
Content and Guarantees of Implementation the Right to Local Self-Government in the Russian Federation

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Abstract:

This article covers the issue of the complex autonomous right, i.e. the right to local self-government and guaranty of its implementation. For the purposes of this paper the authors studied various theoretical approaches, legal and regulatory issues, practices of implementing the rights in the Russian Federation. It was founded that the right to local self-government is a complex and interconnected structure with several essential components (legal rights): right of a local community (population) for local self-governance, individual citizens' rights, the members of this community, to participate in realizing self-governance and rights of the local authorities to exercise public power (local self-governance). In the result of this research the authors gave general definition and disclosed the content of the following terms: "citizen's right to self-government", and "citizen's right to participate in realizing self-governance". Constitutional right to self-government is just an integral part, a link in the system of rights and freedoms; due to this, we can consider this right as the unity with other rights. The guaranty of implementation of the right to self-government on the one hand gave better understanding of the problems of legislation concerning self-government and its improvement; on the other hand it helps to evaluate the conditions under which the citizens and municipal authorities carry out their activity. State and municipal guarantees are the part of the entire mechanism of implementation of the citizens' right on self-government. They objectively exist and fulfil an important function protecting the rights of the population for self-government.

Key Words: *Self-governance, citizens' rights, government, principles, Constitution, legislation, guarantees*

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1. Introduction

1.1 Problem Statement

Content and guarantees of implementation of the citizens' rights for local self-government in the Russian Federation is part of the problem of acknowledging and enforcing rights and freedoms of a human and a citizen in current legal systems in democratic states. Self-government becomes real only when the population has an opportunity to arrange their own life on a certain territory independently; when each citizen living on a municipal territory may exercise his or her constitutional right to self-government which is guaranteed by the guarantee system applicable in the State. This research is relevant because there are facts that in the Constitution of the Russian Federation the constitutional right to local self-government is not directly enshrined; there is a lack of general understanding about its content, place and the role in the system of rights and freedoms of a human and a citizen; there is no reasonableness of guarantee system efficiency in terms of implementation of this right.

1.2 Problem's Value

Local self-government as a way of organizing the life of the population on a particular territory is a logic continuation of self-organizing within the State. However, due to separation from the government control and its constitutionalization as an autonomous local authority subsystem, local self-government objectively fulfills a number of functions that predetermine the content of citizens' rights, the other subjects of public power on a municipal level. Considering local self-government as a result of implementation of constitutional principles in the organization of public power, we may speak about the existence of the autonomous complex right – the right to local self-government in the Russian Federation. We base our position on the fact that constitutional right to self-government is a complex right and it includes some other narrowly interpreted rights: the right to be self-governing and the right to participate in realizing self-governance. A guaranty of implementation of the citizens' rights to be self-governing is an essential part of the mechanism of public power on the local level. Studying this aspect of functioning of the local self-government gave better understanding of the problems of legislation concerning self-government and its improvement; on the other hand it helps to evaluate the conditions under which the citizens and municipal authorities carry out their activity. Guarantees create good foundation for proper implementation of the citizens' rights for local self-government in the Russian Federation.

1.3 The Present Status of the Problem

The problems of organization and guarantees for self-government are the subject for numerous studies. Not only legal experts cover these problems in their works but also philosophers, political analysts, sociologists, economists, historians, and experts in economic geography. Self-government as characteristic of the peoples and other social communities independently solving the problems of organization of their own life is the theme of many studies.

The problem of local authority and self-government organization and of municipal law establishment is covered in the works of S.A. Avakyan, G.V. Atamanchuk, G.V. Barabashev, A.A. Bezuglov, N.S. Bondar', A.S. Burmistrov, V.I. Vasiliev, I.V. Vydrin, B.N. Gabritchidze, A.R. Eremin, A.N. Zamotaev, A.N. Kokotov, E.I. Kolyushin, V.V. Kopeitchikov, A.N. Kostyukov, M.A. Krasnov, V.A. Kryazhkov, L.E. Laptev, V.M. Manokhin, I.I. Ovchinnikov, V.I. Novoselov, N.V. Postovoj, Y.I. Skuratov, A.J. Sliva, D.Y. Shapsugov, K.F. Sheremet, E.S. Shugrina, G.N. Chebotarev, V.I. Fadeev and others.

The problem of self-government guarantee was examined in the researches carried out by the following authors: N.S. Bondar', V.I. Vasiliev, E.V. Gritsenko, A.R. Eremin, V.P. Kanischev, N.M. Kolosova, M.N. Kudilinskiy, Y.A. Svirin, V.I. fadeev, A.V. Tchernenko, N.A. Sheveleva, and E.S. Shugrina.

Doctorate thesis by E.S. Shugrina "Guaranteed rights to local self-government" (2008) is a significant contribution to the studies devoted to the self-government implementation.

This issue is also introduced in the works by foreign authors: Ch. Adrian, E. Banfield, R. P. Claude, W. Hart, H. Kaufman, W. Robson, D. Trubek, B. H. Weston, J. Wilson.

Dissertations, monographs, articles and educational literature are devoted to this issue. Nevertheless, it seems that this problem has still not received durable and recognized solution in legal and some other sciences. Today many new theoretical opinions of the scientists and the problems of law enforcement practice should be taken into consideration for improving current Russian legislation on this issue and require further conceptual development and the complex of fundamental studies including comparative legal research.

1.4 Aims and Objectives

The aim of the study is to justify the existence of autonomous right of the citizens to local self-government in the system of rights and freedoms of a human and a citizen in the Russian Federation; to expand the content of guaranty and implementation of the citizens' rights to local self-government. The aim of the study predetermined the following objectives:

Identify the content of the citizens' right to local self-government;

From the position of a complex character of the right to local self-government define the place of this right in the system of constitutional rights and freedoms of a human and a citizen;

Set the conditions for guaranteed implementation of the right to local self-government by the citizens of municipal entities;

Give a comprehensive assessment of State guarantees for implementing the right to local self-government;

Find out distinctive features of municipal guaranteed right to local self-government in the Russian Federation.

2. Methods

Method of dialectical materialism, analysis and synthesis, systematic, sociological, structural and functional, and comparative legal method.

We apply these methods to consider and analyze such concepts as the right to self-government, the right to exercise self-government, the right to participate in exercising self-government, guarantees, legal guarantees, state guarantees of the rights to local self-government, municipal guarantees of the rights to local self-government. These methods are also applied in defining political and legal nature of the studied concepts.

Cognitive methods contribute to the analysis of the complexity of the citizens' right to local self-government; help to identify the elements and characteristics of internal constituents, relations between the elements of the studies subjective right in the system of rights and freedoms. The system of guarantees of the right to local self-government is studied as well as internal unity of the established guarantees providing the implementation of this right.

Method of dialectical materialism is a scientific representation of the most general regular relationship of the development of the existence and consciousness. Its application implies the priority of economical but not political and legal concepts. All the phenomena (local self-government, human and civil rights, guarantees) are studied in their development and dynamics. Method of dialectical materialism is based on the use of the main laws of dialectic: unity and struggle of opposites; transformation of quantity into quality; negation of the negation. Method of analysis and synthesis is based on the division of the whole into parts, and their analysis (constitutional right to local self-government; guarantees of the right to local self-government include state and municipal guarantees). Analysis as the method of scientific thinking brings out the content (structure) of the studied categories, document their essential parts, identify the character of relationship between them. Synthesis contributes to researching a particular phenomenon as a unity of its essential parts. Applying the systematic method, we studied the citizens' right to local self-government and guarantees of implementation the right to local self-government from the point of view of their consistency. In the context of sociological method the rights of the citizens to local self-government and the local

self-government itself are studied as developing dynamic social institutions and the reasons of their development are rooted in the material living conditions of the society. Structural and functional enabled us to consider a number of elements constituting the content (structure) of the complex right of the citizens to local self-government and guaranteed right to local self-government. Among the elements are, for example, laws and regulations establishing state guarantees as an integral complex of interrelated elements. The application of this method enabled us to consider the system of guarantees of implementation the right to local self-government as a part of a common unified environment – state and the law, as well as state policy in the sphere of local self-government.

Functional approach enabled us to find out all the functions of the studied elements (local self-government, rights of the citizens to local self-government, and guaranteed rights to local self-government). comparative legal method revealed similarities and differences in the development of the objects (the state, law, society, local self-government, rights and freedoms of the citizens) which are on the same stage and revealed similarities and differences in the rising development in general.

3. Results and Discussion

The President of the Russian Federation Vladimir Putin in his address to the Federal Assembly of December 12, 2013 articulated the need for municipal and legislative reforms. He stated: “Local authority, which is the closest authority to people, should be organized in such a way that any citizen could reach it figuratively saying ... I am sure that the very important objective is to clarify the principles of organization of local self-government, to develop strong, autonomous, financially independent local-level authority”.

Current reforming of the system of local self-government reflects both insufficient legal and economic resource of the system functioning and a certain level of “maturity” and its readiness and ability for changes. Nevertheless, reforming cannot ignore fundamental provisions of the RF Constitution which has formed the theory and practice of legislative regulations of relationships in the sphere under our study. Actually, self-government is an Anglo-American product. Local self-governing authorities in the UK and the USA are the part of the constitutional mechanism in these two countries. In an Anglo-American model local self-government exists as a certain municipal corporation which is a large (in the USA the size does not matter) city self-governing community having the rights of a legal entity to regulate local or internal problems on particular territory and for participation in the public state government. According to W. Hart, organizational autonomy of municipal authorities underlying the organization of the municipalities is indicative of specific relations with the population: each municipal unit must be headed by the authority directly elected by the population or election meeting serves as a municipal authority. Thus, we may say speak about managerial autonomy of municipal corporations (local law-making, budget and financial independence and many

others). However municipal authorities in these states today cannot be recognized as real local self-government.

The most widespread position in terms of the essence of local self-government in foreign countries is the idea of a combination of municipal authorities with the public authority where a doctrine dominates which denies self-government as the major beginning of political and legislative nature of municipal authorities. The authors H. Kaufman, E. Banfield, J. Wilson show that this situation is applied to a combination of characteristic features of local self-government (independence in solving local problems, election of local governments) and state-level government (government policy in dealing with problems of the national importance under control and through the guidance of a higher administration).

In Russia we have a different approach to enhance the opportunities of the municipalities, population and local self-government authorities. We proceed from the fundamental provision enshrined in the Basic Law about the citizens' rights to local self-government and further development of its legal regulation and guarantees throughout the entire legal system of the Russian Federation.

Constitutional content of norms related to local self-government may be different. For example, I.A. Alebastrova argues: "in the Constitutions of post-socialist countries the following provisions related to local self-government functioning and governance were provided a legal framework: "the role of a local self-government in the political system, the main principles of local authorities' organizations, fundamentals of administrative and territorial division, the system of local self-government authorities, fundamentals of their competencies and internal structure, fundamentals of relations between local self-government authorities and central government bodies, administrative oversight and, finally, guarantees of the local self-government (judicial, material and financial, legislative etc.)".

Russian Federation Constitution defines the problems of the local self-government. However, Chapter 2 establishes the human and civil rights and freedoms but it lacks the norm which would directly establish the right to local self-government. Does it represent disregard of an important for any citizen right to local self-government or the legislator believes that the right results from the entire set of norms which form an institute of local self-government?

Some researches including S.G. Dyrda, believe that recognition of the citizens' right to local self-government is declared in the Article 3 of the Russian Federation Constitution as the base principle of the Russian state structure. In particular, the Constitution of the Russian Federation affirms multinational people the bearer of sovereignty in the Russian Federation; and paragraph 2 of this Article points that people shall exercise its power "directly as well as through state government bodies and local self-government bodies".

The authors consider this and similar problems and correctly observe that in “Russian and foreign literature the rights of a person and local self-government are regarded as separate problems. Nevertheless, the nature of these institutions, the norms of their legal regulation and mechanisms of implementation demonstrate organic interconnection, convergence and complementarity (in terms of combining the principles of individualism and collectivism) between institutional means of democracy development especially in specific social and cultural environment in Russia” (Bondar’, 1998). This methodological problem has additional specific aspect: relations between the institute of local self-government and the citizens’ rights to local self-government.

We have assessed the content of Constitutional norms constituting the institutes of local self-government, human and civil rights and freedoms as a whole and came to conclusion that there exists an autonomous right to exercise local self-government. This conclusion results from the RF Constitution and the same approach supports the legislator. We may resort to some Acts of the Russian Parliament. For example, the State Duma of the Federal Assembly of the Russian Federation adopted regulation as of June 10, 1994 “On implementation of the constitutional rights of the citizens to local self-government in normative legal acts of constituent entities of the Russian Federation”. The name of the documents shows that the existence of the right to local self-government is acknowledged by the State Duma as one of the constitutional rights of the citizens. In this context there is another similar regulation adopted by the State Duma as of July 10, 1996 “On execution of the federal law ‘On the general principles of organization of the local self-government in the Russian Federation’ and on implementation of the constitutional rights of the citizens to independently solve the problems of the local significance”.

Article 3 of the Federal Law as of August 28, 1995 “On the general principles of organization of the local self-government in the Russian Federation” is formulated as “The right of the Russian Federation citizens to exercise local self-government”. In the decision of the Russian Federation Constitutional Court as of January 24, 1997 “On the constitutionality of Udmurt Republic law as of April 17, 1996 “On the structure of public authorities in Udmurt Republic” it is also mentioned that “the constitutional right to exercise local self-government, i.e. the right to independently solve the problems of local significance” belongs to the people. The Constitutional Court also assessed the constitutionality of certain provisions of the Kurskaya oblast Charter (Basic Law) from the position of the rights of the citizens to local self-government.

All the above mentioned documents are based in their arguments on the general constitutional content, the implied right resulting from the text of the RF Constitution 1933. In the Chapter 8 “Local self-government” the criteria of local self-government are given as well as its guarantees; however nothing is said directly about the right of the citizens or people to local self-government. Other parts of the Constitution also describe local self-government and its bodies but again the rights

of the citizens are not mentioned. As we have already said, this right is not specified in the Chapter 2 of the Constitution “Human and civil rights and freedoms”. The latter may seem an insignificant fact regarding that the right of the citizens (people) to local self-government is acknowledged by the current legislation and court decisions. However specific character of the regulation of this institution raise several questions which are important not only from the position of evaluation constitutional conception of local self-government, but from the position of identifying state policy in this area.

First of all, let us address to the Article 12 of the RF Constitution in which it is emphasized that “the bodies of the local self-government do not constitute the system of the bodies of state power”. This provision is contained in the Chapter 1 of the Constitution “Fundamentals of the constitutional order”, consequently, in virtue of paragraph 2, Article 16 other constitutional provisions shall not contradict it. However in the Constitution there is Article 32 which reads that “the citizens of the Russian Federation shall have the right to participate in managing state affairs both directly and through their representatives”. The second part of this Article defines that “the citizens of the Russian Federation shall have the right to elect and be elected to the bodies of state authorities and local self-government authorities and to participate in referendums”.

Thus, there is no direct constitutional regulation of the right under study which makes it reasonable to address the question of the rationale of the autonomous constitutional and legal institute of the citizens’ right to local self-government. The solution of this problem has both theoretical and practical importance because certain constitutional provisions rather seriously affect the current legislation. The constitutional rationale of the studied right allows develop and enshrine in the current legislation the elements of this complex right in the form of their determination i.e. by their developing and implementing in the current legislation under direct impact of certain constitutional provisions. In other words, due to the constitutional regulation of the right under our study, basic regulatory parameters of subjective personal empowerment which allow exercise the entire complex of the rights for local self-government are predetermined.

Lack of direct incorporation of the subjective right to local self-government in the Constitution of the Russian Federation predetermines the need of its constitutional rationale and invokes controversial opinions. A dissenting opinion of the RF Constitutional Court judge N.V. Vitruk on the Constitutional Court Decision concerning “Udmurtia case” (as of January 24, 1997) confirms our point. In the present case the dissenting opinion means that “The RF Constitution rather carefully formulates the right of the population in the sphere of local self-government in the Articles concerning local self-government (paragraph2, Article 130, Article 131)”. And in Chapter 2 “Human and civil rights and freedoms” the Constitution of the Russian Federation does not enshrine the right to local self-government”. A.V. Lagutkin has a different opinion and believes that when analyzing the constitutional

character of the right to exercise local self-government we must bear in mind Article 32 of the RF Constitution which enshrines the right of the Russian Federation citizens to participate in managing state affairs.

We also should take into account paragraph 2 of this Article which describes the forms of this participation and mentions the rights of the citizens to elect and be elected to local self-government authorities (and not only to the bodies of state authorities). “Despite the fact the list of the forms of participation in the local self-government in the Constitution is not exhaustive, this Article may be considered as a regulatory enshrinement of the rights of the citizens to the participation in the local self-government”.

We should note that the rationale of the existence of the constitutional right to the local self-government cannot be restricted by the content of the Article 32 of the RF Constitution, though this Article has significant evidentiary value in the system of constitutional provisions analysis. It is also important that this Article of the Constitution contains the entire system of the subjective powers of the citizens in terms of exercising local self-government, and these powers may be regarded as autonomous rights of the citizens. Among them the rights to the participation of the citizen in the forming of representative bodies of the local self-government and in election of other bodies and officials of the local self-government. Along the same line with these rights the following can be mentioned: rights of the citizens to participate in the local referendum and other forms of direct democracy and the right to the equal access of any Russian Federation citizen to the municipal service which may be assumed from the paragraph 4 of the Article 32 of the Constitution (where it is said only about an equal access of the citizens of the Russian Federation to the public service).

The content of the right under our study cannot be restricted only by the provisions of the Article 32 of the Constitution of the Russian Federation. The Article contains the provisions which do not give a full understanding of the nature of the right to exercise local self-government and get an insight into its specificity, and define its place in the institutional system of local self-government. This right is characterized by a democratic manifestation and exercise which find its reflection in constitutional provisions. The complex nature of the right predetermines its specifying not only in the regulations providing political rights (Article 32), but in some other Articles of the Constitution. First of all, these are the regulations establishing the fundamentals of the constitutional order because they have a general nature and explain the content of the constitutional provisions. For example, regulations on the people’s authorities directly impact the institutional content of the right to local self-government. Not only paragraph 2 of the Article 3 but paragraphs 1 and 2 are related to the exercise of local self-government. Article 12 of the Constitution contains imperative provision directly connected to the bodies of local self-government. Other fundamental basis of constitutional order established in the Article 1 of the Constitution of the Russian Federation are critical for exercise of the right.

Another group of constitutional provisions creates a content of the system of local self-government as a form of the exercise of public power. It is reflected in several Articles of the Constitution in the Chapter 8 “Local self-government”. Each of the articles here (130-133) confirms the provisions identifying different aspects of exercise of the rights of the population and citizens to local self-government.

One more group of constitutional provisions predetermining content and the place of the right to exercise local self-government contains constitutional rights and freedoms. Many of them may contain provisions the exercise of which is performed on the territory of the municipal entities. We may name the after mentioned Article 32 of the Constitution which contains the system of powers of the citizens related to local self-government including the right to elect and be elected into the bodies of the local self-government; take part in referendums and some others. Virtually all of the personal, political or social and economic rights reflected in the RF Constitution is exercised on municipal level and have a “municipal component”.

Direct impact of constitutional provisions on the content of the federal and regional legislation may be different. In a number of constitutional provisions there is a direct indication on the legal potential of implementation certain provisions in the sphere of local self-government. For example, the Article 33 confirms the right of Russian Federation citizens to individual and collective appeals to local self-government bodies. Another form of determining the content of the citizens’ rights in the sphere of local self-government is direct indication in the Article of the Constitution on the responsibilities of the local self-government bodies to ensure any citizen to exercise his or her right. For example, the Article 24 sets out responsibilities of local self-government bodies to provide each citizen with documents and materials for review which directly relate to his rights and freedoms. An indirect way of constitutional influence (through guarantees of rights and freedoms) is, for example, a confirmation in the Article 41 (paragraph 1) responsibilities of the municipal health-care establishment to offer free medical care funded through the budget. Pursuant to the Article 43 (paragraph 2) pre-school, basic and secondary professional education in municipal educational institutions is accessible to all and free of charge.

The right to exercise local self-government results from other fundamental provisions in the Constitution of the Russian Federation in the first Chapter “Fundamentals of the constitutional order” (Articles 3, 12) as well as in the provision of the Chapter 8 “Local self-government” (Articles 130-132). We should also note that local self-government as one of the forms of exercising people’s authority includes participation of the citizens not only in management of state affairs but in local self-government as well. Due to the high regulatory capacity of the Constitution, which enables to efficiently impact on the industry-related legislation, the development of the institute of the right to local self-government followed a tendency to expand the content of constitutional provisions.

It is no doubt that the rationale for existence and development of the constitutional right to local self-government depends of the stability of the Constitution itself. S.D. Knyazev correctly noted that stability of the Constitution is critical for maintaining constitutional order based on the fundamental values of the Constitution, because the adoption of the constitutional principles and provisions is reached only through a long evolutionary way, which is hardly possible if the Constitution is not stable.

Thus, the subjective right to local self-government is a complex which includes the right of a local community (population) to local self-government; individual citizens' rights, the members of this community, to participate in realizing self-governance and rights of the local authorities to exercise public power (local self-governance). All these rights in the context of the entire complex are interrelated. If the right of the community serves as a necessary precondition for the emergence of certain rights of the citizens and bodies, then these rights in their own turn become a prerequisite for the existence of the local community rights, as they are the form of their exercising. De facto there is no right which cannot be exercised. It is evident that the right of the citizens to local self-government a special meaning as any individual is a primary element of any social institution. This explains why human and civil rights and freedoms but not of a social communities are announced as the highest value and confirmed in the Constitution of the Russian Federation.

Current federal and regional legislation develops and specifies the constitutional right to local self-government regulating different forms of its exercising. For this reason the term "right of the citizens to implement local self-government" covers various forms in which the right to local self-government is realized (elections, referendums, representation etc.).

By the broad definition of the citizen's right to exercise local self-government we should understand the right of a citizen to autonomous resolution of local issues using the forms of his or her participation in public activity as required by laws and acts of the local self-government, including requirements to implement this right and exercise it in the context of a municipal institution.

In addition to realization by the citizens subjective right to local self-government which enables to identify collective will by combining the will of all individuals, it is also possible to realize an individual will and we should regard it as participation in exercising local self-government. That is why the notion "participation of a citizen in local self-government" has its own legal substance and constitutes an essential part in the entire system of constitutional right to local self-government.

Thus, all the three notions "the right of a citizen to local self-government", "the right of a citizen to exercise local self-government", "the right of a citizen to participate in self-government" have their own legal substance and may be applied as the terms denoting the categories under our study.

K.A. Antipiev argues that it is rather difficult to include the right to participate in local self-government into some certain group of the rights: political, social and economic or individual. The right to local self-government has a general character but it can be specified depending on the sphere of its realization.

The impact of constitutional rights and freedoms on the development of local self-government may be derived from the analysis of behavior potential which is provided to the citizens of the municipal entities by the constitutional provisions as well as their functional relations with the institutions of the local self-government. To identify the distinctive features of their impact on the institutions of local self-government we may resort to the most widespread systematization of the constitutional rights and freedoms under which rights and freedoms are divided into individual (civil), political and social and economic (according to a different terminology – economic, social and cultural).

We should note that during the 20th and the beginning of the 21st centuries many foreign countries saw a crisis in confrontation between the autonomy of local self-government and an active intervention of the government in order to regulate all the spheres of the life of the society. A well-known professor Ch. Adrian stated that “the theory of inalienable right to local self-government is dead. Besides, it is not acceptable from the sociological and legal points of view”. However, we think that this statement is arguable as the content of the right to local self-government covers the entire complex of other subjective rights confirmed by the Constitution and the entire legislative system of the country. The mechanism itself of realization the right to local self-government builds on the understanding of the place and the role of this right in the system of human and civil rights and freedoms.

Individual (civil) rights and freedoms in the system of constitutional regulation take a leading place. The Constitution of the Russian Federation 1993 placed them first in the list of rights and freedoms. The content of these rights not only indicates their individual character but provides with all the necessary prerequisites to include any individual into a public activity. Safe conduct, protection of human dignity and other individual rights and freedoms make it possible to create a legal background against which a citizen may feel the protection of the government from arbitrary interference into his private life caused by political activity during his realization of his or her right to exercising local self-government. Thus, individual rights guarantee autonomy of an individual in his relations with government and local authorities.

Individual rights and freedoms established by the Constitution are discussed in specialized literature more often than the relevant international laws that means these rights and freedoms are universal in nature and widely-recognized. They are secured by the federal mechanism which includes related structures of the federal authorities on the territory of the municipal entities. Local authorities may be regarded as an element of this mechanism as well.

In a normative content of some subjective rights and freedoms there is a direct or indirect indication on the local authorities as the subjects of law relations appearing in the process of their realization. For example, pursuant to the Article 24 of the Constitution bodies of the local self-government must provide every individual with documents and materials related to his or her rights and freedoms. The right to freedom of movement and freedom to choose one's place of residence (Article 27) are realized on the municipal level and play a significant role in local self-government development, being a prerequisite not only for freedom of movement but for many other rights and freedoms. For instance, the institution of election of bodies and local self-government officials contains the provisions which are directly associated with freedom of movement and choice of the place of residence.

The full implementation of the right to local self-government is possible only if there is proper economic and financial ground. Financial and economic opportunities for developing local self-government predetermine social and cultural living conditions of the population in municipal entities. In addition to the issues of filling the local budget and building intergovernmental fiscal relations, it is also critical to have a sufficient number of owners who will be able to fill the revenue part of the local budget and be supporters of the economic interest of the population in a municipal entity.

New economic relations in Russia today form certain environment for local self-government functioning which "predominantly takes the form of social and economic self-government" (Bondar', 1998). It relies on the owners whose rights are protected by the Constitution; it is based on the right to entrepreneurial or other economic activity. Consequently, there must exist optimal social living conditions on the territory of a municipal entity and opportunities for spiritual and cultural development.

The realization of the majority of social and economic rights and freedoms is performed on the territory of municipal entities and directly associated with organization of the work of local self-government bodies. Pursuant to the provisions of paragraph 2 of the Article 43 of the Constitution "Pre-school, basic and secondary professional education in municipal educational institutions and at enterprises is accessible to all and free of charge". The majority of pre-school and secondary educational institutions are under the supervision of municipal bodies, so these institutions realize the constitutional provision on the guarantees of education in Russia. Pursuant paragraph 2 of the Article 40, the bodies of local self-government "promote housing construction and create conditions for exercising the right to a home".

The problem of social and economic and cultural rights was named in the foreign literature as the "rights of the second generation" (Claude, Weston, 1989).

Political rights and human and civil rights and freedoms are more closely connected to the right to exercise local self-government. Essentially, the right under our study is based on political rights and freedoms realized within the territory of a municipal entity. They enable the functioning of democratic institutions which make it possible to create local bodies of representative and execution authorities, canvass public opinion on important issues related to life activities in local jurisdictions and control the work of elected officials and bodies. To some extent the right to exercise local self-government may be classified in the group of political rights and freedoms. "It constitutes a core of the local status of a citizen of the Russian Federation, the base of the entire system of municipal (territorial) laws ..." (Bondar', 1998).

The unity of the content of right to exercise local self-government and political rights and freedoms is determined by the same object of regulating. In both cases the object is people's authority as a form of exercising the power by people. Formal and legal, organizational and legal means of establishing and realizing public activity imply the use of a complex of legal possibilities for implementing various democratic instruments designed to enable the participation of the population in power exercising. In the first case it is governmental power, and in another – the power of local self-government bodies.

In legal science there is a tendency to artificially separate individual and political rights from social and economic and cultural rights by their content and binding power; though all these rights relate to the same social reality. The main argument is that the government must respect and provide civil and political rights. As for social and economic rights, legal obligations are not placed on the government; it is only recommended to follow the standards (Trubek, 1984).

In addition to political rights and freedoms of the citizens which constitute a base of the content of right to exercise local self-government (Article 32 of the Constitution), we should also include constitutional rights into legal and organizational instruments of a local self-government as they create proper conditions for local self-government functioning. Among these rights are the right to hold mass meetings, marches, demonstrations; the right to association, the freedom of thought, expression and the freedom of the media.

Defining the right to local self-government as constitutional and complex, we should underline that it has its own rationale and objectively results from the content of the Constitution and natural rights and freedoms. The central element in this rationale is the premise about natural rights inherent to every individual. For example, the right to freedom of choice of one's residency, of economic activity, ecological and any other safety etc. All these rights are realized within the territory of a municipal entity, and they are secured not only by federal and regional legislation but by the regulations of the local self-government bodies. The latter suggests the existence of a particular class of the rights – municipal rights and freedoms (Bondar', 1998).

Constitutional right to exercise local self-government is only a part of this system, consequently, we should consider it in the unity and in a relationship with other rights. For modern democratic states, including the Russian Federation, it is characteristic to treat human rights as a uniform complex. Prioritizing a certain group of rights and freedoms within this complex will inevitably lead to underestimation and discrimination of other rights. It is evidenced by Russian previous experience when in theory and in practice of Soviet constitutionalism absolute priority was given to social and economic rights at the expense of civil and political ones.

Guaranteed right to exercise local self-government is an important element of the mechanism of realizing public authority on the local level. Studying this aspect of local self-government functioning helps us to better understand the problems of implementation of legislation concerning local self-government and its improvement; on the other hand, it enables us to assess the conditions in which the citizens and municipalities implement their activities.

N.S. Bondar' in his work "Russian Federation municipal law" (2013) correctly observed that "Guarantees of local self-government are an attribute of its constitutional and legal status and includes in itself both guarantees (means and institutions giving real opportunities to the citizens to exercise their rights to local self-government) and the process of guaranteeing".

According to the Law Dictionary, the term "guaranty" is derived from the French word 'garantie' – assurance. In the civil law it is understood as a liability stipulated by a law or an agreement upon which a person has responsibilities to the creditors in case with full or partial default in performance of obligations by a debtor. Procedural guarantees is a system of legal means established by the law for proper administration of justice.

In the Constitutional law the guarantees are the combination of legal means enabling to realize established by the Constitution rights and freedoms of both individual and legal entities. Examples include the Federal "Electoral rights and right to participate in referendums (Basic guarantees for the citizens of the Russian Federation)". It is hard to single out the guarantees among other legal means, and we should not do it because the combination of the provisions of this law constitutes the mechanism of guaranteeing the right to elect and be elected as well as the right to participate in referendum.

As was rightly noted by N.V. Dzhagaryan that guaranteeing the rights to local self-government is based on the interconnected unity of the principles of state and legal continuity resulting from the preamble of the Constitution.

Legal guarantees of local self-government is also a system of legal means established by the law and other legal regulations enabling the realization of the

local self-government. Legal means is the essence of a legal norm; they create a legal framework to achieve the legislator's objective. As for the conditions which are the main element of the guarantees, as was mentioned by the authors, they create a background for a proper realization of the rights.

Conditions in which local self-government exists and develops make up an external environment which is able to accelerate or to slow down the realization of the right to self-government. They serve as an objective factor influencing the process of local self-government development. Among them are the level of economic development of a region and territory within which function local self-government bodies. It is clear that in subsidized entities of the Russian Federation the developing potential of municipalities is different from the donor entities. Even within one federative subject there are both territories with relatively high level of industrial development and areas in which the income of population is very low and the rate of unemployment is very high. It would be incorrect to speak about equal conditions in such a situation. The Federal legislature sets equal legal possibilities for exercising local self-government establishing them in the Constitution and in Federal laws or other regulations. Consequently, the laws of the Russian Federation entities also follow this rule, i.e. they create equal legal possibilities for all municipalities within the entity. Thus, legal means implementing the rights of municipal entities and protection are equal for all. Speaking about the development conditions of a municipal entity and, consequently, exercise of right to local self-government in a general sense, they differ depending on the level of region's economic development and its geographical position, presence of democratic and other traditions, staffing and educational potential. Ethnic diversity and historical traditions are significant objective factors which may have influence on the establishment of the institute of local self-government and define conditions of its development.

The government being a guarantor uses available means of influence on public relations such as certain measures of freedom of the parties to civil law relations through establishing equal for all rules of behavior and promotion of justice as means of solving social conflicts and application of enforcement actions against the violators. All the aforementioned means available to the government are applied in the order established by the government. The government declared local self-government one of the pillars of the constitutional order of the Russian Federation and implemented the rights to exercise local self-government and thereby the government took responsibility to ensure this right of the citizens. It is well known that each right is followed by a responsibility; otherwise the right would not be guaranteed.

Thus, government guarantees for the right to local self-government may be defined as the governmental obligation to create conditions for establishing and efficient functioning of the local self-government and maintain these conditions by committing different actions or refraining from the actions that are harmful for the local self-government.

The course of development of municipal power in Russia depends on proper definition meeting the requirements of the constitutional state. This meaning of the guarantees is explained by the fact that local self-government in the Russian Federation is established from the top-down by the Federal legislation. Top-down reform suggest responsibility of the state for this process because even authority matter which are passed to local self-government as the “local issues”.

The direction of the reforms “from the above” assumes the state’s responsibility for the course of developments, as even the authority matters being transferred to the local government as “local issues” become such only in the presence of the government will confirmed in the norms of the law.

Law books usually cover two blocks as the main elements of the system of guarantees: general guarantees and special (judicial) guarantees. Among general guarantees are political, organizational, economic, spiritual and others. The activity of the local self-government bodies and realization of their rights is accomplished under certain social and economic and political conditions which, being the most important principles of the life activity of the people in a society and a state, may have both positive and negative impact on the process of self-governing. That is why it will be reasonable to consider economic and political relations, spiritual attitudes and values of the society as general legal guarantees as they serve as prerequisites for stimulating development of local self-government; provide certain sustainability and stability in the activity of the local self-government bodies; create real possibilities for a full realization of the norms establishing the competency for the local self-government bodies (Kutafin, Fadeev, 2007).

Such approach to guarantees classification is rather widespread. Nevertheless, we should pay attention to one fact. Law is secondary to those real relationships in the society. We may speak about actual and legal Constitution and they may differ. The state may establish legal norms, however in real life other rules will be applied, different from the official ones. In a modern society economic and political relationships appear on the base of the legal norms, but at the same time their development and improvement prove the need for regular revision of the current legislation and amendments and alterations. The development of economic relations, including in the sphere of municipalities, objectively have a great impact on the efficiency of exercising local self-government. Thus, we should distinguish between actual conditions (economic, political, demographic etc.) and legal means which are used by the government for guaranteeing the realization of the right to self-government.

Apparently, based on the fact that state guarantees are legal means for implementing the right, classification criteria for guarantees should be the levels of legal support of right realization (federal, regional, municipal), the ways of preventing potential violation of the right (protection against infringement), and effective means of

correcting infringements of rights (protection). They are all established in current legislation and may be applied when choosing proper classification. As these criteria suggest using the law, it is reasonable to stick to one of the aspects, otherwise it will be impossible to distinguish them during the analysis of the issues related to the realization of the right to local self-government.

Of particular interest to us is the constitutional system of guaranteeing the right to local self-government suggested by Bondar'. He includes in this system individual sub-systems: general and special means and institutions ensuring real opportunities for local self-government exercise. The sub-system of general guaranteeing includes economic, political, social, spiritual and cultural guarantees. The sub-system of special (legal) guaranteeing includes a ban on restrictions rights to local self-government; commitment to consider application of bodies and officials of local self-government by governmental authorities, enterprises, institutions, and organizations; state guaranteeing of the legal force of local self-government acts; judicial protection of local self-government; procuratorial and supervisory guarantees for local self-government. Local sub-systems of special (legal) means of guarantees for local self-government include organization (independence of the population in determining the structure of the local self-government bodies, organizational separation of local self-government from government authorities etc.); financial and economic (right to independently manage municipal property, supply of municipal property that is required for solving local issues, provision of minimal budget etc). A notable variation is the broad system of constitutional guaranteeing for local self-government in the decisions by the Constitutional Court of the Russian Federation (Bondar', 2008).

To describe the content of legal guarantees for local self-government, the most acceptable criteria for classification is evaluation of the current Russian legislation providing achievement of the constitutional purpose – creation of an appropriate institution of local self-government in Russia (levels of legal basis for provision the rights). The Constitution of the Russian Federation, federal and regional legislation, charters and other regulations of municipal entities form a mechanism of guaranteeing which protects material, organizational and other interests of local communities and to evaluate the ability of the state to fulfill its obligations. For this reason, consideration of these aspects of organization and activity of municipalities and related rights of the citizens should reasonably be performed by evaluating the normative content of current legislation.

Constitutional demand to separate local self-government bodies from the system of government authority has been established in the Chapter 1 "The fundamentals of the constitutional order". This indicates a special status of this regulation in comparison with the other regulations confirming, for instance, the autonomy of local self-government. Thus, the state acknowledges local self-government as an autonomous level of exercising people's power. Pursuant to the Article 3 of the

Constitution, people exercise its power both directly and through the government authorities and local self-government bodies.

The regulation of the Article 12 is formulated as an indirect ban which only enhances the guarantees it confirms. This Article prohibits inclusion of the local self-government bodies into the system of government authority. Such organizational separation is intended to exclude direct impact of government authorities on municipal decisions and exclude immediate subordination of municipal officials to government authority.

This constitutional provision was specified in the Federal Act “On general principles of organizing local self-government in the Russian Federation” as of October 6, 2003. This Act establishes that “the participation of government authorities and their officials in establishing local self-government bodies, appointment and dismissal of the officials of the local self-government bodies is permissible only in cases and in compliance with paragraphs 5 and 11 of the Article 37 of the given Federal Act” (Article 34). According to the law these cases are 1) participation of the government authority officials of the Russian Federation entity as the jury in a municipal region; 2) early termination of powers of local government body head – termination of the contract with local government body head based on the mutual agreement of the parties or court decision upon application of the senior executive officer of the Russian Federation entity in connection with a breach of a contract with respect to state powers transferred to the local self-government bodies by the federal laws and the laws of the entities of the Russian Federation. Also, the possibility to temporarily execute powers of the local self-government bodies by the government bodies is regulated by the Article 75 of the Federal law “On the general principles of organizing local self-government in the Russian Federation”.

Thus, we may argue that Russian legislator is consistent in organizational separation of the government and local self-government authorities. Municipalities exercise public power and they are both self-reliant and rely on the possibilities of the state, including its enforcement mechanism. They have a number of distinctive features characteristic for all the bodies performing public administrative functions. The features are autonomous administration; continuity of implementation of the functions; compliance with laws and other regulations; exercise of authority within a particular territory; possibility to use the means of legal institutional violence; right to levy and collect taxes; independent budgeting (Shugrina, 2007). The use of such instruments for exercising public power is not possible without state guarantees of its real application. First of all, it is a legal groundwork enabling the population (citizens) to independently solve local management issues which is not that characteristic in foreign countries. Professor W. Robson correctly noted that in terms of relationships between the state and municipalities in Great Britain, the government and the ministries treat local representative institutions as servants. The same relationships between municipalities and the government power are observed

in the USA where management is performed on the state level and municipal power is a derivative from government authority being its continuation.

Separation of the system of local self-government bodies in Russia does not lead in any way to the end of relationships with the government authority. Only in a legal and organizational unity it is possible to reach the common aim – high living standards for every citizen in the country. Common aims define the existence of the common approaches which, in their own term, are based on objective prerequisites. Apparently, the territory of a municipal entity is the territory of the state, and the people are the citizens of the country. A number of other criteria demonstrate governmental functions of the municipalities: the legal status of a municipal entity is determined by the state and confirmed in the Constitution of the Russian Federation and in legislation; decisions by the local self-government bodies are mandatory for everyone to whom they are directed; local self-government bodies are vested authority of a power and administrative character; local self-government bodies are not able to determine their competence, consequently, the competence is predetermined by the legislature to the extent the state considers it appropriate. Local issues are managed autonomously but in accordance with unified state policy. The state guarantees the status of local self-government.

The Article 131 (paragraph 1) of the Constitution of the Russian Federation establishes the right of the population in municipal entities to independently define the structure of local self-government bodies. This guaranteed regulation excludes potential interference of the federal and regional legislator into a process of establishing the structure of local self-government bodies. The Federal Act “On general principles of organizing local self-government ...” in the Article 34 reiterates this constitutional provision adding a binding condition – the need of establishing the representative body of a municipal entity, head of a municipal entity, local administration (executive and administrative body of a municipal entity). As for other local self-government bodies, they are established independently and cannot be imposed from outside.

In addition to government guarantees for exercising local self-government by local population, there are also municipal guarantees. Municipal entities can autonomously regulate relationships providing a normative basis for implementation of the rights. Normative legal acts accepted by local self-government bodies are municipal means (legal guarantees) which are necessary for reaching the constitutional objective to provide autonomous management of the local issues. Professional literature reviews the guarantees of municipal human and civil rights and freedoms and raises the question about a specific type of guarantees – municipal guarantees of rights and freedoms of the citizens (Bondar', 1998). This question is justified because 80 percent of all social benefits are provided due to the integrity of state budgets of the Federation entities and local budgets of municipal entities. Social programs and benefits are financed both by the state and by municipal entities budgets. This all proves the existence of a consolidated state and municipal

mechanism for implementing social and economic rights and freedoms of the citizens.

Compatibility of the normative and legal and institutional mechanism of guaranteeing rights and freedoms suggests the existence of common state and municipal guaranteeing. This also applies to common guaranteeing of political rights and freedoms. For instance, exercise of the right to elect and be elected into the government authorities is not possible without participation of local self-government bodies.

Autonomous principle in activity of local self-government bodies suggests the existence of a specific range of relationships that must be regulated by municipal regulations. For instance, the establishment of local self-government bodies, determination of their structure, taxes levy and collection, management of the municipal property etc. Thus, when evaluating an integrated mechanism of guaranteeing local self-government we may identify the elements which can be characterized as municipal guarantees. These legal means are based on the Constitution and legislation and are used by local self-government bodies and by the population to have a possibility to independently exercise public power within a certain territory.

Municipal legal system is established on the base of the decisions taken on the local referendum, by local self-government bodies and provides the realization of the citizens' right to local self-government. The primary legal document in this system is the Charter of a municipal entity. The mechanism of realization of public power is confirmed in this document, consequently, it also contains the norms guaranteeing this power.

Municipal Charter confirms two blocks of the authorities which together constitute a mechanism of municipal guarantees – organizational and material. Speaking about the conditions in which local self-government is exercised then we should mention the level of economic development of a region and a particular territory, national, natural and climatic, demographic and other characteristics of a local community. They are not guarantees in a strict sense but just a foundation for establishing local self-government. Among the organizational municipal guarantees for the right to self-government are: a) stability of the system of local self-government bodies; b) real form of direct participation of the population in local self-government; c) composition of municipal entity.

Material guarantees for local self-government confirmed by the Charter are conditioned by the right of local self-government to own and dispose municipal property, to plan and execute municipal budget. Local self-government bodies also have the right in accordance with law to create municipal unitary enterprises for running business operations, solve the issues with their restructuring and liquidation. They define the aims, conditions and operating procedures, approve their Charters,

appoint and dismiss chief executives of these enterprises. In cases, directly provided for by the law they may be the members of corporations and limited partners in trust partnership (Article 66 of the Civil code of the Russian Federation).

The most important procedures of budgetary and non-budgetary relationships established in the municipal Charter enables a real possibility to independently form and dispose financial resources in order to satisfy demands of the population, create conditions for economic development of the territory, and provide social benefits for the citizens.

Municipal guarantees for local self-government are the part of the entire mechanism of realization of the citizens' right to local self-government. They objectively exist and fulfill an important function of protecting rights of the population to local self-government.

Thus, state and municipal guarantees together give a possibility to local self-government to exist, function and develop in the Russian Federation.

4. Conclusion

The studies showed that the content of constitutional provisions constituting the institutions of local self-government, human and civil rights and freedoms enable us to make a conclusion about the existence of autonomous right, the right to local self-government. Lack of direct constitutional regulation of the right under our analysis let us raise the question about justifying autonomous constitutional and legal institution of the citizens' right to local self-government. Also, the lack in the RF Constitution of direct confirmation of the subjective right to local self-government predetermines the need of its constitutional justifying and a comprehensive assessment. Studying of the given problem helped the author to reveal a complex interconnected structure of the subjective right to local self-government which includes several elements (subjective rights): right of a local community (population) for local self-governance, individual citizens' rights, the members of this community, to participate in realizing self-governance and rights of the local authorities to exercise public power (local self-governance). In the result of this research the authors gave general definition and disclosed the content of the following terms: "citizen's right to self-government", "citizen's right to exercise self-government" and "citizen's right to participate in realizing self-governance". Constitutional right to self-government is just an integral part, a link in the system of rights and freedoms; For modern democratic states, including the Russian Federation, it is characteristic to treat human rights as a uniform complex. Prioritizing a certain group of rights and freedoms within this complex will inevitably lead to underestimation and discrimination of other rights. It is evidenced by Russian previous experience when in theory and in practice of Soviet constitutionalism absolute priority was given to social and economic rights at the expense of civil and political ones. The guaranty of implementation of the right to

self-government on the one hand gave better understanding of the problems of legislation concerning self-government and its improvement; on the other hand it helps to evaluate the conditions under which the citizens and municipal authorities carry out their activity. State and municipal guarantees are the part of the entire mechanism of implementation of the citizens' right on self-government. They objectively exist and fulfil an important function protecting the rights of the population for self-government.

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