

Local Self-Governance and State Power in the Russian Federation: In the Search for a Way Out of the Institutional Trap

Mikhail Yurievich Martynov*

Doctor of Political Science, Professor of the Department of Political Science, Surgut State University, Russia

Abstract: The subject of the study is the causes of the contradiction that have arisen in the legal and political field of modern Russia, related to the status of the institution of local self-government. On the one hand, local self-government, in fact, acts as a lower level of public administration, both in political practice and in mass consciousness. But legally, its bodies are not part of the system of state power. The author explains this situation by the institutional trap into which the state power has fallen.

The author sees the reasons for the emergence of this collision between the needs of political practice and legislative requirements in the coincidence of circumstances caused by the struggle of actors during the political confrontation between the legislative and executive powers in October 1993. The lack of socio-economic support, necessary for the full functioning of the institution, made it inevitable that in the future that institution would turn into a "lower floor" of the system of state administration, with the simultaneous camouflaging municipal bodies as a non-governmental organization.

It is shown that throughout the entire subsequent history of local self-government existence attempts were made to resolve this contradiction. The latest attempt was made in the latest version of the Constitution of the Russian Federation by including state and local self-government bodies into the system of unified public power.

It is noted that the functioning of nominally self-governing, but basically - state bodies at the local level has a number of negative consequences. Organizational and legal ways out of the "institutional trap" are suggested.

Keywords: Local self-government, public authority, municipal law, political history of Russia, Constitution of the Russian Federation, municipal power, state power.

INTRODUCTION

The problem of interrelations between state authorities and local self-government has always been one of the most debated.

In the 18th-19th centuries, the so-called "free arable land theory", which was based on the concept of natural law, appeared. T. Jefferson, J. Locke, A. de Tocqueville, J. Mill, J.-J. Rousseau pioneered it. This approach consists in justifying the necessity to limit the state's interference in the affairs of the community, which historically preceded the state. According to A. Tocqueville, "community institutions play the same role for the establishment of independence as elementary school plays for science; they open the way to freedom for the people and teach them to use this freedom, to enjoy its peaceful character" (Tocqueville 1992: 65). The theory was finalized in the works of the Belgian scientist Touré. The ideas of "free arable land theory" later became part of the Anglo-Saxon model of local self-government.

At the end of the XIX century, an opposite concept of local self-government, called the "state" theory, appears. German scientists of the XIX century Lorenz

Stein and Rudolf Gneist are considered to be the founders of this theory. The essence of this theory is that self-government is necessary to divide responsibilities for the management of public affairs between the central government and local authorities. The "State" theory has become the basis of the modern continental model of local self-government.

In pre-revolutionary Russia, the ideologists of the "state" school were A.D. Gradovsky, B.N. Chicherin, V.P. Bezobrazov, I.D. Belyaev, A.D. Korkunov, N.I. Lazarevsky and others. According to these authors, self-governance is the imposing of the tasks of public administration at the local level on the society to solve. They were opposed by the supporters of the "free arable land theory", among whom, first of all, are such scientists as A.I. Vasilchikov and V.N. Leshkov.

Before the revolution in the late 19th - early 20th centuries in Russia there was little experience in practical organization of local self-government in the form of the so-called zemstvos, acting locally alongside the state authorities.

However, after the revolution, local self-government was liquidated and replaced by the system of Soviets, whose bodies were part of the system of state administration. Therefore, in the Soviet period, political and legal science was limited to the study of local self-government in foreign countries. Here we should, first of all, mention G.V. Barabashev (Barbashov 1971).

*Address correspondence to this author at the Doctor of Political Science, Professor of the Department of Political Science, Surgut State University, Russia; E-mail: martinov.mu@gmail.com

Interest in local self-government in the Russian political and legal science is revived in the 1990s. During this period, great expectations from the development of this institution prevailed. Local self-governance, due to its independence from the state, was assumed to be the most important tool for promoting democratic reforms in the country (Arato 1995; Borodkin 1997; Offerdahl 1998).

However, later authors began to point out the inability of municipal bodies to fully address the issues of local significance (Kruzhev 2004: 57). Researchers increasingly observed the growing dependence of local self-government on the state and concluded that "in the process of regime transformations, local self-government, having failed to become a widely-demanded democratic institution, once again turned into a subordinate lower floor of the state power system" (Gelman 2007: 8).

The discussion of the relationship between local self-government and the state in modern Russian political and legal science has become more acute after the introduction of a new article 132 in the Constitution in 2020, according to which local self-government together with the state bodies constitute a single system of public power. This provision was included in the draft of the new law on the general principles of organization of local self-government. The draft is currently under consideration in the Parliament and is expected to be adopted in 2024.

The problem is that at the same time the constitution retains Article 12 which says that local self-government bodies are not part of the system of state power. Since the concept of "public power" has not received a legal interpretation, many experts believe that the use of the term "public power" allows veiledly bypassing Article 12 of the Constitution, and still, in fact, including local self-government in the system of public authorities. This means, in their opinion, "governmentalization" of local self-government.

Such a viewpoint may look too radical, but the fact is that the state authorities in Russia really have difficulties in determining the status of local self-government and, trying to solve this problem, every time they find themselves in an institutional trap. Let us consider what it consists in.

To date, local self-government, in fact, performs local public administration. This is required by the objective necessity of the "vertical" of power

functioning, where local self-government is its lower link. Moreover, in the mass consciousness of the majority of citizens local self-government bodies are perceived as public authorities, which is confirmed by public opinion polls.

As is known, the inclusion of local self-government as a lower level of state power is quite common, the so-called "continental" model of local self-government. An example is the classical structure of local self-government in France. Here communes (communities), departments (municipal districts) along with regions and the central government are included in the system of public authorities.

However, in today's Russian Federation, it is impossible to legally recognize that local self-government bodies are part of the system of state administration bodies because of the notorious Article 12 of the Constitution, which establishes a direct prohibition on this. Moreover, this article is included into the section "Fundamentals of the Constitutional System", and its amendment presents great legal difficulties.

SUBJECT AND METHOD OF RESEARCH

The aim of our study is to try to explain the reasons for the formation of this institutional trap and to find a possible way out of it. In a broader sense, we will try to show the relationship between political practice and legal theory: how the adoption of a legislative norm, having far-reaching consequences, could have been dictated by an accidental political situation, and how then, on the contrary, it is already politics that becomes the captive of this legal norm.

The research method was the analysis of the concept of local self-government in scientific and public discourse since the 1990s.

RESEARCH RESULTS

The requirement to separate local self-government bodies from state authorities appeared in the article of the Constitution of the Russian Federation adopted in 1993. However, the analysis of the discourse has shown a surprising thing: before 1993 this requirement was neither in the scientific, nor in the public discourse, nor in the legislative practice.

For the first time, the principle of local self-government, which was to replace the Soviet local authorities, was formulated as early as in the 1990 Law

"On the General Principles of Local Self-Government and Local Economy in the USSR". However, as a contemporary historian of Russian law writes, "the authors of the concept of the Law in no way meant to separate local self-government from state power... arguing that one cannot contrast local self-government and the state...". Self-government develops not outside, but within the state forms and is connected with the development of power" (Vasiliev 2015: 13).

The Law "On Amendments and Additions to the Constitution of the RSFSR in connection with the reform of local self-government" adopted in May 1991 by the Congress of People's Deputies of the RSFSR not only preserved but even strengthened the role of state governance at the local level.

In the scientific environment, the possibility of separating local self-government bodies from state authorities was also not formulated in any form at that time. G.V. Barabashev, the most famous researcher and consistent supporter of local self-government of that period, believed that the separation of municipal authorities from state authorities was nothing more than a myth. In his opinion, local self-government should have certainly been included into the system of state authorities (Barabashev 1991).

Eventually, up to 1993, the requirement to separate local self-government from the structure of state bodies had not appeared in any party program.

The idea of separating local self-government from the state administration for the first time openly appeared in the political space only in the summer of 1993 in the presidential draft constitution.

However, the majority of participants of the Constitutional Conference held in the summer of 1993 criticized this suggestion, pointing to the absence of the necessary objective prerequisites for its implementation. One of the experts expressed general bewilderment: "I think that reality is not taken into account. And the reality is very definite: we don't have any local communities. We don't have them for the simple reason that we don't have citizens who make up such a community. That is, we will have a legal term, but behind it the reality is completely different" (Constitutional Meeting 1995: 257).

A well-known jurist V.L. Sheinis also stated at the session of the Constitutional Conference: "We had been discussing this problem for a long time in the Institute of State and Law and came to the conviction

that it is dangerous ... we believe that it is inappropriate, this entry, in this article in general" (Constitutional Meeting 1995: 1). (Constitutional Meeting 1995: 226).

The experts could be understood, because there were no objective conditions for the formation of local self-government on a radical model, separating its bodies from state power, in Russia. There was no developed bourgeois "middle class" capable of becoming the social and economic basis of local self-government. Local communities linked by social networks had not developed. There was no tax base that could ensure the independence of local self-government.

Nevertheless, the appearance in the Constitution of an article on the independence of local self-government bodies from state bodies was by no means accidental. Behind this decision were the interests of a new political force that had emerged in the form of local administration officials and the leadership of the executive committees of the local Soviet authorities that continued to exist.

The main incentive that activated the interest of local officials in the transition to local self-governance was dissatisfaction with their role in the conditions of privatization. It was not privatization itself that caused dissatisfaction, but its procedure. According to the standard regulations on this procedure, the committees for the management of state property of the constituent entities of the Federation could carry out this procedure without coordination with local authorities.

The organizations that took the task of expressing the interests of local administration officials upon themselves were the associations of cities that emerged in the early 1990s. A particularly significant role was played by the Union of Russian Cities (URC), which included 91 Russian cities with a population of more than 53 million people.

However, up until mid-1993, the leadership of the associations of cities had not put forward a complete transition to the principle of autonomy of local self-government bodies as a political goal.

The situation changed in the spring-summer of 1993, when the political confrontation between the Supreme Soviet and the presidential power escalated. In the conflict situation of spring-autumn 1993 Local Soviet leaders were ready to support the side that would promise to turn local authorities into independent

political and economic entities. There was a serious force behind the local administrations; there were more than seven hundred thousand officials in the local authorities alone.

An analysis of the 1993 political process shows that by the fall, the political alliance between the supreme executive branch and provincial elites had finally taken shape and played an important role in the victory of Boris Yeltsin's team, securing unconditional local support during the October 1993 political crisis.

The political gain of the municipal bureaucracy from the alliance with the presidential government in October 1993 was consolidated by the inclusion of an article on local self-government in the constitution. This ensured a smooth transition of administrative Soviet appointees from the vertical of executive power to the chairmanship of municipal authorities.

The old Soviet "vertical" of governance was simply cut into municipal components, but its bureaucratic nature did not disappear. Moreover, the independence from state bodies enshrined in the Constitution took local officials out of control "from above," while there could be no control "from below" on the part of the population due to the virtual absence of local communities (Martynov 2023).

This simultaneously blocked the possibility of developing truly democratic institutions of local self-government "from below", on the other hand, it had a destructive effect on the system of public administration.

Thus, the establishment of local self-government in Russia in the first half of the 1990s according to the model separating its bodies from the system of state administration did not have objective social prerequisites for it and was the result of a confluence of political circumstances caused by the struggle of political forces in the fall of 1993.

After B. Yeltsin's team, relying, among other things, on local officials, succeeded in resolving the issue of power in its favour, the need for this support disappeared. The existence of this model of local self-government was no longer necessary, although the article of the Constitution remained. The procedure of scaling the institution of local self-government down and waiving of municipal autonomy began.

While the decade from 1993 to 2003 was a period of maximum independence of local self-government, in

the early 2000s the administrative reforms turned towards centralization of the country's governance and formation of a "vertical of power".

This was reflected in the new Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation" adopted in 2003. It significantly limited the possibilities of regulating the issues of local self-government organization by the subjects of the Russian Federation. These powers were transferred to the federal government. In addition, under certain conditions, the President and regional heads were granted the right to dissolve the representative body of local self-government and dismiss the head of the municipality.

A number of researchers associate this process with the formation of the regime of "electoral authoritarianism" in the Russian Federation, which is reproduced at the local level. As a result, according to K. Ross, the "electoral vertical" stretched from regions to municipalities (Ross 2008: 111).

In 2015, the direct election of mayors by the people was cancelled and the position of city manager was introduced. The city manager is appointed to work by a competitive commission, in which the governor's representatives have a casting vote. As noted by researchers, the practice of replacing the direct election of mayors by the procedure of their competitive selection increases the dependence of local self-government on state power, because "gives the governor the maximum possible leverage to influence the recruitment of heads of municipalities" (Panov 2018: 42).

In addition, local self-government is obliged to execute state powers. If earlier local authorities could participate in determining the scope of these powers, now it is determined by the state authority.

Thus, Russia has a hybrid model of local self-government. From the legal point of view, judging by the Constitution, it looks like an Anglo-Saxon model, since it implies the separation of local self-government from the state system, but in fact, in practice, it is a continental model, which implies their subordinate role in relation to the state.

This tendency of subordination is reinforced by the financial dependence of local self-government on state subsidies and grants. This happened due to the fact that, in accordance with the new budgetary rules, the share of revenues of local budgets relative to other

levels of the budgetary system fell to the lowest level, putting the municipal government in dependence on the state administration (Turovsky 2015: 36).

In an attempt to get out of the institutional trap and bring the actual dependence of local self-government on the state power in accordance with the norms of law, an attempt was made to use the concept of "public power" in the latest edition of the Constitution of 2020. It was used as a generic concept denoting a more general type of power, including local self-government bodies and state authorities. This was the interpretation of public power given by the Constitutional Court of the Russian Federation in a number of its opinions.

In the classical interpretation, originating in the works of M. Weber, the concept of power, understood as "the ability to subordinate the behaviour of another to one's own will" (Weber 1978: 53), can describe a wide range of relationships, including, for example, interpersonal ones. The addition of the adjective "public" to this concept, although it gives it a little more certainty turns out to be not so essential, since the term "public" in the broad sense carries only the meaning of "public", "not interpersonal". The only thing we can now say about power is that it is exercised within the framework of human collectives, communities. In this understanding, "public power" refers to extremely broad concepts, according to Hegel's definition - "bloodless abstractions" that do not carry a significant semantic load.

The decisions of the Constitutional Court, using the concept in this broad sense, indicating the social nature of public power, only approved the possibility of forming state government bodies in the regions along with local self-government, but in no way established any connection, unity, hierarchy between them, i.e. did not set a certain "system of public power".

Thus, the use, including in normative-legal documents, of the term "public power" due to its ontological meaninglessness did not allow to use it as a substantive basis of a generic concept to describe state and non-state types of power as subsystems of public power. It simply does not provide any attributive features for this purpose.

Manipulations with concepts do not help in any way to get out of the institutional trap, and palliative solutions turn out to have a number of negative consequences.

The growing influence of state on the activities of local self-government bodies has politically disoriented

citizens. According to the observations of sociologists, they have become less aware of the functions of local government and their opportunities to participate in the affairs of the local community (Martynov 2013). Researchers have noted the low level of citizens' trust in local self-government (Petukhov 2020: 27-34).

But it is not only the actual blocking of the development of truly public institutions, but also the fact that an inefficient model of local affairs management is formed. Thus, most experts are extremely negative about the novelty based on the constitutional amendment in the draft of the new law of the Russian Federation on the general principles of organization of local government, which limits the organization of local government to the local level.

Experts account the limitation of local self-government organization to the local level for the desire to save costs on the maintenance of the municipal apparatus and call this decision erroneous. However, in reality, the adoption of this novelty is not a mistake, but a logical consequence of the actual existence of state administration at the local level under the mask of local self-government. The state resources are really limited, and one can hardly count on the extension of the "vertical" of power down to each small settlement.

In their Opinion on the draft law, experts of the Public Chamber of the Russian Federation note that if it is to be adopted, the population of small settlements will be deprived of the right to establish local self-government, and their socio-economic situation will worsen. No one can say for sure today how the management of local affairs is planned to be organized in the settlements.

CONCLUSIONS

The constitutionally enshrined model, while satisfying the interests of the local Soviet elite in the first half of the 1990s, simultaneously created an "institutional trap" for the following years and predetermined the ineffective attempts of the state authorities to find a way out of it through palliative solutions. Such half measures were the adoption in 2003 of a new law on general principles of organization of local self-government, which strengthened the role of the state in the affairs of local communities, followed by the establishment of financial dependence of local self-government on state bodies, the spread in the 2010s of the institute of city manager, etc. By the same logic, a new law on general principles of organization of local

self-government was adopted. By the same logic, an amendment to the new version of the Constitution was adopted declaring local self-government as a subset of public authority, along with state bodies.

What way out of the institutional trap can be suggested? The optimal organization of local governance would be the implementation of public administration in the form of prefectures at the district level and the organization of local self-government in the settlements themselves, actualizing the essentially limitless resources of citizens' self-activity. For this purpose, it is necessary to change the status of government bodies, which are called local self-government today, to state local government bodies. At the same time, it is necessary to give an opportunity to develop real self-government of citizens "from below", for example, from territorial public self-government bodies.

This means the parallel existence of two types of power at the local level - state and public. By the way, the Russian zemstvo in the 19th century was such a parallel to the state authority in the field, representing public organizations specifically, the successful experience of which is so often referred to nowadays.

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