

Publicity at the Formation of Municipal Authorities of European States

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Abstract

The establishment of democratic state in Russia requires the compulsive practical realization of the publicity principle that consists in the ultimate transparency of public legal relations. The process of establishing local authorities also refers to them. In this connection, the researches appealed to the experience of those European states, which are notable for their municipal traditions, firmly formed long ago. The comparative analysis of various ways to elect authority in municipalities of European states was carried out. This analysis is carried out in terms of ensuring transparency of formation of local authorities as the compulsive characteristic of local government that consults citizens' interests. The formation of local authorities in legal systems of various states is considered in conjunction with economic, social, cultural, historical, political and other determinants that influence the institution of local government. The experience of Russia that ratified European Charter of Local Self-Government is compared with the experience of other European countries in the matter of forming authorities in municipalities. As the result of work, we have theoretical conclusions about the possibilities of applying elements of the European experience while exercising publicity when forming local authorities in Russia. The author also provides practical recommendations for Russian legislation improvement.

Keywords: publicity, formation of local authorities, municipality, local government, local population

1. Introduction

Nowadays the problem of forming the effective system of government, which would be open at the most to citizens and understood by them, is foregrounded in Russia. Democratic changes are effective only when they are successfully introduced at the closest to every citizen level that means at the municipal level. In this connection, the problem of realization of the publicity principle in the system of local government is of utmost importance. The necessity of realization of this principle is captured in many international documents, particularly, in European Charter of Local Self-Government that was ratified by all the member states of the Council of Europe, including the Russian Federation (European Charter of Local Self-Government, 1985).

The most important element of the publicity principle in the system of local government is public control by citizens of the activities of authorities in municipalities. Nowadays, researchers express various points of view, concerning the maintenance of this institution in the system of local government (Mikheev, 2014). From our point of view, the realization of control by the population over local authority must be also embodied in such a form as the realization of the right of citizens and their associations to participate in the formation of local authorities. Ways of formation of local authority must be established by reference to what extent they let citizens control the established municipal authorities and their decisions thereafter (Mikheeva, 2012).

According to the opinion of most of the researches in the field of municipal law and the municipal housing practitioners, the realization of local government in Russia today is far from constitutional principles of local government and those principles that are declared in European Charter of Local Self-Government (Mikheeva, 2014). Though, amendments in the Russian legislation, concerning the formation of local authority, are regularly introduced, they are not systemized. Due to this reason, it is necessary to appeal to the experience of European states that are aimed as well as Russia at the development of their legal system under terms of European Charter of Local Self-Government and that have deeper traditions in the development of local government.

Thus, the aim of this work is the thorough analysis of legal regulation of citizens' participation when forming local authorities in foreign states. In addition to it, there is the aim to make theoretical recommendations, concerning the possibility of applying the experience of European states to the Russian system of local government. It is also intended to

formulate the legislative proposals on improvement of the regulation of the principle of local authority publicity in the Russian legislation.

2. Methods

In the research the authors apply not only general scientific methods, but also methods, specific for law. Out of general scientific methods, the system analysis method is used. It helps to consider the problematics of forming local authorities in conjunction with other important elements of the principle of local authority publicity.

The usage of historical method is necessary for revealing certain trends of dynamics of regulating the formation of local authorities in European states.

Out of methods of law, the key role is assigned to the comparative legal analysis. It owes to the necessity of consideration, comparison and revelation of general and special trends in the development of the right of forming local authorities in European states.

The usage of the statistical method stems from the importance of application in the work of special facts that relate to the regulation of the formation of local authorities and the practical realization of these processes in European states. Handling these facts is necessary for the following comparative analysis of the processes of formation of municipal authority in various European states and in the Russian Federation.

Formal logic plays an important role in the study. It is necessary for making recommendations for the Russian legislative improvement in questions of regulating the right of citizens and their associations to participate in the formation of local authorities.

The research is based on study, consideration and analysis of scientific papers in the field of constitutional and municipal law, legislation of European states, statistical data, information from periodicals.

3. Results and Discussion

European Charter of Local Self-Government doesn't assign any compulsory order of establishing this or that electoral system at the local elections (Prudnikov, 2007). In this connection, it is reasonable to appeal to the experience of the regulation of this question in the states that ratified the charter.

The elections of representative local authorities in most of these states are based on the application of either the plurality voting, or the mixed electoral system. Thus, in Great Britain the simple plurality voting system is used when the winner is the candidate with the most votes (Achkasov, 1998). In France the plurality voting system is used in the municipalities with the population to 3000 people, but when the number of people is bigger, the mixed system is used. In addition to it, the absolute majority system is used in single-member districts when the winner is the candidate with more than one half of the votes. In other case, the repeat voting (second round) is appointed in which the winner out of the two candidates with the most votes in the first round is the one, for whom the majority of people voted. In Denmark, there is also the plurality voting system when forming the representative local authorities. This is the state with one of the most developed and successfully functioning systems of local government (Velikhov, 1996). In its turn, the mixed electoral system is applied particularly in Italy. Moreover, in Italy three-quarters of the deputies from the representative local government body are elected applying the plurality voting system. Thus, one may talk about the special form of the mixed electoral system at the local elections in Italy. It is based on the dominance of the plurality voting system with some elements of the proportional representation. On the whole, the plurality voting or the mixed electoral system dominates at the local elections in European states (Velikhov, 1999).

The process of forming local authority in Belgium also has its own peculiarities. One party seldom wins enough seats to confirm a burgomaster's election. That's why, the government in each municipality constitutes to the system of coalitions. The participation of local, "town hall", parties at local elections along with federal parties is widely practiced (Kovalenko, 2008). Thus, in Belgium not only federal parties are formed, but also it is assumed to form parties at the level of one certain municipal entity in order to solve purely local questions. In addition to it, local residents have the possibility to choose not only among federal parties. On the other hand, the possibility that "town hall" political parties can take part in municipal elections stimulates the federal parties to study local problems thoroughly and treat the formation of programs for development of municipalities from the perspective of local residents' interests.

The election of the head of the city (Burgomaster) in Belgian municipalities also has its distinctive features. In Belgium there is a tradition, according to which the public politician of any rank is in charge of the municipality, where he became a public figure. The Prime Minister of Belgium, Elio Di Rupo, still holds the potential position of the mayor in his native city of Mons and will return there after his resignation from the post of prime minister, if his party keeps the majority

in the city council. Thus, one can say that the principle of partnership between parties and local associations is realized in the system of local government in this country. This partnership is reflected in publicity at the formation of the executive power in the municipality (Mikheev, 2012). This is possible due to constitutional and municipal customs, developed in Belgium and other states in Western Europe.

In France mayors are formally elected not by people, but by local council deputies. However, one can say that the result of this form of indirect elections is actually determined by universal suffrage. In such a way, the mixed system of forming a representative body is applied in municipalities with more than 3000 people. In addition to it, the absolute majority system is applied not only at the voting in districts at the plurality voting system, but also at the voting for lists at the proportional representation. The number of men and women must be equal in a list. The lists are open for voters. If one of the lists wins more than 50% of votes in the first round, it automatically gets the half of deputy's seats (Code Administratif, 1995).

Other seats are proportionally distributed between all the party lists including the winner. Thus, winners get the majority of deputy's seats in the local council in any case. If none of the lists can break the 50 percent barrier in the first round, the second round of voting is appointed, in which the lists that won no less 5 percent of votes in the first round can take part. In the second round, the same scheme of distribution of deputy's seats as in the first round is applied. At the first session of the local council its deputies appoint a new mayor and deputy mayors.

Specification for the candidate for municipal deputy and mayor in France: age of 18 years, full legal capacity. At the local election in France not only citizens of this country, but also citizens of any other country in the European Union have passive and active voting rights (Rassel, 2012).

Special voting system is applied in two biggest cities in France – Lyon and Marseille. In these cities, the election of the mayor consists of 3 rounds. At the first round, according to the mixed electoral system, local citizens choose municipal deputies of their district (arrondissement). Then, from their number these deputies choose members of the city council and, in their turn, they elect the mayor by an absolute majority of votes. At the voting, the two-round model is also used in districts and at the party list voting with the only difference that lists that received not less than 10 percent of the vote can move on to the second round (Genevier, 1994).

Lately, the position of the so-called "Mayor of the Night" has been introduced in the number of French cities. Their duty is to maintain order in the nighttime, safety and ecological cleanness of the city in the evening and at night. The elections of "Mayor of the Night" are held in the process of voting on the special web portal. At first, the institution of "Mayor of the Night" wasn't official that means it wasn't introduced in the system of local authorities (Yevdokimov, Stratsev, 2001). However, recently, "Mayors of the Night" have been offered the special position of the consultant of the head of the municipality in the number of cities, particularly in Paris. Thus, with this institution local residents got additional possibilities to participate in the formation of local authorities and influence their policy.

Speaking about the possibility to use the experience of European states in Russia for exercising publicity at the formation of authority at the local level, it is important to mention following aspects. The activities of the political parties in Russia, unlike European states, are determined mostly not by the constitutional traditions, but by the legislation on political parties and by the election legislation. They consider the activities of parties on the basis of subordination of local subdivisions of federal hierarchy. The formation of local and regional parties isn't assumed. In this connection, it is more reasonable to apply the plurality voting system with the prohibition for candidates, nominated by parties, to participate at the elections at the formation of local representative authorities in Russia. At the same time, this right must be given to non-party public associations. The essence of their activities presumes more open character of nominating candidates.

European experience of electing mayors shows that the procedure of electing the head of the municipality out of the number of deputies in the representative body, as provided by the Russian legislation, doesn't contradict the European practice. At the same time, some questions are caused by the system of appointing the head of the local administration that has lately spread in Russia. According to it, the head of the local administration is appointed, in contrast with the representative body, out of candidates, recommended by the contest commission. The head of the subject of the Russian Federation takes part in the formation of this commission. It stands to reason that most European states abandoned this system. When applying such a way, there are not enough guaranties of exercising transparency of procedures of appointing candidates for mayor. It sufficiently decreases its accountability to local people. In most European states the election of mayor is held directly through the elected local deputies, in the first case. In the second case, candidates for mayor announce that they nominate themselves as candidates in the course of their participation in the elections to the representative bodies. They head the party list or come forward as candidates through self-nomination in one of the regions. Thus, in both cases it is possible that citizens have an immediate influence on the process of forming local administration. In this connection, it is reasonable to introduce some amendments in the Russian federal legislation which would mostly lead to exercising the publicity principle at the formation of local authorities. We are

of the opinion that the head of the local administration must be appointed at the direct election or out of deputies of the representative body. In its turn, only local residents must decide at the local referendum which of these systems will be applied. It must be introduced in the Federal Law of the Russian Federation "About general principles of the organization of local self-government in the Russian Federation". When evaluating the two-level system of the local government and the formation of local authorities in municipalities with such a system, it is necessary to assume social, economic, cultural, historical and other peculiarities of these municipalities. Experience of the biggest cities proves the propriety of the two-level system of authority, aimed at the increase of quality of work of local authority and at the availability of municipal services for citizens. Thus, it is reasonable to form the city authority with the purpose of realization of the concept of the common development of the city, its outer relations, growth of economic basis. At the same time, the principle of local authority publicity presumes the possibility of public control, announcement of their initiatives and when solving routine, vital, everyday problems of local residents. From this point of view, it is quite logical that the European experience of applying the two-level system of forming local authority must be used in the urban districts of Russia with the population of more than 300000 people.

4. Conclusion

The analysis, conducted by us, lets make the number of conclusions concerning the peculiarities of formation of authority in the municipalities of member states of the Council of Europe:

1. The publicity principle at the formation of authority at the local level is reflected when finding out the peculiarities of this or those way of citizens' participation in the local elections in the federal laws on election and also in certain legal customs.
2. The formation of the representative bodies must be based on the principle of transparency of this process and its accountability to local people, but not to some other subjects. That's why in the European countries, mentioned above, the plurality voting system is widely spread. In those cases, when the elements of the proportional representation are applied, for example in Belgium, local parties can take part in elections on equal terms with federal parties. It prevents the process of governmentalization of local self-government.
3. The participation of parties in the municipal elections in the European states also must correspond to the principle of transparency. It is reflected in the open lists of candidates when the voter has the possibility to distribute candidates in the list according to his preferences.
4. The publicity principle is applied at the elections of the mayor, at the formation of the local administration. In such a way, the model of "city management", originated in Great Britain, wasn't spread in the states of Continental Europe. According to this model, the mayor is appointed by the special contest commission, in the formation of which the representatives of the state authority can also take part. More often the heads of the municipalities are elected at the direct elections as, for example, in Paris. At the same time, because of constitutional traditions, established in Europe, the election of the mayor may actually occur along with the election to the representative body, when the candidate for the head of the municipality heads the list of the electoral association. The similar way of formation of local authority lets also talk about the observation of the principle of local authority publicity. In this case, citizens vote for the open list of the electoral association, which deputies, being elected, appoint the mayor and deputy mayors out of their number.
5. Recently, the realization of the principle of local authority publicity has become evident as the appointment of the members of the local administration is held in the process of internet voting among the local residents. Thus, the development of publicity is more and more spread at the appointment of the members of the local administration.
6. Special attention should be paid to the order of forming representative bodies in the number of French cities. In such a way, the two-level system of the local government with the in-city district division, applied in big cities, has recently been adopted by the Russian federal law. Thus, the opinion of some Russian researches, who claim that the introduction of the two-level system of formation of local authority in Russia contradicts the European practice of city government, is presumed to be not quite right.

In the democratic state local self-government is the only instrument, with the help of which people's trust to the authority is established. Guaranties of this must be the legal mechanisms that lead to publicity in all the elements of local government, including citizens' participation in the formation of local authorities (Mikheev D.S., Mikheeva T.N., Mokoseeva M.A., 2015).

The considered experience of the European states proves that the most important elements of this principle are impolitic local government, the creation of conditions for the participation of all the categories of local population in the

formation of local authority, transparency of election of authority in municipalities. These ideas may be also realized in Russia taking into account the number of local peculiarities.

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