation*.

Judicial legal guarantees are legal means by their nature. In particular, court rulings have so far taken effect to guarantee access to justice [19], competition and equality of the parties [20], and judicial representation [21].

The 2014–2015 amendments to the Federal Codes entitled the Federation's regions to choice of local self-government models. In most regions, they decided to have less municipal elections. As the legislative amendments were supported by the Supreme Court [22], the situation the local self-government today finds itself in features an imbalance of direct and representative foundations; there is a prerequisite for greater influence of representative municipal authorities, as the amendments to law have effectively led to less municipal elections; however, the prerequisite is ignored by and large. Direct municipal democracy is in decline; its role is being reduced to discussions only, the representative bodies are merely formal, while the executive authorities have taken lead [23]. As representation weakens, governmental power replaces municipal power [24].

Of interest in this context is the situation of Khabarovsk Krai. Its Governor has taken a legislative initiative to submit to the regional Legislative Duma a bill that, if adopted, will get Head-of-Municipality elections back in place. The initiative seeks to alter the way Heads of Municipalities are appointed, to entitle the local communities to actual and responsible self-government. We agree with the Initiator that right to election is of special importance to the institutes of democracy, which must apply as widely as possible to local self-government [25].

The initiative essentially comes from the region's current situation: the legislative and executive authorities in fact differ in terms of the political forces comprising them, which causes conflict. The Governor's desire to alter the local self-government model is probably due to his want to remove the opposing party from seats of municipal power.

Advancements in ICT have indeed affected the statutory recognition of some forms of citizens' involvement in local self-government. Public hearing and public discussion are merging as concepts. The newly adopted legislative amendments allow for public discussion of draft Master Plans, rules of land use and development, planning and layout rules, as well as gentrification rules, all of which used to require public hearing. However, any resolution adopted by public hearing or discussion is recommendatory rather than obligatory. The fundamental difference between these forms is that a discussion can involve more interested citizens. Public discussion is a broader concept than public hearing. The latter implies personal participation. Discussion can be done remotely. We believe that soon enough, resolving the local matters in presentia might become a thing of the past. An open question today is how to identify the remote participants in public discussion. Only persons subject to the right to self-government (the agents of self-government) can be involved in it. This innovation deserves a positive attitude, as it expands the legal guarantees.

Use of distant means to enable self-government requires not only the technical facilities but also appropriate legal guarantees. It is imperative to be prepared to pursuit of democracy, which includes setting forth the legal guarantees for the citizenry to take part in self-government, as well as broad analysis of public opinion.

This paper categorizes the legal guarantees citizens can enjoy to be involved in local self-government. It identifies the problem of 'reducing' the guarantees provided by the Federal Law No. 131-FZ *On the General Principles Behind Self-Government in the Russian Federation*; the reduction applies to the powers that municipality heads are vested with. This can be handled by making appropriate amendments to the Federal Law No. 131-FZ or by enabling the Russian regions to get Head-of-Municipality elections back in place. Experience shows a Russian region must be in turmoil of intraregional conflicts to even raise this question.

Regulatory framework seems to converge the meaning of public hearing and public discussion. The Internet opens up ample opportunities for public discussion, as it can get a broad audience involved in discussing local matters. The regulatory framework must facilitate this. Russian legislators are attempting that. What effectively prevents a broad use of distance self-government is not only the conservatism of law, but also the challenge of identifying the agents of local self-government.

Citizens' involvement in local self-government has a plenty of various forms: a local referendum, municipal elections, resident meetings and rallies, polls and public hearings, vote on changing the boundaries of municipal entities; public call for elected officials to resign; and appeals filed by natural persons. The law contains an open list of the forms of self-government. Legal guarantees for, and popular involvement in, local self-government raises questions of extreme importance, questions that demand further research.

This research has identified the issues pertaining to the legal guarantees for local self-government within the framework of its territorial arrangement and public involvement. It has thus produced the following findings:

- 1) Russia has yet to find an optimal model for territorial arrangement. The historical administrative and territorial division is mingling with the modern territorial arrangement of local government.
- 2) Legal regulation of how local self-government is arranged territorially is a legal guarantee that effectively handles the local matters with due consideration of historical or other local traditions. Municipal districts have been defined as a novel type of municipal entities; their appearance is in line with the trend towards consolidation of municipalities. This might make it challenging to properly resolve local issues and to appropriately use the governmental powers resulting from such changes. The root of the problem is in how municipal districts are populated, as they mainly comprise rural settlements.
- 3) Such changes in the territorial arrangement contradict the Russian Federation's international commitments set forth in the European Charter of Local Self-Government; they are also contrary to the Constitution.
- 4) Enforcing such changes will not help create an administrative tradition or instill a responsible attitude of the locals to their place of residence.
- 5) Legislative changes have weakened representation in local self-government, distancing people away from the local authorities even further. Such reforms disable legislative guarantees and impede people's access to power.
- 6) Legal guarantees for local self-government are themselves not without contradiction. There's inconsistency between the ideas international acts and the Russian Constitution, which reflect the liberal European legal traditions of the Russian legislation. Resolving this requires political will of regional officials and a democratic focus on public opinion.
- 7) Internet and other cutting-edge communications greatly expand the availability of local self-government to people. The legislative framework is beginning to evolve towards legitimizing the distant resolutions.

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