

## REAUTHORIZATION INSTITUTION: “THE AUDACITY OF HOPE” OR THE END OF THE RUSSIAN LOCAL SELF-GOVERNMENT ILLUSIONS

Sergey Gennadevich Solovev\* and Dmitriy Borisovich Abushenko\*\*

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**Abstract:** The article investigates the conceptual, theoretical and practical aspects of the legal institution of reauthorization between the local self-government authorities and public authorities of constituent entities (regions) of the Russian Federation.

In the paper, the preconditions for introduction, the content and prospects expertise of this legal institution have been studied. From the position of targeting theory, the study sets out the basic purpose for which the local government has been included in the mechanism of the state apparatus of the Russian Federation, offering the author’s vision of the hierarchy of those goals. Taking into account the hierarchy of goals of local self-government, an attempt was made to assess the prospects for improving the mechanism of reauthorization between the local self-government and public authorities of regions of the Russian Federation, as well as to formulate a probabilistic forecast of the results of the introduction of the analyzed legal institution in the present system of local self-government.

**Keywords:** Local self-government, local self-government goals, reauthorization institution between state and local self-government authorities.

If we do not change the direction where we are moving, we are at risk to get to a wrong destination.

*Conceptual aphorism*

### INTRODUCTION

The Russian local self-government system in the historical retrospect of the past 30 years has been experiencing a steady systemic crisis. The attempts to reform it, made periodically at the federal level so far, did not achieve their goals. Therefore, starting from the views of Mendeleev, “... science begins where a measuring starts” (Mendeleev 1952), and making comparative measurements of the condition of not abstract municipal indicators that have (in accordance with the latest developments by Stanford University scientists) a fairly large index of confusion (Carey 2015) (the independence of local self-government, the level of municipal democracy, the independence of local authorities, rooting local self-government, corporatist principles, the development of active autonomy of an individual, etc.), but of the actual criteria of the condition of municipal infrastructure (the state of communications and roads in municipalities, landscaping yards, the condition of the housing, lighting and landscaping, etc.), it becomes obvious that local issues

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\* South Ural State University, 76, Lenin prospekt, Chelyabinsk, Russia, 454080, Chairman of the Public Chamber of Miass city district, Member of the Expert Council of the Committee on the Federal Structure and Local Government of the State Duma of the Russian Federation

\*\* South Ural State University, 76, Lenin prospekt, Chelyabinsk, Russia, 454080

were much more efficiently solved in the Soviet era, when the basis for the current, extremely worn out, municipal infrastructure was created. In this regard, the recent history of local self-government, unfortunately, should be read as a history of the disease, which so far contains a report on unresolved issues and (which is very important for the municipal-legal science) keys to understanding their causes.

Meantime, undoubtedly, a principally new stage in reforming the Russian local self-government is the municipality-related legal innovations, brought by the Federal Act dated May 27, 2014 No. 136-FZ “On Amendments to Article 26.3 of the Federal Act “On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Authorities of Constituent Entities of the Russian Federation” and the Federal Act “On General Principles of Local Self-Government Organization in the Russian Federation”, which attempted to reform the local government on a conceptually different basis. The core of the Act, as indicated by many practitioners of municipal structuring, is the legal institution of reauthorization between local self-government and state authorities of the constituent entities of the Russian Federation (Babun 2015).

## METHODOLOGY

Introduction to the municipal law of this legal institution, by the way, already having some experience of partial regulatory fixing in the Act of the USSR “On General Principles of Local Self-Government and Local Economy in the USSR” dated April 9, 1990 (Vasilyev 2015), and being a 180 degrees turn compared to the original ideology of the reforms of the early two 2000s, caused a mixed reaction of the municipal community. It is necessary to point out the fact that a significant proportion of prominent theorists and practitioners of municipal self-government (Babun 2015; Shugrina 2015; Byalkina 2014; Kostyukov 2014; Peshin 2015; Yezhukova 2015; Markvart 2014) treated fairly critically the introduced institution of reauthorization between local self-government and state regional authorities.

Analyzing these criticisms against the legal institution in question, we should take into account the fact that any scientist in his/her judgment sets out a subjective opinion about objective processes. It is important to remember that to evaluate any decision of public authorities in the sphere of local self-government is possible only within a certain subjectively accepted concept of its structure, primarily involving the definition of local self-government institution goals.

Only then can one develop strategies, programs, ways and means to achieve the goals and to assess certain decisions of legislative bodies. Any of their decisions is not true or false *a priori*, a reasoned assessment of what is happening can only be given from the perspective of the concept of building local self-government shared by some or other scientist.

Therefore, to assess the prospects of the introduction into the legislation of the Russian Federation of the said legal institution is possible only with a clear definition of the hierarchy of goals in order to achieve which, the public institution of local self-government was included in the mechanism of the state structure of the Russian Federation in 1990s. The correlation of these goals and the results achieved, taking into account the mistakes will help formulate a probabilistic forecast of the results of the introduction of the assessed legal institution into the present system of local self-government, and also give a reasoned answer to the question as to whether the said legal structure is either "the audacity of hope" in terms of Obama (Obama 2006), or the end of the Russian local self-government illusions.

## RESULTS

The public institution of local self-government operates as a part of state structure, where, in addition to state management processes, self-government processes do flow. The public nature of local self-government creates some illusion of spontaneity of processes occurring in it; however, it is only an illusion. The system of local self-government solves serious state tasks, and to provide local prosperity it is appropriate to clearly understand the concept of local self-government (a model, a perfect shape), on the implementation of which it is necessary to work. The identification of this concept in the first place involves the integration of the system or the set of goals of local self-government introduction into the mechanism of state administration of the Russian Federation.

Based on the fact that many of the ideals of life in our society are implemented through laws (despite that legislators often do not clearly define the purpose and concept to adopt federal acts thereupon, and the authors of theoretical works in municipal law and government often avoid clear definition of the goals of local self-government), it is worth trying to identify the vector of goals to achieve which the public institution of local self-government is fixed in the Russian legislation.

1. ***Local self-government – self-goal:*** Such targeting of local self-government is seen in the works of the formal-legal approach followers, arguing the need to introduce the local self-government institution in the state structure of the Russian Federation as the said institution is enshrined in the European Charter of Local Self-Government, adopted on October 15, 1985 and ratified by the Russian Federation on April 11, 1998. If we follow the line of reasoning of the said targeting, local self-government should be present in the Russian system of government, no matter whether it is useful, useless or even harmful.
2. ***Local self-government – a means to solve local issues:*** In accordance with Part 1 of Article 130 of the Constitution of the Russian Federation, the goals of local self-government include independent settlement of local

issues. A similar target is also set out in Part 2 of Article 1 of the Federal Act dated October 6, 2003 No. 131-FZ “On General Principles of Local Self-Government in the Russian Federation”, postulating in a rather florid form the argument that local self-government in the Russian Federation is a form of exercising of power by the people, ensuring settlement of local issues by the population.

3. ***Local self-government – a means to bring authorities closer to people:*** Setting this goal before the institution of local government, according to Putin is due to the fact that “... that level of government is not called state in the legal sense of the word, but the meaning, of course, refers to one of the most important state levels of government, because it works directly with people in everyday, in hourly mode” (Records of the Council for Development of Local Self-Government under the President of the RF of January 21, 2013).
4. ***Local self-government – a means to self-organize local population and separate it from the state apparatus:*** Setting such a goal against the present Russian system of local self-government, solving quite serious issues of considerable importance for the state, is rather controversial. Obvious is the fact that even if the role of municipalities in addressing local issues increases, the presence of the state, represented by its authorities, would still be very noticeable, as the sharpness of local problems is directly perceived by a significant portion of the country’s citizens. In this regard, the state, having among the goals the creation of conditions for dignified life and free development of an individual (Part 1, Article 7 of the Constitution) cannot step back from the settlement of any social issues, objectively being part of the national affairs within a municipality.  
In the world, addressing issues of local importance is directly or indirectly aimed at the exercising of human rights and freedoms guaranteed by the state in accordance with the Constitution, and implemented in accordance with state standards (Cohen & Peterson 1999; Cheema & Rondinelli 2007; Falleti, 2010).
5. ***Local self-government – a means to break the uniform system of state government:*** The probability of setting such a goal is caused by the fact that any particular process can be embedded in more global processes. It is clear that the achievement of absolute independence and autonomy of all Russian municipalities, in fact (like the “parade of sovereignties of the RF regions” which once occurred in the Russian history) means the collapse of the Russian Federation government system as a single and coherent state structure.

It is hard to deny that such a goal of the process of local self-government development in the Russian Federation may well fit into the plans of its geopolitical

rivals, trying to instill in Russia deadlock directions and models of social processes, and promote them through the insistent recommendations on the implementation of the relevant international legal norms, the provisions of which they have the choice not to perform (Abushenko, et. al., 2015).

Probably, setting the task to identify in detail the system of targeting and the vector of goals with respect to the Russian local self-government, there is no doubt that many more goals may be specified (Solovyev 2015). However, in our understanding, they will be derived from the above main goals. With regard to the topic of this research, it is important that to positively or negatively evaluate the introduction into the municipal law of the institute of reauthorization between local authorities and state authorities of the Russian Federation one can only start from the subjectively accepted goals, which, according to the researchers, the system of local self-government is to achieve.

At the same time, it is important to take into account that not a single goal may be set for the institution of local self-government; there may be a few. They can be one-way or mutually exclusive. Meantime, in order to ensure the clarity of scientific knowledge, the hierarchy of goals should be identified in the list of one-way goals, the core goal should be highlighted, and the sequence of secondary goals should be provided.

For example, if the main goal of the Russian local self-government is identified as *dealing with issues of local importance*, the legal institution of reauthorization between local authorities and regional authorities of the Russian Federation rather well fits into the self-government system, created to achieve this goal. If, however, the main goal of the Russian local government is identified as *self-organization of the local population and its separation from the state apparatus*, it is obvious that the legal institution of reauthorization between local authorities and regional authorities of the Russian Federation does not fit into the self-government system, working to achieve this goal.

Based on the above, to avoid useless (and probably endless) disputes concerning the prospects of the legal institution of reauthorization between local self-government and regional authorities of the Russian Federation, as well as disputes concerning the projected outcome of its introduction, it is appropriate to identify the core goal of the present Russian system of local self-government and to build the hierarchy of goals, which may change over time. Meantime, as we understand it, today the core goal of the Russian local self-government should be considered *dealing with issues of local importance*. The second goal in the hierarchy should be identified as *bringing authorities closer to people*, and the third – *self-organization of the local population and its separation from the state apparatus*.

Based on the designated system of targeting in relation to the Russian system of local self-government, we can go on to the definition of legal problems in the

existing legal institution of reauthorization between local self-government and regional authorities of the Russian Federation.

## DISCUSSION

As mentioned above, the idea of reauthorization between local self-government authorities and state authorities has already found its provision in the legislation (Vasilyev 2015). In the context of the study, it should be noted that the present legal institution of reauthorization between local authorities and state authorities of the Russian Federation is a kind of interpretation of the above idea.

In our understanding, if we approach the analyzed legal institution without chicanery and sophisticated logic, it is appropriate to positively assess the main goal of the present model of reauthorization between municipalities and state, which ideally implies assignment of dealing with issues which cannot be settled by municipalities to regions of the Russian Federation. However, it should be pointed out that this model of reauthorization between municipalities and state is still far from perfection. Therefore, in conclusion, this study seems reasonable to put before the respective legal institution a series of theoretical and practical questions defining in a similar (somewhat non-traditional) form possible directions to improve it.

First, Article 1 of the Federal Act dated May 27, 2014 No. 136-FZ states reauthorization, but not redistribution of competences between local authorities and regional authorities of the Russian Federation. In this case, considering that a body's competence comprises its powers and issues of governance, within the proposed model in the course of reauthorization (the aggregate of rights/liabilities) issues of governance of relevant authorities are not redistributed. It is debatable from the point of view of both legal theory and municipal practices. According to legal theory, it is correct to fix the model of redistribution of competences between local authorities and regional authorities of the Russian Federation.

Second, the legal institution of reauthorization between the municipal and state levels of government involves the mechanisms of withdrawal of powers from local authorities, entering into serious conflict with the constitutional concept of local self-government autonomy. This institution is a potential threat of infringement of rights of municipalities to internal territorial and self-determination of the structure of local self-government.

Third, the fact is questioned that the existing scheme of reauthorization between local authorities and regional authorities of the Russian Federation does not involve proposals of any relevant municipality in making decisions on reauthorization (in fact, on actual seizure of powers).

Fourth, the absence in the existing scheme of reauthorization between local authorities and regional authorities of the Russian Federation of the liability to

establish via a regulation of a regional Russian authority a fact of inability or apparent infeasibility of exercising of a respective power by a municipality.

Fifth, the potential for permanent changes in legislation and periodic reauthorization between municipal and state levels of government creates a threat to the stability of legal regulation and the system of public authorities.

Sixth, the introduction into the system of municipal law of the legal institution of reauthorization between municipal and state levels of government causes serious questions about the possibility to consider the regional state authorities of Russia, endowed (albeit for a specified period) with the right to deal with issues of local importance as the elements of the present Russian system of local self-government.

Seventh, it is necessary to acknowledge the still unsatisfactory state of the related federal legislation called to determine the powers of local self-government in respective fields (the rights and liabilities of municipalities are formulated in general terms, unclear and somewhat vague; the term *powers* is replaced by *issues of local importance*). In this regard, the question arises whether the redistribution of ambiguously regulated powers causes confusion in determining the competency status of public authorities of different levels, if not breaks the consistency of their actions.

Eighth, the introduction into the system of municipal law of the legal institution of reauthorization between municipal and state levels of government involves the elaboration of the legal status of local authorities exercising redistributed state powers under double subordination.

Ninth, the Federal Act of May 27, 2014 No. 136-FZ did not fix the liability of regional state authorities of the Russian Federation to finance the exercising of redistributed powers, which inevitably raises questions about proper funding of redistributed powers.

Tenth, in circumstances where local authorities are not fully financed to exercise their powers, local self-governments are continuously tempted to reject their powers, as much as possible by assigning them onto the upper level.

Eleventh, today there is some uncertainty in matters related to the methodology of estimation of costs on providing municipal services. However, the authorities should have the criteria to determine the amount of financial resources necessary to municipal budgets for the execution of particular powers. Obviously, before reauthorization, both state authorities and local self-governments need to objectively assess the costs of the full exercising of the redistributed powers.

Twelfth, the new model of distribution of competences in local self-government does not eliminate the existing problem of lack of funds, adding uncertainty in connection with reauthorization. This creates a risk of the municipalities to get



involved into a long process of restructuring the system to administer municipalities, during which the issues of local importance will not be able to be effectively dealt with.

Thirteenth, it is disputable whether the laws of regions of the Russian Federation can reauthorize local self-governments as provided for by the related federal legislation, or this procedure applies only to municipal powers listed in the Federal Act of October 6, 2003 No. 131-FZ.

Fourteenth, the practice of municipal structuring will inevitably put the question whether Part 1.2 of Article 17 of the Federal Act of October 6, 2003 No. 131-FZ permits the possibility of actual assignment to the regional level of all the powers of local self-governments allowed to be reauthorized which make up the essence of local self-government. In this case, local self-governments of such municipalities may become *mailboxes* to deliver letters, complaints and suggestions to regional state authorities of the Russian Federation.

Fifteenth, the literal interpretation of the provisions of Part 1.2 of Article 17 of the Federal Act of October 6, 2003 No. 131-FZ allows concluding on the admissibility of reauthorization between municipal and state levels only, calling into question the possibility of reauthorization between various types and levels of municipalities.

## CONCLUSION

Summarizing the above, it must be concluded that the existing in Russian law institution of reauthorization between local authorities and regional authorities of the Russian Federation, despite its objective progressivity to improve the system of the state structure management, still needs certain legislative improvements. In addition to the areas already identified in this paper, the interaction of local and self-government and regional authorities of the Russian Federation in connection with reauthorization while solving local issues may take contractual forms. It needs enhancement of some technical and legal tools, a clearer definition of the status and opportunities of the use of appropriate forms of legal regulation in the legislation.

This aspect of the analyzed problem has not been considered in the framework of the above research. However, this direction of scientific research while solving the considered problem seems quite promising. In this regard, the author predicts a further intensification of the relevant scientific research.

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