

Issues of the legal status of municipal public chambers: a view from Russia

Questões sobre o status legal das câmaras públicas municipais: uma visão da Rússia

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Abstract

The paper analyzes the main theoretical and practical legal issues related to the legal status and activities of municipal public chambers in modern Russia. To build a logical legal structure that regulates the status and activities of municipal public chambers, the authors propose a set of legal measures aimed at its improvement.

Keywords: Local Self-Government; Municipal Government; Municipal Public Chambers.

Resumo

O artigo analisa as principais questões jurídicas teóricas e práticas relacionadas ao estatuto jurídico e às atividades das câmaras públicas municipais na Rússia moderna. Para construir uma estrutura legal lógica que regule o status e as atividades das câmaras públicas municipais, os autores propõem um conjunto de medidas legais que visam ao seu aprimoramento.

Palavras-chaves: Governo Autônomo Local; Governo Municipal; Câmaras Públicas Municipais.

1 Introduction

The current state of the local self-government system in the Russian Federation is characterized by a wide spread of specific subjects of municipal legal relations – public chambers of municipalities. Based on the analysis of their similar organizational documents, public chambers are collegial advisory bodies that ensure the interaction of citizens of the Russian Federation living in the municipality and non-profit organizations created to represent and protect the rights and legitimate interests of professional and social groups operating in the municipality with local self-government bodies to consider the needs and interests of the population and involve citizens and organizations in solving issues of local significance (Assembly of Deputies of the Miass City District, 2014).

Noting the important role of about 2.5 thousand public chambers of municipalities (established in the Russian Federation according to the Ministry of Justice of Russia on January 01, 2022) in the sphere of coordinating the interests of the population and municipal authorities recognized by many scholars and practitioners (Chebotarev, 2018; Chekryga, 2022; Grib, 2015; Solovev, 2017), it should be pointed out that today the legal status of these subjects of municipal legal relations is defined superficially. The issues and goals of their activities are numerous and set out in an extremely general form, the required results of their functioning are not clearly defined, and their powers (if we can talk about powers concerning such powerless subjects of legal relations) are fixed in an extremely general form. Their legal regulation at the federal level and the level of the subjects of the Russian Federation is fragmentary.

Methods. Based on the analysis of the theoretical foundations and the existing experience in the practical implementation of legal structures that regulate the functioning of public chambers of municipalities and using dialectical, logical, historical, and formal legal methods and reference, value, system, functional, and informational approaches, we analyzed the main theoretical and practical legal aspects related to the functioning of municipal public chambers and proposed promising directions for improving the content of relevant legal structures.

2 Results and Discussion

2.1 Issues related to the consolidation of the legal status and activities of municipal public chambers

Analyzing the legal status of municipal public chambers as collegial advisory bodies that ensure the interaction of citizens and local self-government bodies, first, it is necessary to determine the public-power nature of their activities. The following activities are related to the implementation of their functions:

- ♦ organization of a dialogue between the population and the authorities;
- ♦ public control;
- ♦ coordination of interests of various social groups;
- ♦ promotion and support of civil initiatives;
- ♦ conducting public discussions of socially significant issues and drafting decisions of local self-government bodies;
- ♦ conducting a public examination of draft municipal regulatory legal acts;
- ♦ development of recommendations to local self-government bodies.

Public chambers pursue public interests (the interests of large groups of residents or the entire population of the municipality) and their activities should be recognized as public.

However, does the public nature of their activities imply the authoritative content of their competence? Can they be considered public authorities? As the Constitutional Court of the Russian Federation points out in its Resolution No. 30-P of December 01, 2015, municipal public chambers are not local self-government bodies. Accordingly, they cannot be recognized as entities that are part of the unified system of public authority in the Russian Federation. In addition, the presence of municipal public chambers in a municipality is not mandatory. As noted by T.N. Mikheeva and E.S. Shugrina, they are public control bodies and a form of public participation in the implementation of local self-government. They are created at the discretion of local self-government bodies (Mikheeva & Shugrina, 2022), which (if necessary) are entitled to decide on their liquidation.

Municipal public chambers implement the function of public control (including concerning bodies and officials of local self-government) related to the forms of direct democracy, which allows us to conclude the presence of certain power principles in their activities. However, this does not mean that they have a public authority status, which calls into question the legality of using such categories as the competence of municipal public chambers and powers of municipal public chambers, often used both in rule-making practice and in the scientific literature (Kokotova, 2021; Stavropol City Duma, 2015, Article 3).

If we proceed from the definition of the public authority competence as a set of powers in the subjects of its jurisdiction, then municipal public chambers are not endowed with authority, the implementation of which is both a right and an obligation for them.

Concerning municipal public chambers, the practice follows the path of consolidating the list of their rights, the implementation of which is not directly fixed as their duties. In this regard, the issue of determining the subjects in respect of which municipal public chambers have legally fixed duties is of undoubted scientific interest.

The body making the decision on the establishment of a municipal public chamber and approving the regulations on its activities (the head of a municipality or a local

representative body) cannot but have the right to demand in a normative form from the relevant public chamber the fulfillment of the duties stipulated in its organizational documents. In addition, we should not forget about the responsibility of the municipal public chamber to the population of the municipality in whose interests it is created.

The practice of the work of local public chambers shows that it is the presence of the responsibility of the municipal public chamber to the population of the municipality that makes it necessary to specify its main controlled issues. Otherwise, municipal public chambers become defenseless against individual representatives of the population who initially have a negative attitude towards representatives of the current municipal government and any related bodies. In modern municipal legal realities, it is difficult for the current members of municipal public chambers to find convincing and reasoned answers to the destructive criticism of these subjects, which categorically require the municipal public chambers to constantly carry out expert and control work on all issues of local significance.

In theoretical terms, it is the absence of clear regulation of the list of main issues of the activities of municipal public chambers and the absence in the regulatory framework of “hints” on the criteria for the effectiveness of their activities that allows several researchers to question their viability as a real institution of civil society, appealing to the fact that such state-imposed constructions of dialogue between the state and civil society create only the appearance of public activity of citizens representing ersatz institutions of civil society (Avdeev & Grudtsyna, 2013; Uvarov, 2016).

The existing legal uncertainty in the field of the list of main issues of the activities of municipal public chambers raises questions about the differentiation of their activities with other subjects of public control, as well as specialized public councils established in municipalities (for example, with the public environmental council), and does not allow organizing coordinated functioning and the interaction of these subjects with a proper coefficient of socially useful action.

The assignment of an unlimited range of controlled issues of local significance to municipal public chambers, together with the normatively fixed possibility of permanent public control actions, inevitably leads actively working municipal public chambers to regular clashes with the relevant local self-government bodies objectively not interested in carrying out any regular inspections of their activities. This is confirmed by the thesis actively promoted by local self-government practitioners that it is expedient and effective to understand public control not over local self-government bodies but together with local self-government bodies (Shugrina, 2023).

The assignment of an unlimited range of controlled issues of local significance to municipal public chambers turns them into extremely attractive public institutions for representatives of various kinds of socio-political movements who try to use the platforms of public chambers as an arena for political struggle, thereby making it difficult to discuss and solve issues related to the daily needs of the population.

2.2 A set of legal measures aimed at improving the legal structure that fixes the activities of municipal public chambers

Having outlined several topical theoretical and practical problems related to the consolidation of the legal status and activities of municipal public chambers, it seems appropriate to propose for discussion by the scientific community the following areas of improvement of the current legislation regulating the relevant municipal legal structures.

First, to unify the regulatory framework, mechanisms, and forms of activity of municipal public chambers, there is a need:

- ♦ at the federal level, to fix the legal definition of the municipal public chamber as a collegial advisory public body created by the decision of the representative body of the municipality, acting based on the regulations and ensuring the interaction of citizens of the Russian Federation living in the municipality and non-profit organizations established to represent and protect the rights and legitimate interests of professional and social groups engaged in activities on the territory of the municipality with bodies and officials of local self-government;
- ♦ at the federal level, to normalize a unified approach to the legal status, goals, functions, and issues of activity and forms of work of municipal public chambers by adopting the framework Federal Law “On General Principles of Organization and Activities of Municipal Public Chambers”;
- ♦ to fix the mandatory establishment of municipal public chambers in all municipalities of the Russian Federation with the key functionality of the platform for the implementation of mandatory regular face-to-face communication of municipal leaders with the population.

Second, due to the lack of public authority status of municipal public chambers, for competent legal designation of the spheres of their activities and the rights delegated to them, it is proposed to fix the term “activities of municipal public chambers” for the designation of these phenomena, denoting the spheres of local public relations in which municipal public chambers have legally fixed rights.

Third, to fix the list of activities of municipal public chambers, it is proposed to normalize their following main functions:

- ♦ organization of a dialogue between the population and the authorities;
- ♦ implementation of public control;
- ♦ coordination of interests of various social groups in municipalities;
- ♦ promotion and support of civic initiatives;
- ♦ conducting public discussions of socially significant issues and drafting decisions of local self-government bodies;
- ♦ conducting a public examination of draft municipal regulatory legal acts.

Fourth, to determine priorities in the activities of municipal public chambers, it is proposed to highlight:

- ◆ a cluster of mandatory issues of the activities of municipal public chambers related to organizing a dialogue between the population and authorities, conducting public discussions of socially significant issues, and drafting decisions of local self-government bodies;
- ◆ a cluster of optional issues of the activities of municipal public chambers related to the implementation of public control, coordination of interests of various social groups in municipalities, promotion and support of civic initiatives, and public examination of draft municipal regulatory legal acts.

Fifth, to build a logical structure of the legal status of municipal public chambers, it makes sense to fix the following list of their main responsibilities:

- ◆ holding plenary sessions at least once every two months;
- ◆ organizing public discussions of socially significant issues on the appeals of local self-government bodies and initiative groups of residents in the amount of at least 1% of the number of residents of the municipality;
- ◆ conducting public discussions of draft decisions of local self-government bodies on the appeals of local self-government bodies and initiative groups of residents in the amount of at least 1% of the number of residents of the municipality;
- ◆ conducting public control raids on appeals of local self-government bodies and initiative groups of residents in the amount of at least 1% of the number of residents of the municipality;
- ◆ conducting a public examination of draft municipal regulatory legal acts on the appeals of local self-government bodies and initiative groups of residents in the amount of at least 1% of the number of residents of the municipality.

Sixth, to form mechanisms for an objective assessment of the productivity of municipal public chambers, it is proposed to establish a list of criteria for the effectiveness of their activities.

Seventh, to ensure the stable and effective functioning of municipal public chambers, there is a need at the federal level to establish the obligation of local self-government bodies to provide organizational and financial support for the activities of municipal public chambers.

3 Conclusion

Having considered the key legal problems associated with the uncertainty of the legal status of municipal public chambers and the dimensionality of the list of issues of their activities, we want to focus on the fact that municipal public chambers represent

relatively new and specific subjects of municipal legal relations. If considering the world experience (McLennan et al., 1994), we predict the development of long-term rule-making trends in the municipal sphere, then we can conclude that a competent description of the legal status of municipal public chambers will sooner or later require its theoretical basis and adequate legal structures. The practice of the mechanical use of legal constructions designed to describe elements of the legal status of public-power subjects of municipal-legal relations concerning municipal public chambers should be recognized as controversial, which is undoubtedly a problem and requires the formation of an appropriate scientific discourse (Foucault, 1971).

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