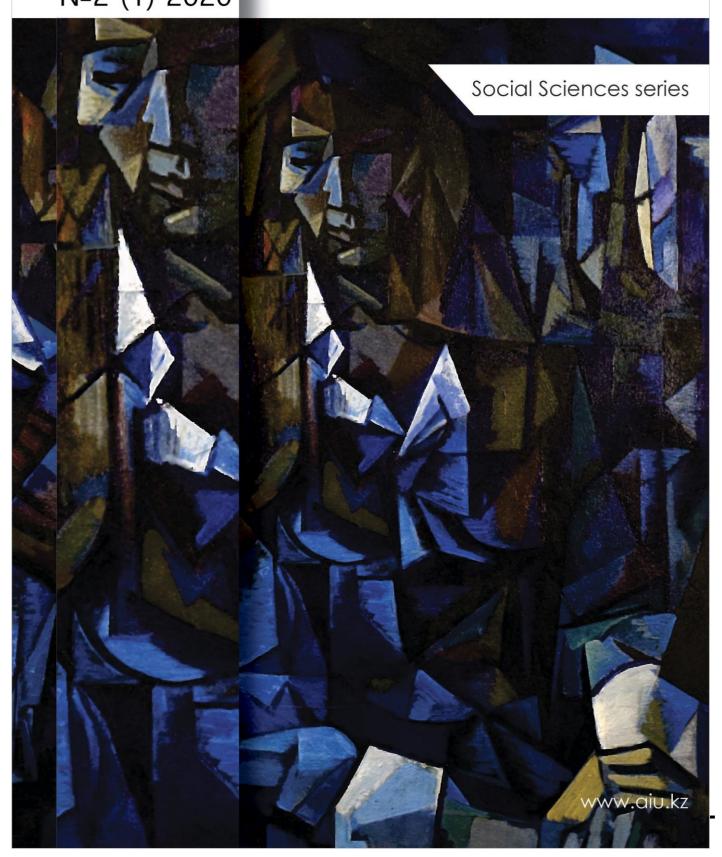


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FEATURES OF DELEGATION OF AUTHORITY BETWEEN DIFFERENT LEVELS OF POWER

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Annotation. The article is devoted to the issues of vesting local governments with separate state powers of the Russian Federation, as well as vesting local governments with separate government powers of the constituent entities of the Russian Federation. It is noted that, speaking about the form of vesting local governments with separate state powers, one cannot ignore the requirements presented by the legislator to the federal law and the law of the subject of the Russian Federation, through which this vesting is carried out.

Key words: state power, public authority, local self-government, law, municipal authority, state powers, competence of subjects, rights of citizens, state intervention, power.

Introduction

The general theory of state and law understands state power as the essence of the state, in turn, the essence of state power can be considered those legally significant actions that are carried out in the prescribed manner by state bodies within their competence. This provision, subject to certain terminological amendments, can be used to disclose the essence of municipal authority; it consists of legally significant actions committed by local authorities in the prescribed manner within their competence.

Taking into account the complexity of the system of public authority in Russia as a federal state (two levels of state power and independent, not reducible to state, local government), we take a special view of the problem of the features of delegation of authority between different levels of government. For its analysis, we highlight the main problematic aspects: vesting local authorities with separate state powers of the Russian Federation; vesting local governments with separate state powers of the constituent entities of the Russian Federation.

The constitutionally fixed (part 2 of article 132 of the Constitution of Russia) the possibility of vesting local governments with separate state powers of the Russian Federation is specified in Chapter 4 of the Law "On General Principles of Local Government Organization" dated October 6, 2003 No. 131-FZ, part 2 of Art. 19 of the Law says that the vesting of local governments with separate state powers of the Russian Federation is carried out by federal laws and the laws of the constituent entities of the Russian Federation, while the vesting of local governments with separate government powers by other normative legal acts is not allowed. The law, therefore, is the only possible form of vesting local governments with separate state powers. This rule is confirmed by the decision of the Constitutional Court of Russia of November 30, No. 15-P.

Discussion

M.Yu. Dityatkovsky, examining the legal and technical aspects of the norms that determine the procedure for vesting local governments with separate state powers, discovers a sufficient number of debatable provisions, in particular, the dispositively formulated norm of

Part 2 of Art. 132 of the Constitution of Russia causes ambiguous interpretation and provokes the law enforcement officer to violate the legal form of vesting with state powers, exercising it through, for example, by-laws. Although in the literal interpretation of Part 1 of Art. 132 of the Constitution of Russia should proceed from the fact that the word "may" does not refer to the form of vesting, but to the possibility of vesting as such.

Speaking about the form of vesting with individual state powers, one cannot ignore the requirements of the legislator to the federal law (the law of the subject of the Russian Federation), through which this vesting is carried out. They are listed in Part 6 of Art. 19 of the Law of October 6, 2003. In accordance with part 6.1 of the same article, the law of the subject of the Russian Federation, providing for the vesting of local authorities with state powers of the Russian Federation, transferred for implementation to the state authorities of the subject of the Russian Federation, must contain a number of additional provisions. However, the issue of the right of the constituent entities of the Russian Federation to establish additional requirements to the laws of the constituent entities on the vesting of local governments with separate state powers of the constituent entities of the Russian Federation has not been resolved.

According to M.Yu. Dityatkovsky, this right arises only when it comes to vesting with those powers that, in accordance with the Constitution of Russia, belong to the exclusive competence of the constituent entities of the Russian Federation. In general, this position seems sufficiently convincing.

The empowerment of local governments with separate state powers is a constitutional relationship, which means that it reveals in itself all the elements inherent in this theoretical structure. The object of this legal relationship, as follows from the general meaning of constitutional norms, is the authority of state bodies, as well as the material and financial resources necessary for their implementation. Moreover, the transfer of these funds is a legal obligation of the state body entering into this relationship. In turn, the right of local governments to demand the transfer of these funds corresponds to the obligation to use them for their intended purpose (provided for in paragraph 8 of Article 19 of Federal Law No. 131-FZ). Actually, the transfer of certain powers and their material basis entails the emergence of a constitutionally guaranteed right for the transferring entity to exercise control measures over the exercise of powers and the expenditure (or use) of the transferred material resources. We talked about this type of control earlier.

Local self-government bodies exercise their powers to the extent established by law. In addition to a specific list of issues of local importance, the competence of local governments also includes individual state powers delegated to municipalities in a strictly defined order. However, if there is a mechanism for delegating certain state powers to local authorities, then (and this logically follows from the general principles of public authority activity), the reverse mechanism should also be provided for by law - a mechanism for transferring certain powers of local governments to state bodies. The Law "On General Principles of the Organization of Local Self-Government" provides for the procedure for the temporary exercise by state authorities of certain powers of local authorities (Article 75). As can be seen from the text of this article, the legislator presumes the exclusivity of the application of measures of state intervention in resolving issues of local importance, this norm establishes a closed list of cases in which this intervention is possible:

- 1) if, in connection with a natural disaster, catastrophe, other emergency, the representative body of the municipality and the local administration are absent and (or) cannot be formed;
- 2) if, as a result of decisions, actions (inaction) of local self-government bodies, overdue debts of municipalities arise for the fulfillment of their debt and (or) budgetary obligations, exceeding 30 percent of own revenues of budgets of municipalities in the reporting financial year, and (or) overdue debts of municipalities on the fulfillment of its budgetary obligations,

exceeding 40 percent of budgetary appropriations in the reporting financial year, subject to the fulfillment of budgetary obligations of the federal budget and the budgets of the constituent entities of the Russian Federation with respect to the budgets of these municipalities;

3) if in the exercise of certain transferred state powers due to the provision of subventions to local budgets, local self-government bodies committed improper spending of budget funds or a violation of the Constitution of Russia, the Federal Law, and other regulatory legal acts established by the relevant court.

Conclusion

I must say that article 75 of the Constitution of Russia also provides for a number of mechanisms for protecting the rights of local authorities against abuse of state bodies, among them the limitation of the scope of interference of state bodies, the right to judicial appeal of their actions, limitation of time, the establishment of a list of requirements for regulatory acts introducing these restrictions.

In accordance with Part 2 of Art. 75 in the cases established by clause 1 of part 1 of this article, the decision on the temporary exercise by the executive bodies of state power of a constituent entity of the Russian Federation of the relevant powers of local authorities is made by the highest official of the constituent entity of the Russian Federation on the basis of a decision of the representative body of local self-government or a decision of the legislative (representative) body of the state authorities of the constituent entity of the Russian Federation, adopted by a majority of at least two-thirds of the votes of the established number of deputies.

It seems that this norm, in a sense, is in conflict with the fundamental principles of local self-government. If local self-government is understood as the right of citizens, then the restriction of this subjective right should be carried out in the manner prescribed by the Constitution of Russia, namely: only through the adoption of a federal law (part 3 of article 55 of the Constitution of Russia). It is clear that the establishment by the Law of October 6, 2003 of a simplified procedure for state intervention sets as its goal an early operational solution to the problem. However, it must be assumed that even the presence of an emergency does not justify a violation of basic constitutional principles.

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ОСОБЕННОСТИ ДЕЛЕГИРОВАНИЯ ПОЛНОМОЧИЙ МЕЖДУ РАЗЛИЧНЫМИ УРОВНЯМИ ВЛАСТИ

Аннотация. Статья посвящена вопросам наделения органов самоуправления отдельными государственными полномочиями Российской Федерации, а также наделения органов местного самоуправления отдельными государственными полномочиями субъектов Российской Федерации. Отмечается, что, говоря о форме органов самоуправления отдельными наделения местного государственными полномочиями, нельзя оставить без внимания требования, предъявляемые законодателем к федеральному закону и закону субъекта Российской Федерации, посредством которого и осуществляется это наделение.

Ключевые слова: государственная власть, публичная власть, местное самоуправление, закон, муниципальная власть, государственные полномочия, компетенция субъектов, права граждан, государственное вмешательство, власть.