

## QUASI-ELECTORAL CONSTRUCTIONS OF THE RUSSIAN COMPETITIVE MODEL FOR ELECTING THE HEAD OF THE MUNICIPALITY AND THE PROBLEM OF CIVIC ACTIVISM IN EXERCISING THE RIGHT TO PARTICIPATE IN LOCAL SELF-GOVERNMENT

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**Abstract:** The article is devoted to understanding the content of the quasi-election design of the competitive model for electing the Head of the municipality and its impact on civic engagement in the realization of the right to participate in local self-government. The laws of the constituent entities of the Russian Federation, adopted on the basis of federal laws, give preference to the model of formation of local governments that abolishes direct elections of heads of municipalities and thereby reduce their responsibility to the population and implore the constitutional right of residents of the municipal formation to directly participate in elections. The nature of relations between public authorities at various levels is changing: local governments are built into the vertical of state power and become agents of this local authority. Depriving the heads of municipalities of direct legitimacy obtained directly from voters reduces their political influence and reduces the crucial role of the population to zero. The key theoretical and practical problems associated with the substantive and procedural aspects of the existing mechanism for filling the position of the head of the municipality as a result of being elected by the representative body of the municipality from among the candidates represented by the competition commission based on the results of competition are considered. A set of legal measures aimed at improving the content of the analyzed legal structure is proposed.

**Keywords:** election of the Head of the municipality, competitive election model, competition commission, civic activity, participation in local community affairs.

### 1 Introduction

The Russian national model of local self-government is designed and at the same time includes both elements of a single all-Russian system of democracy and belonging to the institutions of civil society, as well as a number of elements of government with its characteristic centralization regime. The variety of meanings is reflected not only in the theory of municipal law, but also in the actual difference in legal statuses of different types of municipalities, different models of the system of local governments depending on the type of municipal formation and the establishment of dependence of the type of electoral system on the type of municipal formation. The consequence of attributing a territory to a specific type of municipality (urban or rural) are very significant differences in the extent of constitutional and other rights and freedoms of citizens, as well as levels of social and legal activity and self-organization of the population. Local self-government is a deeply democratic institution that encourages citizens to participate in the management of the affairs of society, gives the population the right to independently decide issues of local importance, which largely ensures their political rights.

In accordance with the amendments made by the Federal Law of February 3, 2015 N 8-FZ "On Amendments to Articles 32 and 33 of the Federal Law" On Basic Guarantees of Electoral Rights and the Right to Participate in the Referendum of Citizens of the Russian Federation "and the Federal Law" On general principles of the organization of local self-government in the Russian Federation", the Russian municipal legislation has received a fundamentally new way of filling the position of the head of the municipal entity as a result of being elected by the representative body of the municipal education from among the candidates submitted by the competition committee on the results of the competition.

Noting the novelty of this method, it should be noted that a similar legal procedure was previously used in relation to the head of the local administration. However, due to the fact that the construction of the legal status of the head of the municipality, as the highest official of the municipality with its own authority to resolve local issues, is much more complicated, the application of the competitive procedure for the head of the municipality causes an ambiguous reaction in the environment

both theorists of municipal law and practitioners of local self-government [1-6].

The main reason for the controversial opinions regarding the analyzed legal structure is the presence in its content of a wide range of legal problems, primarily generated by the extraordinary legal nature of the procedure introduced for the competitive election of the head of the municipality, combining in its content both competitive and elective principles. Taking into account the above, as well as the fact that over the past three years of practical application of this legal structure in various municipalities of Russia, contradictory practices have been accumulated that require their own scientific understanding and systems analysis, a detailed examination of the problematic aspects of the legal procedure for the election of the head of the municipality is of undoubted scientific interest. Of concern is the problem of actual mechanisms for the implementation of citizens' voting rights, which are significantly different from the ideology of free elections, which provides additional material for assessing the phenomena under consideration.

### 2 Methods

Based on the analysis of the elaboration of the theoretical platform and the experience of the practical application of the legal construction of electing the head of the municipality according to the results of the competition, an attempt has been made using dialectical, logical, historical, formal-legal, comparative-legal methods of scientific cognition legal aspects. Based on the identified problematic issues, as well as the needs of municipal practice, it is proposed to suggest ways to improve the legal construction of the election of the head of the municipality based on the results of the competition, contributing to the improvement of its functioning.

### 3 Results

Turning to the consideration of the problematic aspects of the legal construction of the election of the head of a municipality by the local representative body from among the candidates submitted by the competition commission based on the results of the competition, first of all, one should start with the fact that the clear terminological apparatus used to construct any legal construction represents the basis for its subsequent trouble-free application.

However, for the description of this legal construction in paragraph 5 of Part 2 of Art. 36 of the Federal Law N 131-FZ, it was not the term "appointment to a post" that was used for more than ten years to refer to a largely identical substitution procedure based on the results of a competition for the position of head of a local administration, but a combination of two different industry terms was used:

- 1) the term "election", which assumes the filling of a post as a result of elections using the appropriate electoral procedures regulated by electoral legislation;
- 2) the term "competition", which traditionally involves filling a position as a result of a selection made by an authorized body on the basis of established criteria, using the procedures regulated by labor legislation.

At the same time, the analyzed competitive procedure of "electing" the head of the municipality essentially implies the selection of candidates based on the assessment of professional competences, presentation of additional qualification requirements to these persons (special education, special work experience...), which is not consistent with the general requirements established in respect of candidates for the position of head of the municipality, as an elected official. In this regard, the Supreme Court of the Russian Federation naturally indicated

that the legal status of the head of the municipality is one regardless of the method of his election; therefore, the requirements for candidates for the named electoral office must be the same [7].

To eliminate this contradiction in Art. 36 of the Federal Law N 131-FZ stipulates that a citizen may be registered as a candidate for the position of the head of the municipality who, on the day of the competition, does not have in accordance with Federal Law No. 67-FZ of June 12, 2002 "On Basic Guarantees of Electoral Rights and Rights to participate in the referendum of citizens of the Russian Federation "restrictions on passive suffrage for election as an elected official of local self-government. Further, in the text of this article, the legislator used streamlined language, suggesting that the requirements for vocational education and (or) professional knowledge and skills can be stipulated by the conditions of the competition and are preferable for the head of the municipal entity to exercise authority to resolve issues of local importance. In accordance with this provision, the provisions on holding a competition for filling the position of the Head of a municipality issued at the municipal level fix various lists of documents required for applicants to submit to the position of head of the municipality, which consolidate the above requirements to the respective candidates.

Obviously, such an approach of the legislator formally removes the problem associated with the various requirements for candidates for the position of head of the municipality (depending on the established method of electing the head or the requirements of the competition regulations of a particular municipality). However, in essence, this systemic problem has both remained and remains, since the competition commissions in selecting candidates took into account and will first take into account the presence of professional competencies of candidates for the position of head of the municipality and their compliance with established additional qualification requirements, since it is obvious that existing requirements of the electoral legislation imposed on the head of the municipality do not provide the level of professionalism required for effective leadership municipality in modern conditions. Moreover, in the conditions of economic instability, getting an unprepared person to the post of head of a municipality can lead to serious problems in the functioning of both the municipal economy system and the system of municipal bodies and officials.

Also, it is necessary to point out the fact that if we proceed from the principle of autonomy of local self-government within its authority, enshrined in Art. 12 of the Constitution of the Russian Federation, the competitive selection for the position of the head of the municipality, as part of the procedure for electing the highest official of the municipality, should be considered the prerogative of the local community, which naturally raises the question of the legality of the normative consolidation of art. 36 of the Federal Law N 131-FZ of the obligation to involve representatives of state authorities in the competition commissions.

In addition, many questions raise the status, order of formation and functioning of the competition commission, as a body formed to conduct a commission examination of the professional qualities of applicants, evaluate their abilities to successfully solve the problems of a specific territory and give an opinion on the compliance of the identified qualities of applicants to the qualities required to occupy a position heads of the municipality.

In this case, it should be noted that the federal legislator in Art. 36 of the Federal Law N 131-FZ defined only general requirements for the formation of a competition commission, giving the municipalities more freedom in rule-making in this matter. Based on the analysis of the relevant Provisions adopted in the municipalities, it should be stated that at the municipal level, the legal consolidation of the status of the analyzed tender commission is extremely superficial, which naturally raises many questions:

- 1) The current practice of appealing the decisions of the competition commissions [8] naturally arises the question of in what capacity should the competition commission be viewed: as a municipal body, assuming the existence of a relevant Regulation and Regulation, or as a specialized commission created by a local representative body?
- 2) The presence of different approaches to determining the composition of the competition commission implies the question of whether representatives of the municipal community (public chambers, honorary citizens, councils of veterans...) should be represented on the composition of the competition commission (and in what proportion)?
- 3) The lack of clear approaches to the recruitment of the competition commission determines the question of whether it is advisable to include in the composition of the competition committee municipal employees who later will be subordinate to the elected Head of the municipality?
- 4) Different approaches to the mechanism of the competitive procedure (testing, interviewing, etc.), as well as the vagueness of the criteria for evaluating candidates [9] implies raising the question of the feasibility of developing a single mechanism for the competitive procedure and uniform criteria for evaluating applicants for the position of the Head of the municipality, objectively taking into account the management potential of the candidates, their professional experience and the elaboration of the submitted municipal development programs.
- 5) The lack of certainty of the procedural aspects of the implementation of the competitive selection for the position of Head of the municipality implies raising the question of the appropriateness of the normative enshrining of the obligation to observe the principle of transparency in the implementation of reports, answers to questions and other presentations of relevant applicants.
- 6) The existing practice of turning competitive selection into a "decorative" procedure, which involves the use of a competitive commission as a filter for "dropping out" strong candidates that are not inconsistent with regional authorities and conducting pre-agreed candidates, raises questions about the feasibility of developing regulatory mechanisms that exclude the practice of unjustified restriction of the choice of deputies of the local representative body as a result of the presentation of the only candidate [10] or special prepared pairs of candidates, including a "strong" candidate, and it is certainly a weak competitor.
- 7) The diverse practice of municipalities in the matter of determining the list of documents necessary for submitting to the competition commission candidates for the position of Head of the municipality raises questions about the need for unification of the list.

Natural concerns are also caused by the fact that the existing competitive system for electing the head of the municipality not only prevents citizens from directly electing the mayor, but also excludes the possibility of the population initiating the voting procedure for its recall, as it is under such an election procedure (which cannot be put into one a row with a classic electoral order of filling a specified position) cannot be considered as an elected Head of a municipality subject to the application of an existing the Review procedures [11].

#### 4 Discussion

Having cited the above problems arising from the established municipal practice of holding a competitive procedure for filling the position of the head of a municipal entity as a result of being elected by the representative body of the municipal entity from among the candidates submitted by the competition commission based on the results of the competition, attention should be paid to the fact that the analyzed procedure changes the existing ideas about traditional ways to fill positions in the system of local self-government (election, appointed No, competition).

The election of the Head of the municipality according to the results of the competition cannot be assessed as an election in

the traditional sense. However, this legal procedure also cannot be attributed to the classical competition. In this regard, the legal construction of the election of the Head of the municipality based on the results of the competition requires serious attention from both the scientific community and the federal legislator, which should manifest itself in more detailed regulation of its content at the federal level.

If we proceed from the problems identified in the law enforcement practice of municipalities in the preparation of this publication, then we can suggest the following ways to improve the content of the analyzed legal framework:

First, in order to exclude the conjuncture approach to determining the composition of the competition commission, we should move towards consolidating the status of the competition commission in the municipal legislation, formed to evaluate candidates for the position of head of the municipality, not as a temporary commission formed by the local representative body, but as an independent public expert body acting on the basis of its own position and formed for a long time (4-5 years).

Secondly, in order to unify the accumulated municipal practice for the selection of candidates for the position of Head of the municipality, it makes sense to add to Art. 36 of the Federal Law N 131-FZ, the norms fixing a single list of documents submitted to the competition committee, the principles of the competitive selection procedure, as well as clearly defined criteria for evaluating applicants for the position of Head of the municipality.

Thirdly, in order to reduce the number of conflict situations, to unify the main procedural aspects of the work of the competition commission, it is advisable to fix in the Federal Law N 131-FZ the basic principles of organizing the work of the competition commission for selecting candidates for the position of the Head of the municipal entity, in particular, assuming that the position of chairman is mandatory commission by the representative of the municipality, the publicity of all procedures (including the announcement of the candidates' programs and answers to the questions of the commission's members), as well as the opportunity to participate in the discussion of the programs of candidates of all registered candidates for the position of Head of the municipality.

Fourthly, in order to optimize the composition of the competition commission for the selection of candidates for the position of the Head of the municipality in relation to the function performed, it is proposed to be fixed in Federal Law N 131-FL:

- mandatory quota of members of the public,
- a ban on the inclusion of municipal employees and other employees of local governments,
- optional inclusion of representatives of regional state authorities.

Fifthly, in order to ensure the proper implementation of the passive electoral right of registered candidates for the position of the Head of the municipality, it makes sense to stipulate in the Federal Law N 131-FZ the obligation of the competition commission to select candidates for the position of the Head of the municipality to submit to the representative body of the municipality to candidates for the position of the head of the municipality of all candidates registered with the competition commission with the application in conclusions on the compliance of each candidate with the established requirements for vocational education and / or professional knowledge and skills.

## 5 Conclusion

Summing up the study, it should be noted that the municipal elections as a form of direct democracy, through the vote of residents, allow the head of the municipality to acquire the highest legitimacy and trust of the population. The offensive spread of the rejection of direct elections harbors the threat of

devaluation of the idea of public participation in the affairs of society and the state.

At present, the legal structure of filling the position of the head of the municipality as a result of being elected by the representative body of the municipality from among the candidates submitted by the competition commission according to the results of the competition raises many questions, both substantive and formally legal. Obviously, it is the result of the efforts of the legislator, who tried, while preserving democratic approaches to the nature of the Head of the municipality, to integrate it more firmly into a single vertical of the Russian public executive.

It is indisputable that the municipal scientific community is not at all pleased with the fact that this embedding, as usual, was carried out without a corresponding preliminary broad scientific discussion and analysis (which, incidentally, is not exclusively Russian practice) [12, 13]. In this regard, the direction of development of research on the considered issue is predicted both in the analysis of the actual and legal validity of such embedding, and in the direction of creating additional legal structures that improve the content of the procedure for the competitive election of the head of the municipality and correctly enter it into the existing system of Russian municipal law.

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