

# Constitutional and Legal Regulatory Aspects of the Report of the Head of the Municipality to the Representative Body

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## ABSTRACT

In the framework of this study, an attempt was made to analyse the state of the constitutional and legal regulation of issues related to the content and presentation of the report of the head of the municipality to the representative body of the municipality, in modern Russia. In the course of the study, it was noted that the form and timing of the report of the head of the municipality, as well as the requirements for its structure and content, did not find their legal expression in federal legislation, which poses a serious threat to the rights and freedoms of citizens. In order to minimize the above-mentioned risks, it is proposed that, at the level of the Federal Law «On General Principles of Organization of Local Self-government in the Russian Federation», the deadlines and forms for the submission of the report of the head of the municipal entity should be fixed, as well as visible, accessible to everyone performance indicators of his work. In addition, it is argued that the possibility of participation in the evaluation procedure of the report of the head of the municipality of the population or of the public chamber of the municipality, as well as the monitoring and accounting body and independent experts, should be established by law, in order to enhance the objectivity of the evaluation of the report. The results of the study can also contribute to the improvement of the existing normative legal regulation of issues related to the report of the head of the municipal entity at the municipal level, both in Russia and abroad.

**Keywords:** *the head of the municipality, the report of the head of the municipality, representative body, municipal authority, municipality, local self-government*

## 1. INTRODUCTION

In accordance with the provisions of article 36 (parts 1 and 5) of the Federal Act of 6 October 2003, 131-FZ «On the general principles of the organization of local self-government in the Russian Federation» the head of the municipality is the highest official of the municipality, which is accountable and accountable to the population and representative body of the municipality.

In accordance with the provisions of Article 74.1 (Part 2, paragraph 3) of the Federal Law «On General Principles of Organization of Local Self-government in the Russian Federation» unsatisfactory assessment of the activity of the head of the municipal entity is made by the representative body of the municipal entity based on his annual report to the representative body of the municipal entity. This is the second time in succession that the head of a municipality is dismissed.

Accordingly, the head of a municipality, as a person having a special public-law status and voluntarily acquiring it, assumes not only the powers to decide matters of local importance, but also certain duties, in particular to be accountable at least once a year to the people and the representative body of the municipality for the results of

its activities, and to recognize and realize the possibility of its responsibilities, including the form of its retirement. In the case of recognition of the activity of the head of the municipality, following the submission of the annual report, it is unsatisfactory.

## 2. REPORT OF THE HEAD OF THE MUNICIPALITY TO THE REPRESENTATIVE BODY

To begin with, it should be noted that the form, the timing of the report, as well as the requirements for the structure or content of the report of the Head of Municipality, the federal legislation has not found any legal expression and so far has not been regulated at the level of federal law.

In the scientific community, this lack of federal regulation has been strongly criticized because it does not only make it impossible to objectively evaluate the activities of the head of the municipality, but also creates a real possibility for deputies of a representative body of a municipal entity to arbitrarily dismiss the head of a municipal entity only on the basis of their subjective discretion [1–8] and in fact makes the removal of the head of a municipality a

resignation from the measure of legal responsibility a measure of responsibility of a political entity, which, by the way, the head of the municipality can be held solely to the public [9].

It should also be noted that the above-mentioned problem of the legal regulation of the accounts of the head of a municipality is not unique to the Russian Federation. In foreign scientific literature, the problem of objective evaluation of the activity of the head of the municipality, as well as the undemocratic nature of the assessment procedure itself, is also recognized as one of the most significant for the entire system of local self-government [10–12].

In the absence of a unified regulatory legal regulation on the reporting of the head of the municipality to the public and the representative body of the municipality at the federal level, the main gravity of the regulations is the legal regulation of this problem falls squarely at the municipal level.

The existence of a gap at the level of federal legislation, as well as the possibility of overcoming it partially by municipal law-making, is confirmed by the explanations of the State Duma Committee on Federal Organization and Local Self-government, which, answering the question about «in what form should the report of the head of the municipality be compiled?» as well as on «whether it is necessary to fix the order of the chapter's report in any municipal legal act?» clarified that Federal law does not rule out the prior transmission of the report to the deputies or its subsequent submission in the form of a general report of the chapter, nor does it require the head of the report to read it out loud at the appropriate meeting of the representative body».

Moreover, the Committee noted that all issues related to the report of the head of the municipality entity «should be regulated in the statute of the municipality entity and municipal legal acts». Furthermore, «the absence in the statute of the municipality of special provisions concerning the submission of reports by the head of the municipality to the representative body does not release the head of the municipality from such a duty» [13].

The analysis of municipal law-making practice in the Russian Federation shows that the issues of the annual report of the head of the municipality to the representative body of the municipality may be regulated as legal acts of the head of the municipality itself (as a rule, these acts concern the characteristics of the preparation of the report), decisions of the representative body of the municipality (regulate both the preparation and hearing of the report and the adoption of the final decision on it).

There are municipal legal acts that approve the structure of the report, requirements for its content (for example, the Order of the Administration of the Tomsk District of October 7, 2016 377-P «On the approval of the procedure for the preparation of the annual report of the Head of the Tomsk District on the results of his activities, the activities of the Administration of the Tomsk District and its bodies»).

Municipal legal acts regulating separately the characteristics of the annual reports of each local self-

government unit separately (for example, the Decision of the Kurgan City Duma of 28 September, 2016 197 «On the approval of the Regulations on the procedure of presentation and hearing of the annual reports of the Head of the City of Kurgan, the Head of the Administration of the City of Kurgan, the Chairman of the Control and Accounts Chamber of the City of Kurgan»).

Some municipalities regulate the number of questions that can be asked during the discussion of the chapter report (for example, Order of the Khanty-Mansiysk City Administration of 3 April 2013, 337 «On the Procedure of the Organization and Holding of the Town Assembly on the Discussion of the Draft Report of the Chief of the Khanty City Administration»).

There are examples of regulation of the report of the head of the municipality to the public and of regular and extraordinary reports to the deputies of the representative body (for example, Decision of the Belogorsk City Council of People's Deputies of 19 February, 2008 47/14 «On the status of «On the procedure of the report of the head of the municipal education of the city of Belogorsk and the deputy of the Belogorsk City Council of People's Deputies»).

### **3. CONTENTS OF THE REPORT OF THE HEAD OF THE MUNICIPALITY TO THE REPRESENTATIVE BODY**

One of the most difficult, but undoubtedly important, questions related to the annual report of the head of the municipality to the representative body of the municipality is the question of the content of the report.

Attention should be drawn to the fact that according to the provisions of Article 36 (Part 5.1) of the Federal Law «On General Principles of Organization of Local Self-government in the Russian Federation», the head of the municipality shall submit annual reports to the representative body of the municipality or, if the head of the municipality is the head of the local administration, The results of the activities of the local administration and other local self-government bodies under its jurisdiction, including the resolution of questions posed by the representative body of the municipal entity. Thus, the content and length of the report of the head of the municipality depends on the place he occupies in the structure of local self-government established in the Statute of the municipality.

Detailed regulation of the form, content and reporting procedures of the head of the municipality is an unconditional guarantee of his rights and protection against possible abuses (especially against possible politicization), when deciding on the removal of the head of the municipality.

In a decision dated of 4 October 2011, 1264-O, the Constitutional Court of the Russian Federation stated that the removal of the head of a municipal entity from office was a measure of its responsibility to the representative body of the municipal entity and, ultimately, to the

population, Guaranteeing the restoration of the statutory procedure for the exercise of local self-government in the territory of the municipality concerned, and the control and accountability of the head of the municipal entity to the population and representative body of the municipal entity, ensuring a balance of powers between the representative body of the municipality and the head of the municipality in the system of local self-government.

However, the decisions of the representative body of the municipality related to the retirement of the head of the municipality must not be arbitrary and their adoption must be subject to judicial review (Decision of the Constitutional Court of the Russian Federation of 16 July 2013, 1241-O).

The inadmissibility of arbitrary discretion in the regulation of matters relating to the report of the head of a municipal entity is also linked to the repeatedly expressed position of the Constitutional Court of the Russian Federation that the vagueness, ambiguity and ambiguity of the law give rise to the possibility of ambiguous interpretation and, consequently, arbitrary application of its rules, which predetermines the requirement of certainty for the legislator, clarity, clarity of the legal rules it adopts and their consistency in the system of existing legal regulations. Otherwise, contradictory law enforcement practices may occur, weakening the guarantees of State protection of the rights, freedoms and legitimate interests of citizens (Resolutions of 15 July 1999, 11-P and of 27 May 2003, 9-P).

Paragraphs 34 and 35 also indicate that the law-making body has complied with the principle of certainty «The practice of courts considering cases of challenging normative legal acts and acts containing clarifications of legislation and possessing normative properties», approved by the Decision of the Plenum of the Supreme Court of the Russian Federation of 25 December 2018 № 50.

From the above-mentioned positions of the highest judicial bodies, it is clear that if a municipal legal act is adopted in a municipality, regulating the issues of the report of the head of the municipality to the representative body of the local self-government, the said act must, in both form and content, comply with the legislation in force, to be certain, clear and unambiguous.

However, an analysis of municipal law-making practice unfortunately shows that municipal authorities do not always comply with the above requirements when adopting municipal legal acts. As an example, authors would like to cite the draft decision of the Yekaterinburg City Duma «On the approval of the Regulation «On the Annual Report of the Head of Yekaterinburg to the Yekaterinburg City Duma», which, after considerable processing, was approved by the Decision of the Yekaterinburg City Duma of 28 January 2020 1/28. However, even a cursory examination of the text of the said municipal legal act still reveals its obvious imperfections.

For example, Chapter 2, paragraph 5, paragraph 1 of the Regulation states that the report of the Chapter of Yekaterinburg shall contain information «on development and realization of measures on civil defense, prevention

and elimination of emergency situations and elimination of consequences of natural disasters on territory of municipality «city of Yekaterinburg».

At the same time, in accordance with article 16 of the Federal Law «On the General Principles of the Organization of Local Self-government in the Russian Federation», questions of local significance of a city district include «participation in the prevention and elimination of the consequences of emergency situations at borders municipality, city district». The form of the exercise of the said authority is disclosed in the provisions of Article 8 of the Federal Law «On Civil Defense», in which when compared with the text specified in the decision of the Yekaterinburg City Duma the wording is not identical.

Paragraph 1 of Chapter 2, paragraph 5 of the said Act mentions that the report of the Head of Yekaterinburg shall contain information on the exercise by the Head of Yekaterinburg, during the reporting year, of his powers to deal with matters of local importance, including: «on the development of regional, interregional, international and foreign economic relations of the municipality «Yekaterinburg». However, article 36 of the Federal Law «On the General Principles of the Organization of Local Self-government in the Russian Federation» does not define such authority for the head of the municipal entity, and the Statute of the municipal entity «Yekaterinburg» Assigns to the Head of Municipality only the powers to «determine the directions of development of regional, interregional, international and foreign economic relations of the municipality», that is obviously not identical to the text of the decision of the Yekaterinburg City Duma of 28 January 2020 1/28.

#### **4. CONCLUSION**

The examples examined in this study are only a small part of the case law indicating the extremely low quality of municipal legal acts prepared and adopted by the municipal authorities, their incompatibility with the provisions of the legislation in force, as well as the application in the texts of municipal legal acts regulating the reports of the Head of Municipality to the public and representative bodies of municipalities, Formulations which may subsequently give rise to the possibility of ambiguous interpretation and arbitrary application of the rules, which in turn may entail a violation of the guaranteed constitutional rights and freedoms of the individual and the citizen, including in the area of local government.

In order to overcome the identified shortcomings of domestic legal regulation and optimize municipal law-making, the following measures should be proposed.

It is necessary at the level of the Federal Law «On the General Principles of the Organization of Local Self-government in the Russian Federation», which is the basis for the legal regulation of local self-government by law, to lay down the following points.

First of all, regulations should be made on the timing and form of the report of the head of the municipality. This may be seen as follows: the report of the head of the municipality shall be submitted in electronic and hard copy form, no later than three months after the end of the reporting year, with mandatory preliminary official publication, the procedure and duration of which are determined by the Statute of the Municipality.

Second, in the Federal Law «On the General Principles of the Organization of Local Self-government in the Russian Federation» there should be provisions explicitly stating the indicators of efficiency of the head of the municipality, which are accessible for inspection that are objective, understandable to any kind of municipal entity and, most importantly, comprehensible to the residents of the municipal entity, regardless of educational and professional competences.

Such performance indicators of the head of the municipality could, for example, include: the number of heat and power network accidents during the reporting period; the number of emergency facilities in municipal ownership; number of urban infrastructure facilities (heat grids, power grids, roads, etc.); number of playgrounds and other public areas upgraded during the reporting period; net profits of municipal unitary enterprises; as well as economic societies whose charter capital belongs to the municipality; the number of citizens petitions considered during the reporting period, indicating the measures taken to improve the situation of citizens, etc.

Visible, easily verifiable indicators of the performance of the head of the municipality are particularly important in the smaller municipalities, where the majority of the deputies of the representative body exercise their powers on a non-professional basis.

Third, at the level of the Federal Law «On the General Principles of the Organization of Local Self-government in the Russian Federation» the possibility, or on the contrary the impossibility, for a representative body of a municipality to submit a request to the head of a municipality to submit an extraordinary report must be regulated.

It would seem that such a right should be granted to the representative body of the municipality. However, the possibility of its realization for purely political purposes should be severely restricted. For example, a rule could be laid down that a representative body of a municipality may request the head of the municipality to submit an extraordinary report on the results of its activities no more than once a year. It could be added that only the head of a municipality who had been in office for more than two years could be required to submit an extraordinary report.

It would also be useful to point out that the extraordinary report is submitted by the head of the municipality only according to the indicators directly requested by the representative body and not in full (in the annual report). Such an indication would, in our view, make better use of the institution.

Fourth, at the level of the Federal Law «On the General Principles of the Organization of Local Self-government in the Russian Federation», it would not be superfluous to

establish a procedure for the mandatory taking into account of the opinion of the population of a municipality (for example, by means of public hearings or by means of other forms of public consultation [14–17]) or by the opinion of the public chamber of a municipality concerning the report of the head of a municipality, which in turn would have a positive impact on the development of civil society institutions in Russia.

Fifth, it would also be advisable to establish the right of the representative body of the municipality, in the process of evaluating the report of the head of the municipality, to request the opinion of the control and accounting body of the municipality, or, in its absence, the opinion of independent expert organizations, especially with regard to financial, budgetary and property relations.

The involvement of independent expert organizations would also be relevant in the assessment of technical issues requiring special knowledge, which may not necessarily be the case for an absolute majority of the deputies of a representative municipal body.

In our view, such an independent evaluation would be particularly helpful if the question of whether the quality of the work carried out corresponds to the amount of the municipal budget spent on it were to be answered. As a result, it would also significantly reduce the corruption component in the activities of the head of the municipality, in this sphere of social relations, which, unfortunately, is very common today.

All the measures listed above, if implemented as a whole, will increase the efficiency and relevance of the annual report on the activities of the head of the municipality, and to strengthen the guarantees of the said person against possible abuses by the representative body of municipal entities and other persons participating in the exercise of local self-government in the territory of the respective municipality.

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