CONSTITUTIONAL LEGAL FRAMEWORK OF LOCAL GOVERNMENT IN RUSSIA AND SOUTH AFRICA

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https://doi.org/10.21684/2412-2343-2021-8-1-35-62

The article examines certain issues relating to the constitutional and legal regulation of local self-government in Russia and South Africa in the context of their cooperation within the partnership of the BRICS countries, as well as the constitutional reforms of local self-government carried out in these states. It is noted that, despite the fundamental difference in the historical prerequisites for their implementation, the constitutional and legal approaches to determining the legal nature of local self-government and identifying its status in the general system of public authority in these countries have similar features. This circumstance, according to the author, indicates the potential for a convergence of the systems of legal regulation of these countries and actualizes the need to exchange experience in legal regulation in this area in order to solve similar problems of development of local self-government.

Keywords: decentralization; developmentalism; local government system in the Republic of South Africa; constitutional reform of local government in Russia.

Recommended citation: Ramiz Aliev, *Constitutional Legal Framework of Local Government in Russia and South Africa*, 8(1) BRICS Law Journal 35–62 (2021).

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Introduction

The relations of the Russian Federation with the Republic of South Africa are developing dynamically, including in terms of interaction between the two states within the BRICS group of countries.

On 5 September 2006 in Cape Town, Russian President Vladimir Putin and South African President Thabo Mbeki signed an Agreement of Friendship and Partnership Between the Russian Federation and the Republic of South Africa. The Agreement states that the parties regard each other as friendly states and seek to develop partnership relations based on their common fundamental national interests, ideals of freedom, democracy, equality, universally recognized principles and norms of international law, and will also maintain a regular dialogue at the level of the political leadership of the two states.[1]

The participation of countries in interstate associations is predetermined by the orientation of the participating countries towards achieving common goals, which in turn determines certain processes of convergence of their legal systems, as well as the associated appearance of scientific research on this topic. For example, work on the prospects of unification of private law in the BRICS countries, including in Russian legal literature, already takes place.[2] This circumstance, in turn, is due to the prioritization of the development of financial, economic and trade relations of the participating countries within the framework of this association. At the same time, it seems that comparative legal studies aimed at identifying the similarities and differences between the political and legal systems and institutions of the BRICS states, the exchange of practices in the field of public administration, are no less relevant.[3]

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[1] Договор о дружбе и партнерстве между Российской Федерацией и Южно-Африканской Республикой от 5 сентября 2006 г. [Agreement of Friendship and Partnership Between the Russian Federation and the Republic of South Africa, 5 September 2006] (14 Dec. 2020), available at http://kremlin.ru/supplement/3731.

[2] Национальные особенности и перспективы унификации частного права стран БРИКС: учебник: в 2 т. [*National Characteristics and Prospects for the Unification of Private Law of the BRICS Countries: Textbook. In 2 vols.*] (Ksenia M. Belikova ed., 2015).

[3] Актуализация процесса взаимодействия стран БРИКС в экономике, политике, праве: материалы Научного семинара, Москва, 9 октября 2012 г. [*Updating the Process of Interaction Between the BRICS Countries in Economics, Politics, Law: Materials of the Scientific Seminar, Moscow, 9 October 2012*] (Ksenia M. Belikova ed., 2012).

This thesis, in our opinion, is not least applicable to the institution of local self-government.

So, the effective implementation of the goals of socio-economic development, they being raising the standard of living of citizens and creating conditions and opportunities for self-realization of individuals, is possible with the coordinated interaction of all authorities at all levels (federal, regional and local). At the same time, a significant part of the burden falls precisely on local self-governed bodies as institutions of public authority that are closest to the population and on whose effective activities the vital activity of citizens, the well-being of people, and the provision of a comfortable living environment depend. The possibilities of innovative development of territories, the quality of implementation of national projects, and the level of services rendered to residents will depend on municipal governments as they are closest to the people. In this regard, the issues of increasing the efficiency of municipal governance, development and improvement of the legal framework of local self-government, including from the point of view of its interaction with other levels of government, acquire particular relevance and importance from the point of view of the overall goal of economic development of states.

The scope of these circumstances determines the research interest in the topic of legal regulation of local self-government in South Africa.

It should be noted that such interest is also due to the distinctive specificity of the legal principles underlying this topic, which, fundamentally, are the principles of decentralization and developmentalism. So, in itself, the principle of decentralization is one of the basic concepts through the prism of which the modern theory of state and municipal government is considered. At the same time, despite the fact that this principle is widely known in the practice of municipalism in many countries, in South Africa it has a separate independent content, not least due to the history of the formation and development of local self-government in this country. The principle of developmentalism is also specific, orienting the activities of local self-governing bodies to create conditions for improving the well-being and quality of life of citizens, which is the basis for the constitutional reform of local self-government in South Africa.

Considering the institution of local self-government in Russia and South Africa in a comparative legal aspect, it should be noted that the prerequisites for municipal reform in these countries have different specifics.

Municipal reform in South Africa is closely related to overcoming the consequences of apartheid, resulting in the leveling of the positions of the population living in the "white" territories and the African ("colored") population living in the so-called "Bantustans" as well as the integration of the previously disenfranchised "colored" population into a single political nation. In this regard, even the boundaries between the municipalities were drawn in most cases in such a way that in each of them one part of the territory would be part of the former Bantustan while the other part would contain land previously intended for the residence of the "white" population.

Related to this is the idea of social orientation of the municipal authorities, the creation of favorable conditions for the "colored" population as a population that previously suffered from unfair social conditions, as well as the idea of the accelerated development of depressed territories and alignment of their position with prosperous territories. The idea of involving the local population in the implementation of municipal power in South Africa, including the creation of various advisory institutions, is largely due to the characteristics of the local population, including the existence of local leaders ("traditional leaders") who have great authority among the local African population. The involvement of leaders in the sphere of local government through forms of participatory democracy also pursued the goal of integrating the local population.

Obviously, such prerequisites are specific to South Africa.

What has been said, in our opinion, does not, however, mean the fundamental impossibility of a comparative study of modern legal regulation of local self-government in South Africa and in Russia, especially taking into account the fact that the actual problems of the development of local self-government in these countries (in particular, problems such as the low level of qualifications of municipal employees, the need to find new ways to develop the economic basis of local government, etc.) are similar.

In addition, we consider it possible to note the following.

On 15 January 2020, Russian President Vladimir Putin addressed a message to the Federal Assembly in which he pointed out the need for a comprehensive constitutional reform in Russia.[4]

The process of changing the constitutional text was initiated by the President himself through the introduction of a draft law on an amendment to the Constitution of the Russian Federation[5] which provided for a number of complex constitutional

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[4] Послание Президента Федеральному Собранию от 15 января 2020 г. [Address of the President of the Russian Federation to the Federal Assembly of the Russian Federation, 15 January 2020] (14 Dec. 2020), available at http://kremlin.ru/events/president/news/62582.

[5] On 20 January 2020, a draft law on an amendment to the Constitution of the Russian Federation "On Improving the Regulation of Certain Issues of Organizing Public Authority" was submitted by the President to the State Duma (draft No. 885214-7) (14 Dec. 2020), available at http://publication.pravo.gov.ru/Document/View/0001202003140001. For the purpose of discussing and finalizing this draft, the President signed an order "On the Working Group for Preparing Proposals for Amending the Constitution of the Russian Federation." *See* Распоряжение «О рабочей группе по подготовке предложений о внесении поправок в Конституцию Российской Федерации» от 15 января 2020 г. [Order "On the Working Group for Preparing Proposals for Amending the Constitution of the Russian Federation," 15 January 2020] (14 Dec. 2020), available at http://kremlin.ru/events/president/news/62589. As a result of its activities, amendments to the part of local self-government were finalized at the stage of the second reading and substantively expanded in comparison with the originally introduced edition.

According to the Decree of the Central Election Commission of the Russian Federation of 3 July 2020 No. 256/1888-7 "On the Results of the All-Russian Vote on the Approval of Amendments to the Constitution of the Russian Federation," which summed up the results of the nationwide vote on the approval of amendments to the Constitution of the Russian Federation, the changes are considered approved.

novelties related both to the constitutional consolidation of additional guarantees of social rights of citizens and to the procedure for the formation and powers of public authorities.

One of the blocks of the recent constitutional reform was a set of changes dedicated to improving the constitutional and legal regulation of local self-government.

As the President pointed out in his Address to the Federal Assembly, the main task of the modern Russian state is to ensure "high living standards, equal opportunities for every person, and throughout the country," and, at the same time, to "eliminate the gap between the state and municipal levels of power" and the "division, confusion of powers" of public authorities at various levels.[6]

That is why the President pointed out the need to consolidate (in the Constitution) the principles of a unified system of public power, the effective interaction between state and municipal bodies. In addition, the President also indicated the need to expand the powers and real capabilities of local self-government – "the level of power closest to the people."[7]

The ultimate goal of municipal reform in South Africa was to create such a system of local self-government, the functioning of which would be focused on improving the quality of life of the population. Within its framework, local government bodies were given extensive powers while the local government itself began to be positioned not as a "lower" level of government, but as an area of public administration equivalent to the national and provincial levels of power. In the course of the constitutional reform, local self-government bodies were guaranteed independence and non-interference in their activities by public authorities from other spheres of public administration – national and provincial.

Despite the different conditions and prerequisites, as well as the historical context of the reform of the local self-government system in South Africa in 1996 and in Russia in 2020, a parallel is clearly seen between the stated goals, which in turn allows us to speak of the existence of universal values of local self-government characteristic of two data (as well as other states), as well as the possibility of studying it from these positions.

It seems that the consolidation of the term 'united public authority' within the framework of the constitutional reform in Russia gives the studied topic additional relevance and interest.

In accordance with the Decree of the President of the Russian Federation of 3 July 2020 No. 445 "On the Official Publication of the Constitution of the Russian Federation as Amended," amendments to the Constitution of the Russian Federation, provided for by the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of 14 March 2020 No. 1-FKZ "On Improving the Regulation of Certain Issues of the Organization and Functioning of Public Authorities," entered into force on 4 July 2020.

6 Address of the President of the Russian Federation, *supra* note 4.

7 *Id.*

1. Local Self-Government in the System of Public Authority in Russia and South Africa

Considering the experience of South Africa, it seems possible to note a turning point in the adoption of the 1996 Constitution of South Africa, which signified the final abandonment of the policy of apartheid and the transition to a democratic system of local self-government bodies, the primary goal of which was proclaimed to ensure the social and economic development of local territorial communities.[8]

At the same time, as noted by foreign researchers, with the transition to a new democratic legal order, "local government was given a critical developmental role to play in rebuilding local communities and environments, as the basis for a democratic, integrated, prosperous and non-racial society."[9] The implementation of the goals set to improve the quality of life of the population, including through local government bodies working closely with citizens and public associations and identifying their needs and requirements, was objectively assumed in the context of transferring the necessary functions and powers to the local government level.[10]

The 1996 Constitution of South Africa devotes all of Chapter 7 and its fifteen articles to local self-government, which forms the very title of the chapter. The norms of legal regulation of this institution of power are also contained in other chapters of the Constitution, the fundamental importance of which from the point of view of determining the constitutional and legal nature of local self-government are the provisions of Article 40 in Chapter 3 Cooperative Government.

According to the provisions of this article, in the Republic (of South Africa), government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. This provision of the Constitution is a general rule that enshrines the basic characteristics of the public government system in South Africa, according to which the distribution of political power occurs in three areas. Moreover, all these spheres coexist in the system of cooperative government and must exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere.

The academic approval that defines the status of local self-government, as "not as a lower level of government, but as a sphere of government with an equal status along with the national and provincial spheres of government,"[11] seems to be of fundamental

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[8] The White Paper on Local Government, 9 March 1998, at 23 (14 Dec. 2020), available at https://www.gov.za/sites/default/files/gcis_document/201409/whitepaper0.pdf.

[9] Andrew Siddle & Thomas A. Koelble, *Local Government in South Africa: Can the Objectives of the Developmental State Be Achieved Through the Current Model of Decentralized Governance?*, ICLD, Research Report No. 7 (2016) (14 Dec. 2020), available at https://icld.se/app/uploads/files/forskningspublikationer/siddle-koelble-icld-report-7.pdf.

[10] The White Paper, *supra* note 8.

[11] *Id.*

importance. The rationale for this claim is in the contents of the provisions of Article 151 of the Constitution, in accordance with parts 3 and 4 of which a municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution. At the same time, the national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

Regarding the legal nature of local self-government as well as the principle of independent exercise of its powers, in its decisions the South African Constitutional Court formulated a number of fairly detailed legal positions and, in particular, noted that under the current Constitution, local government was granted more autonomy than was provided by the 1993 Interim Constitution, and this autonomy derived directly from the constitutional text itself, and not from any acts or decisions of the provinces.[12]

The Constitutional Court of South Africa also noted the following:

> The constitutional status of a local government is thus materially different to what it was when parliament was supreme, when not only the powers but the very existence of local government depended entirely on superior legislatures. The institution of local government could then have been terminated at any time and its functions entrusted to administrators appointed by the central or provincial governments. That is no longer the position. Local governments have a place in the constitutional order, have to be established by the competent authority, and are entitled to certain powers, including the power to make by-laws and impose rates.[13]

Furthermore, the Court commented:

> The Constitution has moved away from a hierarchical division of governmental power and has ushered in a new vision of government in which the sphere of local government is interdependent, "inviolable and possesses the constitutional latitude within which to define and express its unique character" subject to constraints permissible under our Constitution. A municipality under the Constitution is not a mere creature of statute otherwise moribund save if imbued with power by provincial or national legislation. A municipality enjoys "original" and constitutionally entrenched powers, functions, rights and

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[12] Certification of the Constitution of the Republic of South Africa, 1996 (CCT 23/96) [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996) (14 Dec. 2020), available at http://www.saflii.org/za/cases/ZACC/1996/26.html.

[13] *Fedsure Life Assurance Ltd. and Others v. Greater Johannesburg Transitional Metropolitan Council and Others* (CCT7/98) [1998] ZACC 17; 1999 (1) SA 374; 1998 (12) BCLR 1458 (14 October 1998) (14 Dec. 2020), available at http://www.saflii.org/za/cases/ZACC/1998/17.html.

duties that may be qualified or constrained by law and only to the extent the Constitution permits.[14]

Summarizing the legal positions of the Constitutional Court of South Africa regarding the constitutional and legal nature of local self-government, it seems possible to note the following.

From the point of view of its legal and ontological status, local government is a separate sphere of public administration, functioning in the general system of public authority in the Republic of South Africa, along with the national and provincial spheres of government.

In accordance with the 1996 Constitution, local government in South Africa is a constitutionally guaranteed and constitutionally protected institution of government. As a consequence, the powers of local governments, firstly, have their own constitutional and legal nature, and, secondly, proceeding directly from the constitutional text, cannot be abolished or canceled by acts of the bodies of the national or provincial spheres of government.

In this context, it is fundamentally important to note the fact that local government, both from the standpoint of constitutional judicial law enforcement practice and from the standpoint of legal doctrine, is considered not to be a level of public authority, but to be an independent sphere of public administration, functioning on an equal basis and having an equal constitutional and legal status relative to other spheres of public authority (national, provincial).

The legal logic in this case is based on the previous historical experience of legal regulation of the institution of local self-government in South Africa, according to which the establishment and status of municipalities was provided for and regulated by the provisions of provincial legislation, which made the very existence of local self-government dependent on the discretion of regional authorities. It is the statement about the rejection of such legal regulation and giving local government the status of a constitutionally protected institution of power, functioning on the basis of the principle of autonomy, that is the basis for the interpretation of constitutional norms on local self-government.

Thus, when considering the legal nature of local self-government in South Africa in the doctrine and constitutional law enforcement practice, emphasis is placed on the independence and full rights of this institution in relation to other spheres of public authority, as well as on the relationship of coordination and interaction between them while maintaining the guarantees of municipal autonomy.

It should be noted that the issue of independence of local self-government, issues related to its relationship with state power and the definition of its place in the

[14] *City of Cape Town and Other v. Robertson and Other* (CCT 19/04) [2004] ZACC 21; 2005 (2) SA 323 (CC) (29 November 2004), paras. 58–60 (14 Dec. 2020), available at http://www.saflii.org/za/cases/ZACC/2004/21.pdf.

system of Russian statehood, are classic and traditionally debatable in the Russian science of municipal law.

The starting point for many discussions is Article 12 of the Constitution of the Russian Federation (contained in its first chapter, devoted to the foundations of the constitutional system), according to which local self-government is independent within the limits of its powers; local government bodies are not part of the system of government bodies.

Even before the constitutional reform was carried out by one of the most authoritative constitutionalists, Chairman of the Constitutional Court of the Russian Federation V. Zorkin, the design of this article was assessed as not devoid of shortcomings.[15] As noted at the time, its content

> gives rise to the opposition of local self-government bodies to public authorities (including representative bodies of state power), while bodies of local self-government are by their nature only the lower, local link of public power in the Russian Federation.[16]

This statement in particular entailed two fairly broad parallel discussions. They took place both at numerous conferences dedicated to the 25th anniversary of the Constitution of the Russian Federation and in the framework of scientific publications. At the same time, the first of them concerned the solution of the issue of the existence of constitutional prerequisites for the separation of local self-government bodies from the state, and the second – about the need to amend the Constitution.

At the same time, regarding the first discussion, it seems possible to note that, in our opinion, the issue concerning the legal nature of local self-government and its relationship with state power had already been resolved by that time within the framework of constitutional judicial law enforcement practice.

In particular, the Constitutional Court of the Russian Federation had already formulated the position that municipal power is not actually state, or proper public, power and is a special kind of power that unites these principles. As noted by the Court:

> Article 12 of the Constitution of the Russian Federation, as if recognizing the "non-state" principles of local self-government, makes it possible to reveal the specific, municipal-legal nature of the corresponding level of power relations, which by their own side (self-government) simultaneously invade the system of civil society institutions But this cannot serve as a basis for denying the

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15 *Зорькин В.* Буква и дух Конституции // Российская газета. 2018. 9 октября. № 226 [Valery Zorkin, *The Letter and Spirit of the Constitution*, Rossiyskaya Gazeta, 9 October 2018, No. 226] (14 Dec. 2020), available at https://rg.ru/2018/10/09/zorkin-nedostatki-v-konstitucii-mozhno-ustranit-tochechnymi-izmeneniiami.html.

16 *Id.*

> constitutional value of exercising the functions of the state through local self-government at the appropriate territorial level, which, however, does not imply the deprivation of local self-government – under the pretext of its recognition as an institution of statehood – of its own essential characteristics, of the constitutional system, local self-government should maintain status independence, on the one hand, but according to its constitutional and legal characteristics, its public-power nature cannot exist and function isolated from the state power – on the other. On this constitutional basis, it becomes possible to understand local self-government as a special kind of public power, which is realized on the basis of a combination of state and "non-state" (public) principles, which follows from the legal position of the Constitutional Court of the Russian Federation, expressed back in the Decision of 2 November 2000 No. 236-O.[17]

In its other decisions, the Constitutional Court has also repeatedly noted in the context of considering certain issues that the constitutional nature of local self-government as a public authority closest to the population makes it necessary to take into account the peculiarities of this public authority; in turn, this predetermines the need to achieve a balance of autonomy of local self-government within the limits of its powers with other constitutionally protected values.[18]

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[17] Определение Конституционного Суда Российской Федерации от 2 ноября 2000 г. № 236-О «По запросу Верховного Суда Кабардино-Балкарской Республики о проверке конституционности пункта «е» статьи 81 Конституции Кабардино-Балкарской Республики, статьи 2 и пункта 3 статьи 17 Закона Кабардино-Балкарской Республики «О местном самоуправлении в Кабардино-Балкарской Республике»» // СПС «Гарант» [Determination of the Constitutional Court of the Russian Federation No. 236-O of 2 November 2000. At the Request of the Supreme Court of the Kabardino-Balkarian Republic on the Verification of the Constitutionality of Paragraph "e" of Article 81 of the Constitution of the Kabardino-Balkarian Republic, Article 2 and Paragraph 3 of Article 17 of the Law of the Kabardino-Balkarian Republic "On Local Self-Government in the Kabardino-Balkarian Republic," SPS "Garant"] (14 Dec. 2020), available at https://www.garant.ru/products/ipo/prime/doc/12022019/.

[18] *See, e.g.*, Постановление Конституционного Суда Российской Федерации от 5 июля 2017 г. № 18-П «По делу о проверке конституционности части 2 статьи 40 Федерального закона «Об образовании в Российской Федерации» в связи с жалобой администрации муниципального образования городской округ город Сибай Республики Башкортостан» // СПС «КонсультантПлюс» [Resolution of the Constitutional Court of the Russian Federation No. 18-P of 5 July 2017. In the Case of Checking the Constitutionality of Part 2 of Article 40 of the Federal Law "On Education in the Russian Federation" in Connection with the Complaint of the Administration of the Municipal Formation of the Urban District of the City of Sibay of the Republic of Bashkortostan, SPS "ConsultantPlus"] (14 Dec. 2020), available at http://www.consultant.ru/document/cons_doc_LAW_219531/; Определение Конституционного Суда Российской Федерации от 9 ноября 2017 г. № 2516-О «По жалобе администрации города Барнаула на нарушение конституционных прав и свобод пунктами 4 и 5 части 1 статьи 16 Федерального закона «Об общих принципах организации местного самоуправления в Российской Федерации»» // Официальный интернет-портал правовой информации [Determination of the Constitutional Court of the Russian Federation No. 2516-O of 9 November 2017. On the Complaint of the Administration of the City of Barnaul on Violation of Constitutional Rights and Freedoms by Paragraphs 4 and 5 of Part 1 of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation," Official Internet Portal of Legal Information] (14 Dec. 2020), available at http://publication.pravo.gov.ru/Document/View/0001201711210020.

The most authoritative modern textbooks also emphasize that municipal government is a special form of public power. As the authors note:

> The traditionally emphasized dualism of the legal nature (a combination of public power, coercive ("state") and social principles) is an inalienable property of municipal power that distinguishes it from other forms of public power. This is an institutional form of political self-government that allows citizens to take himself the management of local affairs that form part of public affairs.[19]

In accordance with the amendments made to the Constitution of Russia by the Law of the Russian Federation on the amendment to the Constitution,[20] Article 132 was supplemented with a new part 3, according to which local governments and public authorities are included in the unified system of public power in the Russian Federation and interact to most effectively solve problems in the interests of the population living in the relevant territory.

As some researchers note, this rule should be considered to be an element of smoothing out contradictions linking state power and local self-government:[21]

> The wording is new: in no other article of the Constitution of the Russian Federation before the adoption of this Law on amendments … was [anything] said about public authority or public functions of state or local government, nor about publicity in general. The common feature that unites local government and state power is called publicity, that is, both state power and municipal power are forms of public power.[22]

Thus, it should be stated that the approach to determining the constitutional and legal nature of local self-government, developed in Russian constitutional judicial

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[19] Муниципальное право России: учебник [*Municipal Law of Russia: Textbook*] 136 (Suren A. Avakyan ed., 2019).

[20] Закон Российской Федерации о поправке к Конституции Российской Федерации от 14 марта 2020 г. № 1-ФКЗ «О совершенствовании регулирования отдельных вопросов организации и функционирования публичной власти» // СПС «КонсультантПлюс» [Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation No. 1-FKZ of 14 March 2020. On Improving the Regulation of Certain Issues of the Organization and Functioning of Public Authorities, SPS "ConsultantPlus"] (14 Dec. 2020), available at http://www.consultant.ru/document/cons_doc_LAW_346019/.

[21] *Пешин Н.Л.* Конституционная реформа местного самоуправления: единство публичной власти как новый всеобщий принцип организации местного самоуправления // Конституционное и муниципальное право. 2020. № 11. С. 24–29 [Nikolai L. Peshin, *Constitutional Reform of Local Self-Government: The Unity of Public Power as a New Universal Principle of the Organization of Local Self-Government*, 11 Constitutional and Municipal Law 24 (2020)].

[22] *Id.*

law enforcement practice, received its normative expression at the constitutional level in the framework of the adoption of new constitutional amendments.

As well as adding a new part 3 to Article 132 of the Constitution, the Law on Amendments to the Constitution[23] introduced other changes concerning local self-government, a number of which received a negative assessment in Russian legal literature.

So, according to a number of researchers, new norms on local self-government, with their certain interpretation, provide additional grounds for promoting, both at the level of municipal theory and at the level of legislative regulation, the idea of nationalizing local self-government or, otherwise, the idea of embedding it in the system of state power.

This trend, as noted by a number of prominent municipalists, has long and fairly widely realized itself in the modern legal regulation and practice of local self-government and continues, strengthened by new constitutional amendments. It manifests itself, in particular, in the institutions operating at the level of law, the transfer of certain state powers to local governments and the redistribution of powers between regional and municipal authorities,[24] and in the actual formation of the structure of local governments by regional authorities[25] and the actual constitutional consolidation of the possibility of participation of state authorities in the formation of local authorities.

At the same time, for example, if earlier the last provision was realized exclusively in legislation and in a rather limited form,[26] then the new amendments consolidate

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[23] So, e.g., in part 1 of Article 131 it was established that the types of municipalities are now established by federal law, and it is also clarified that the structure of local self-government bodies is determined by the population independently, but now in accordance with the general principles of organizing local self-government in the Russian Federation, established by the federal law. In addition, this article was also supplemented with part 1.1, according to which state authorities can participate in the formation of local self-government bodies, the appointment and dismissal of local self-government officials in the manner and cases established by federal law.

[24] *Зубарев С.М.* К вопросу об огосударствлении местного самоуправления // Lex Russica. 2018. № 12. С. 83–89 [Sergey M. Zubarev, *On the Nationalization of Local Self-Government*, 12 Lex Russica 83 (2018)]; *Тимофеев Н.С.* Тенденции и направления концептуального развития местного самоуправления в России (статья первая) // Конституционное и муниципальное право. 2018. № 10. С. 52–63 [Nikolai S. Timofeev, *Trends and Directions of Conceptual Development of Local Self-Government in Russia (Article One)*, 10 Constitutional and Municipal Law 52 (2018)].

[25] *Пешин Н.Л.* Конституционная реформа местного самоуправления: механизмы встраивания местного самоуправления в систему государственной власти // Конституционное и муниципальное право. 2020. № 8. С. 25 [Nikolai L. Peshin, *Constitutional Reform of Local Self-Government: Mechanisms of Embedding Local Self-Government into the System of State Power*, 8 Constitutional and Municipal Law 24, 25 (2020)].

[26] We are talking, in particular, about the provisions of part 2.1 of Article 36 of the Federal Law of 6 October 2003 No. 131-FZ "On General Principles of Organization of Local Self-Government in the Russian Federation," which provides for the possibility of a senior official of a constituent entity of the Russian Federation in some cases to participate in the formation of half of the composition of the competition commission for the selection of candidates for the position of the head of the municipal formation.

the general constitutional rule on the fundamentally admissible possibility of participation of state bodies in the formation of local self-government bodies in the manner prescribed by federal law.

As A. Dzhagaryan notes in this regard,

> Attaching constitutional significance to the corresponding institution of "participation" creates obvious preconditions for much more serious state intervention in issues of local importance.[27]

At the same time, such constitutional regulation is inconsistent with the legal position of the Constitutional Court of the Russian Federation, as expressed by the Court in its decree of 1 December 2015 No. 30-P, according to which the independence of local self-government is not absolute, "but, however, excludes the decisive participation of public authorities in the actual formation of local self-government bodies."[28]

It should be noted that in the current articles devoted to the consideration of the reform of constitutional norms on local self-government[29] there are already reflections and assumptions about the possible further recognition and normative implementation of the idea of the state nature of local self-government and even the subsequent consolidation in Article 12 of the Constitution of the provision that local self-government is exercised by the population directly or through local government bodies formed by the population.[30]

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[27] *Джагарян А.А.* Исправленному верить? Субъективные заметки в связи с Заключением Конституционного Суда РФ от 16 марта 2020 года № 1-3 // Конституционное и муниципальное право. 2020. № 8. С. 9–17 [Armen A. Dzhagaryan, *Whether to Believe the Corrected? Subjective Notes in Connection with the Conclusion of the Constitutional Court of the Russian Federation of 16 March 2020 No. 1-3*, 8 Constitutional and Municipal Law 9 (2020)].

[28] Постановление Конституционного Суда Российской Федерации от 1 декабря 2015 г. № 30-П «По делу о проверке конституционности частей 4, 5 и 5.1 статьи 35, частей 2 и 3.1 статьи 36 Федерального закона «Об общих принципах организации местного самоуправления в Российской Федерации» и части 1.1 статьи 3 Закона Иркутской области «Об отдельных вопросах формирования органов местного самоуправления муниципальных образований Иркутской области» в связи с запросом группы депутатов Государственной Думы» // СПС «КонсультантПлюс» [Resolution of the Constitutional Court of the Russian Federation No. 30-P of 1 December 2015. In the Case of Checking the Constitutionality of Parts 4, 5 and 5.1 of Article 35, Parts 2 and 3.1 of Article 36 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation" and Part 1.1 of Article 3 of the Law of the Irkutsk Region "On Certain Issues of the Formation of Local Self-Government Bodies of Municipalities of the Irkutsk Region" in Connection with the Request of a Group of Deputies of the State Duma, SPS "ConsultantPlus"], para. 1 of cl. 2.1 (14 Dec. 2020), available at http://www.consultant.ru/document/cons_doc_LAW_189899/.

[29] *Пешин Н.Л.* Конституционная реформа местного самоуправления: новая (старая) модель соотношения государственной и муниципальной формы публичной власти // Конституционное и муниципальное право. 2020. № 6. С. 15 [Nikolai L. Peshin, *Constitutional Reform of Local Self-Government: A New (Old) Model of Correlation between State and Municipal Forms of Public Power*, 6 Constitutional and Municipal Law 10, 15 (2020)].

[30] *Чеботарев Г.Н.* Как укрепить единую систему публичной власти? // Конституционное и муниципальное право. 2020. № 3. С. 19–23 [Gennady N. Chebotarev, *How to Strengthen a Unified System of*

It seems, however, that such a reading of the new constitutional norms on local self-government contradicts the approaches that have developed in modern Russian constitutional judicial law enforcement practice regarding the determination of the legal nature of this institution of power.

In addition, one should also pay attention to the legal position expressed by the Constitutional Court of the Russian Federation in its Opinion of 16 March 2020 No. 1-Z, in which the Court recognized the compliance of the new constitutional norms on local self-government with the provisions of the Constitution on the foundations of the constitutional order (Chapters 1, 2, 9) and once again reiterated its position that local self-government bodies, by their nature being public authorities, are not part of the system of state authorities.

In this opinion, considering the provisions of the new part 3 of Article 132, the Court, in particular, noted

> local self-government … [as] being a collective form of realization by the population of the right to resolve issues of local importance and at the same time – an expression of the power of the local community, at the same time in the person of its bodies integrated into the general institutional system for the implementation on the relevant territory of the functions of a democratic legal social state on the basis of interaction both with federal government bodies and, above all (bearing in mind the objectively existing closest interrelationships of public functions and tasks carried out by regional and municipal authorities), with the state authorities of the constituent entities of the Russian Federation. The Constitution of the Russian Federation imposing on the local self-government bodies the independent solution of issues of local importance does not interfere with the constructive, based on the recognition and guarantee the activity of local self-government, interaction between local self-government bodies and public authorities for the most effective solution of common tasks directly related to issues of local importance, in the interests of the population of municipalities, as well as the participation of local self-government bodies in the performance of certain public functions of state importance and tasks in the relevant territory - both in the order of endowing local self-government bodies with separate state ones, and in other forms. Thus, the unity of the public power system is understood primarily as functional unity, which does not exclude the organizational interaction of public authorities and local governments in solving problems in the relevant

Public Authority?, 3 Constitutional and Municipal Law 19 (2020)]. It should be noted that the relevant assumptions are not new and were expressed long before the adoption of the current constitutional amendments. *See Пешин Н.Л.* Государственная власть и местное самоуправление в России: проблемы развития конституционно-правовой модели [Nikolai L. Peshin, *State Power and Local Self-Government in Russia: Problems of the Development of the Constitutional and Legal Model*] 58 (2007).

> territory. This does not deny the independence of local self-government within the limits of its powers and does not indicate the entry of local self-government bodies into the system of public authorities.[31]

It seems, therefore, that the emphasis in reading the relevant new constitutional norms should be shifted from the idea of embedding local self-government into a unified system of public administration (especially since such an interpretation directly contradicts Article 12 of the Constitution of the Russian Federation, which has not undergone any changes) to the need to establish effective interaction between state and municipal public authorities acting in the interests (expressing and transmitting them) of local territorial communities.

It is this idea, in our opinion, laid down in the new constitutional norms on local self-government (at least, they can be interpreted in this way) and, in particular, in the provisions of the new part 3 of Article 132 of the Constitution, according to which local self-government bodies and state bodies are part of the unified system of public authority in the Russian Federation and carry out interactions for the most effective solution of problems in the interests of the population living in the corresponding territory.

Also interesting is the constitutional text's use of a new constitutional concept – "unified system of public power" – which was included in Chapter 4 President of the Russian Federation (pt. 2 of Art. 80) and Chapter 8 Local Self-Government (pt. 3 of Art. 132) of the Constitution.

As the Constitutional Court noted in its conclusion:

> The principle of a unified system of public power, although it has not found a literal consolidation in Chapter 1 of the Constitution of the Russian Federation, at the same time implicitly follows from the constitutional provisions on the unification of the multinational people of the Russian Federation by a common destiny on their land, the established state unity and the revival of the sovereign

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[31] Заключение Конституционного Суда Российской Федерации от 16 марта 2020 г. № 1-3 «О соответствии положениям глав 1, 2 и 9 Конституции Российской Федерации не вступивших в силу положений Закона Российской Федерации о поправке к Конституции Российской Федерации «О совершенствовании регулирования отдельных вопросов организации и функционирования публичной власти», а также о соответствии Конституции Российской Федерации порядка вступления в силу статьи 1 данного Закона в связи с запросом Президента Российской Федерации» // СПС «КонсультантПлюс» [Conclusion of the Constitutional Court of the Russian Federation No. 1-Z of 16 March 2020. On Compliance with the Provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation of the Provisions of the Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation "On Improving the Regulation of Certain Issues of the Organization and Functioning of Public Authorities," as Well as the Compliance with the Constitution of the Russian Federation of the Procedure for the Entry into Force of Article 1 of This Law in Connection with the Request of the President of the Russian Federation, SPS "ConsultantPlus"] (14 Dec. 2020), available at http://www.consultant.ru/document/cons_doc_LAW_347691/.

> statehood of Russia (preamble), about the Russian Federation – Russia as a democratic federal rule of law with a republican form of government, about the only source of power – the multinational people of the Russian Federation, which is the bearer of sovereignty that extends to the entire territory of Russia, and exercises its power directly and through public authorities and local self-government bodies … The category "unified system of public authority" is thus derived from the fundamental concepts of "statehood" and "state," about significant political union (unification) of the multinational Russian people. The general sovereign power of this political union extends over the entire territory of the country and functions as a single systemic whole in specific organizational forms determined by the Constitution of the Russian Federation. Consequently, local self-government bodies, which, according to Article 12 of the Constitution of the Russian Federation, are not included in the system of government bodies specified in its Articles 10 and 11, in any case, are included in the unified system of public power of the political union (association) of the multinational Russian people. Anything else, in particular, would entail a violation of the state unity of the Russian Federation and would mean the inapplicability of the basic constitutional and legal characteristics of the Russian state to local self-government, which is constitutional and legal nonsense.[32]

Thus, by disclosing and defining the basic characteristics of the concept of "a unified system of public authority," the Constitutional Court of the Russian Federation put forward additional arguments in favor of including local government bodies in this system.

It should be additionally noted that the concept of a unified public system was normatively fixed and defined in the Federal Law of 8 December 2020 No. 394-FZ "On the State Council of the Russian Federation" adopted to develop the constitutional amendments. According to the provisions of part 1 of Article 2 of this Law, the unified system of public power means federal bodies of state power, bodies of state power of the constituent entities of the Russian Federation, other state bodies, local self-government bodies in their totality, exercising within the constitutionally established limits on the basis of the principles of coordinated functioning and established on the basis of the Constitution of the Russian Federation and in accordance with the legislation of organizational, legal, functional and financial and budgetary interaction, including on the transfer of powers between levels of public authority, its activities in order to observe and protect the rights and freedoms of man and citizen, and create the conditions for social-economic development of the state.[33]

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[32] Conclusion of the Constitutional Court of the Russian Federation No. 1-Z, *supra* note 31.

[33] Федеральный закон от 8 декабря 2020 г. № 394-ФЗ «О Государственном Совете Российской Федерации» // СПС «КонсультантПлюс» [Federal Law No. 394-FZ of 8 December 2020. On the State

Thus, it should be noted that the new constitutional amendments introduced normative clarity to the definition of the legal nature of local self-government bodies in Russia as public authorities of a special kind, revealed earlier in the practice of the Russian body of constitutional judicial control. Having constitutionally secured the status of local self-government as one of the levels of public authority, the constitutional amendments introduced additional clarifications regarding the way of building relations between state authorities and local self-government, namely, interaction predetermined by the goals of the most effective solution of problems in the interests of the population living on the corresponding territory.

It seems possible, therefore, to note the general direction of constitutional approaches in defining the legal nature of local self-government in Russia and South Africa as one form (variety) of public authority (or in foreign terminology – public administration) functioning on an equal basis with public authorities.

In this context, we consider it possible to note that, in our opinion, the independent exercise of the powers of local self-government bodies seems to be an approach according to which local self-government is considered not to be a level of public authority, but to be an independent sphere of public administration that enjoys equal constitutional legal status on a par with other spheres of public authority (federal (national), regional), characteristic of the constitutional practice of South Africa.

In our opinion, this approach is more consistent with the basis for the emergence of municipal power, as a special way of decentralizing government in the state.

2. Certain Aspects of the Application of the Principle of Decentralization in Legal Regulation of Local Self-Government in Russia and South Africa

As noted in the literature, before the democratic elections in 1994, the situation of municipalities in South Africa was characterized by difficult housing conditions, delays in the provision of services to the population, unequal property status of municipalities, local struggles against the apartheid system, high unemployment rates and a high number of poor households.[34]

That is why the new municipal system was conceived as evolutionary (focused on the development and improvement of the quality of life of the local population) and decentralized, and the constitutional reform of local self-government was based on two fundamental principles – developmentalism and decentralization.[35]

Council of the Russian Federation, SPS "ConsultantPlus"] (14 Dec. 2020), available at http://www.consultant.ru/document/cons_doc_LAW_370105/.

[34] *Democracy and Delivery: Urban Policy in South Africa* (Udesh Pillay et al. eds., 2006).

[35] Siddle & Koelble, *supra* note 9.

As also noted in the literature, the principle of decentralization in the Republic of South Africa was carried out on three planes: political, administrative and fiscal.[36] At the same time, the main interest is the sequence of the implementation of the principle of political decentralization in legislation and in practice.

Political decentralization, as a rule, is understood as the complete or partial transfer of public authority from the center to lower levels of government. As noted in the literature, an integral element and the primary formal expression of political decentralization is the holding of democratic elections at the municipal level. In addition, commentary also highlights the relationship between political decentralization and the involvement of the population in the implementation of local self-government. Thus, some authors believe that real political decentralization takes place where there is an increase in the forms of participation of the population in the decision-making process at the local level, which in turn also leads to an improvement in the procedure and quality of the provision of municipal services. Close interaction of government bodies, citizens and public organizations contributes to a better coordination of interests, identification of the real needs of the population,[37] and solutions to pressing problems of local territorial communities that "can no longer be resolved only through elections."[38]

In this context, it should be noted that the legislation of the Republic of South Africa has quite consistently carried out the idea of the need to involve the population in the decision-making process at the local government level, both from the point of view of the content of legislative norms of an ideological-orienting nature (norms-principles, norms-goals) and from the point of view of normative consolidation at the national level of various forms of participatory democracy.

Thus, the preamble to the Municipal Systems Act of South Africa[39] states that a "fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part" and that "there is a need to create a more harmonious relationship between municipal councils, municipal administrations and the local communities through the acknowledgement of reciprocal rights and duties."

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36 Siddle & Koelble, *supra* note 9.

37 John M. Cohen & Stephen B. Peterson, *Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance* (1997); Larry Diamond, *Developing Democracy: Towards Consolidation* (1999).

38 *Черкасов А.И.* Прямая и партисипационная демократия как средство вовлечения населения в процесс принятия решений на местном уровне // Труды Института государства и права РАН. 2018. Т. 13. № 2. С. 202 [Alexander I. Cherkasov, *Direct and Participatory Democracy as a Means of Involving the Population in the Decision-Making Process at the Local Level*, 13(2) Proceedings of the Institute of State and Law of the Russian Academy of Sciences 190, 202 (2018)].

39 Municipal Systems Act of South Africa No. 32 of 2000 (14 Dec. 2020), available at https://www.gov.za/documents/local-government-municipal-systems-act.

In accordance with the provisions of parts 1, 2 of Article 4 of the Municipal Systems Act, municipalities are assigned such duties as: govern on its own initiative the local government affairs of the local community; encourage the involvement of the local community; consult the local community about the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider and the available options for service delivery; and contribute to the realization of the rights provided for by the Constitution of South Africa.

In addition, a separate special chapter of this Act (Chapter 4 Community Participation) is devoted to the regulation of issues of involving the population in the implementation of local self-government.

Thus, in accordance with the provisions of Article 16 of the Municipal Systems Act, a municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory governance. For this purpose, municipalities are obliged to encourage and create the conditions for the participation of the local community in the affairs of the municipality, including in the preparation, implementation and review of its integrated development plan; the monitoring and review of its performance, including the outcomes and impact of such performance; the preparation of its budget; and strategic decisions relating to the provision of municipal services and other issues. The South African Local Systems Act provides that these provisions should not be interpreted as permitting interference with the constitutional right of municipal councils to exercise executive and legislative power in municipalities.

Municipalities also have a general responsibility to create the necessary conditions for wider public participation in the decision-making process, and it is also stipulated that the activities of local governments should be transparent and the decisions taken should be available for public discussion.

At the national level it is possible to create and operate such forms of participatory democracy as: receiving and considering petitions and complaints filed by members of the local community; public discussions of adopted municipal acts and other decisions related to issues of local importance; public meetings organized by municipalities; participation (presence) of citizens in hearings (sessions) of the municipal council; and consultative meetings with local public organizations (Art. 16 of the Municipal Systems Act).

In addition, in accordance with the Municipal Structures Act,[40] in certain categories of municipalities it is possible to create district committees consisting of a member of the municipal council (representative body of a municipality in South Africa), elected in this district, as well as ten representatives of the public. These committees have the right to adopt acts of a recommendatory nature concerning the development of the

[40] Municipal Structure Act of South Africa No. 117 of 1998 (14 Dec. 2020), available at https://www.gov.za/documents/local-government-municipal-structures-act?gclid=CjwKCAjw74b7BRA_EiwAF8yHFGs_dHQp1cbHjEESJJFPY3vq4Y0bQMJrewq7LgYqpkVeq9.

municipal district and send them to the representative of the district, or directly to the municipal council. In addition, the Municipal Structures Act also allows the possibility of delegating certain powers of the municipal council to district committees (with the exception of issues of budget approval and economic development plans).

Thus, it is necessary to state the presence in the legislation of South Africa on local self-government of a number of both value-oriented and practical norms, indicating, on the one hand, the need to involve the population in the process of local self-government, and, on the other hand, specifically regulating the methods of such involvement. Also necessary to note is the legislative consolidation of the relevant terms – "participation" and "involvement of the population" in the solution of issues of local importance.

In the context of the modern understanding that municipal democracy should be interactive,[41] the presence in legislation of terms, concepts and mechanisms that guide local governments to involve citizens in solving local self-government issues, the formulation of relevant ideas and tasks at the level of legal provisions seems to be a progressive practice of legal regulation.

In this sense, the absence in Russian legislation of a legal definition of the term 'public involvement in the implementation of local self-government' seems to be an omission,[42] despite the fact that sufficient attention is paid to this problem in Russia – conferences and round tables are held, public involvement is considered to be a criterion for evaluating the best municipal practices, and this term is contained in a number of regional acts.[43]

The development and strengthening of the democratic potential of local self-government in Russian municipal practice, the need to establish effective interaction of municipal bodies with civil society institutions, public associations and citizens seems to be in demand.

At present, as rightly noted in some publications, in Russia "there are problems of overcoming the risks of reduced transparency and guarantees of taking into account the interests of local communities."[44] To look upon local self-government as one of the elements (levels) of a unified system of public power, declared in the

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41 Cherkasov 2018.

42 Taking into account the fact that the mechanisms of participatory democracy differ in their essence and the way of elaborating and making decisions from the mechanisms of direct (both imperative and consultative) democracy.

43 For more on this, *see Шугрина Е.С.* Муниципальная демократия: тенденции развития в материалах правоприменительной практики // Правоприменение. 2019. № 3(3). С. 110–113 [Ekaterina S. Shugrina, *Municipal Democracy: Development Trends in the Materials of Law Enforcement Practice*, 3(3) Enforcement 108, 110–113 (2019)].

44 *Джагарян А.А., Джагарян Н.В.* Функционально-правовые ориентиры местного самоуправления: теоретический аспект // Сравнительное конституционное обозрение. 2017. № 5(120). С. 94–115 [Armen A. Dzhagaryan & Natalia V. Dzhagaryan, *Functional and Legal Guidelines of Local Self-Government: Theoretical Aspect*, 5(120) Comparative Constitutional Review 94 (2017)].

course of the constitutional reform of local self-government, should not diminish the democratic importance of this institution in the general system of public administration. In particular, given that a systemic reading of the relevant norm, in our opinion, should be interpreted not in the context of a principle of nationalization of local self-government, but exclusively in the context of building a logical system of distribution of powers between levels of government and effective interaction between them.

Considering the concept of decentralization, it is also possible to note that in foreign legal literature mention is also made of certain necessary elements of the legal regulation of relations related to public administration, reflecting the processes of decentralization.

Among these elements are the following:

• Consolidation at the constitutional level of provisions guaranteeing the legal status and competence of local self-government bodies;

• The presence, in legislation, of mechanisms regulating the interaction of both different levels of government and different public authorities;

• Existence of normative rules defining the processes by which public authorities perform their functions;

• Availability of legislative guarantees of the economic basis for the activities of local self-government bodies;

• Legislative consolidation of the principles of accessibility of local self-government bodies, their accountability to the population.[45]

It seems possible to note that the above analysis of the constitutional and legal regulation of local self-government in South Africa allows us to conclude that most of these principles have been carried out quite consistently. However, the real results of South Africa's decentralization experiment, as noted in the literature, are mixed at best.

While basic services are now much more affordable than ever before, individual municipalities are not coping with the proper implementation of their powers, let alone able to cope with their new evolutionary role and provide breakthrough economic and social development of the municipality.[46] It is noted that in many municipalities the proper level of management, including financial, is not achieved, which is largely due to the insufficient qualifications of the staff of municipal employees. Attention is also drawn to cases of non-compliance or improper implementation of the provisions of national and provincial legislation, both in the implementation of functions of municipal government and in the provision of services to the local population.

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[45] James Manor, *Local Government in South Africa: Potential Disaster Despite Genuine Promise*, SLSA Working Paper 8 (2000) (14 Dec. 2020), available at https://www.gov.uk/research-for-development-outputs/slsa-working-paper-8-local-government-in-south-africa-potential-disaster-despite-genuine-promise.

[46] *Id.*

As noted by individual authors, although South Africa's decision to follow the principle of decentralization and give local government a decisive role in improving the socio-economic situation of citizens, the quality of life of their people, and development, this decision was based on the assumption that all municipalities would be governed by competent employees, provided there were sufficient material and financial resources, in the exercise of municipal powers by officials guided exclusively by the interests of the population. In reality this assumption has not fully justified itself.

As noted in the research, with the Republic of South Africa,

> there is a serious discrepancy between the officially pursued state policy and public expectations, on the one hand, and the real potential (including leadership qualities) of local governments and their resource base, on the other. Municipalities, as a rule, poorly implement the rights and obligations assigned to them, including in conditions of limited resources and opportunities.[47]

It seems possible to note that the difficulties that exist in the exercise of their powers by local governments in South Africa are in many respects similar to those that occur in the exercise of municipal power in the Russian Federation.

An insufficiency of the revenue base of local budgets and other difficulties associated with the formation of a solid economic basis for local self-government,[48] the generally low level of qualifications of municipal employees[49] and the inconsistency of the stated issues of local importance with the real possibilities of municipalities are typical problems associated with the implementation of local self-government in the Russian Federation.

As noted in the domestic literature:

> The modern correction of Russian democracy by the people, primarily due to local civic activity in the context of the nationalization of local self-government, should be associated primarily with the stimulation of the territorial community, generating social capital. It should be borne in mind that this is … about the formation of a political regime, the collectivist principles of which do not suppress the individual, but, on the contrary, contribute to

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47 Manor, *supra* note 45.

48 *Шугрина Е.С.* Экономическая основа местного самоуправления: правовой анализ // Правоприменение. 2018. № 2(3). С. 89–109 [Ekaterina S. Shugrina, *The Economic Basis of Local Government: Legal Analysis*, 2(3) Enforcement 89 (2018)].

49 Recommendations of the round table "Constitutional and Legal Mechanisms of Interaction Between State Authorities and Local Self-Government Bodies at the Present Stage," Federation Council of the Federal Assembly of the Russian Federation, Moscow, 26 November 2018.

the realization of civil rights and freedoms not only at the municipal level, but also at the national level.[50]

In this context, another specificity of the system of legal regulation of local self-government in South Africa is of interest, namely, the presence in it of a general guiding principle for the activities of local self-government bodies – the principle of developmentalism.

3. The Principle of Developmentalism in the System of Legal Regulation of Local Self-Government (in the Context of the Experience of the Republic of South Africa)

Taken outside the framework of legal studies, the concept of developmentalism can be viewed as an economic theory or economic policy which involves active government intervention in the market economy and industrial development of the country in order to accelerate its modernization.

As noted in the literature, currently there is no single definition of the term "developmentalism"; the narrowest definition from the standpoint of economics comes down to the concept of reducing poverty by increasing the income of the population.[51] Despite the fact that this concept is still unclear, it correlates with the ideas of sustainable development in favor of improving the quality of life of people, reducing and ultimately eradicating poverty, as well as ensuring a decent standard of living and equal opportunities for all.[52]

From a political and legal point of view, the idea of developmentalism is based on the concept of "development state," ideologically based on the country's own ability to achieve high-quality economic growth that transforms the lives of citizens.

Various authors single out certain constituent elements of the concept of the state of development. Some elements are different, but most of them show similarities. In particular, the following are distinguished:

• Higher government positions are replaced by representatives of the political elite, focused on achieving the growth of the state's economy;

• The state has extensive powers to influence the economy and set the conditions for the private sector;

• The state apparatus is distinguished by a high level of professionalism, adherence to the ideas of the country's economic growth;

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50 Timofeev 2018.

51 Kealeboga J. Maphunye, *Public Administration for a Democratic Developmental State in Africa: Prospects and Possibilities*, Centre for Policy Studies, Research Report 114 (2009) (14 Dec. 2020), available at https://media.africaportal.org/documents/RR114.pdf.

52 Milton J. Esman, *Management Dimensions of Development: Perspectives and Strategies* (1991).

• The role of civil society in the management of public and political affairs is insignificant and controlled by the state;

• The legitimacy of the political elite is closely related to the state's ability to ensure the country's economic growth.[53]

The ideas of developmentalism were actively discussed in South Africa on numerous political discussion platforms and, in particular, put forward by the African National Congress as the basic means of modernizing the state economy in the mid-2000s.

Separate ideas of developmentalism were initially laid down in the basis of the constitutional model of local self-government in South Africa.

In particular, these ideas found their constitutional embodiment in the provisions of Article 152 of the 1996 Constitution of South Africa, which enshrines the objects of local government's active role, among which the following are indicated:

a. to provide democratic and accountable government for local communities;

b. to ensure the provision of services to communities in a sustainable manner;

c. to promote social and economic development;

d. to promote a safe and healthy environment; and

e. to encourage the involvement of communities and community organizations in the matters of local government.

This role is also clearly seen in the provisions of Article 153 of the 1996 Constitution, according to which a municipality must structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community, and participate in national and provincial development programs.

Thus, as noted in the literature, in the general system of public administration, municipalities are entrusted with the role of agents ensuring a high standard of living for citizens.[54] At the same time, the need for economic development of municipalities ("local economic development") is seen not just as a right, but as a direct constitutional requirement and a corresponding obligation of local governments.[55]

One of the most important official documents that reveals the role of local government in ensuring the progressive development of society and modernization of the economy is the so-called White Paper on Local Government in South Africa –

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53 Jan Laubscher, *The South African Developmental State: Myth or Reality?*, Economic Insight, Economic Commentary (2007); William Gumede, *Delivering the Democratic Developmental State in South Africa*, Development Planning Division, Working Paper Series No. 9 (2009).

54 Isaac Khambule, *The Role of Local Economic Development Agencies in South Africa's Developmental State Ambitions*, 33(3) Local Econ. 287 (2018).

55 Costa Hofisi et al., *Scoring Local Economic Development Goals in South Africa: Why Local Government Is Failing to Score*, 4(13) Mediterr. J. Soc. Sci. 591 (2013); Richard D. Kamara, *Creating Enhanced Capacity for Local Economic Development (LED) Through Collaborative Governance in South Africa*, 1(3) SocioEconomic Challenges 98, 100 (2017).

a program document that describes the socio-political vision of implementing the local self-government.[56]

The White Paper contains the concept of "developmental local government," which is local government whose purpose is social development or, as the document itself describes it, local government which is based on a commitment to working with the local community in order to develop sustainable ways to identify their social, economic and material needs and provide them with a high standard of living.[57]

The White Paper determines that local self-government is assigned a central role in expressing the interests of local communities, protecting human rights, as well as meeting the basic needs of the population. All activities of local government bodies should be focused on improving the quality of life of the population.

The concept of developmental local government is also contained in the Municipal Systems Act of South Africa.[58] In particular, the preamble to the Act indicates that the ideas of evolutionary local self-government are based on the processes of effective planning, resource mobilization and organizational change. Section 23 of the Act specifies that municipal planning should be development-oriented in order to ensure that the objectives of local self-government specified in section 152 of the Constitution are achieved, as well as to properly fulfill the responsibilities assigned to municipalities by section 153 of the Constitution.

Thus, the principle of developmentalism was put forward as the defining principle of the democratic reform of local self-government in South Africa and was sufficiently explicitly expressed in the provisions of the Constitution in 1996, as well as in the provisions of national legislation, and program documents.[59]

It should be noted that the principle of developmentalism as an economic concept has certain ideological foundations rooted in decolonization and is closely related to the idea of accelerated socio-economic development of countries that have freed themselves from colonial dependence or dictatorial regimes. For this reason, this term has always been used to denote a certain type of economic policy in Asia, Africa and Latin America – mainly the countries of the "third world." The use of the term "developmental state" is also limited to a certain context. In this regard, the perception of this theory as an ideological basis for the development of the financial and economic base of local self-government bodies in Russia, the prerequisites for the formation of which are not due to difficulties similar to those of South Africa, is objectively difficult.

At the same time, leaving behind the framework of the purely economic aspects of the principle of developmentalism, which are expressed in the point of view of

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56 The White Paper, *supra* note 8.

57 *Id.*

58 Municipal Systems Act of South Africa No. 32, *supra* note 39.

59 Kgalema Mashamaite, *Role of the South African Local Government in Local Economic Development*, 10(1) International Journal of eBusiness and eGovernment Studies 114, 118–21 (2018).

the need to strengthen state intervention in the market economy, the practice of carrying out certain elements of this principle at the level of legislative provisions seems to be positive: for example, the norms concerning the functions of local self-government bodies in the aspect of the normative consolidation of goals that orient their activities towards the creation and provision of conditions for the socio-economic development of the population and high living standards of citizens.

It seems that the consolidation of goals that orient the activities of local self-government bodies to the need to ensure a decent standard of living create conditions and opportunities for self-realization of citizens is possible and justified in Russian legislation, not only in the context of national goals and strategic objectives,[60] but also in terms of implementation of the constitutional principle of the social state, enshrined in the provisions of Article 7 of the Constitution of the Russian Federation, as well as the provisions of the new Article 75.1, introduced by the latest constitutional amendments, according to which conditions are created in the Russian Federation for sustainable economic growth of the country and improving the welfare of citizens.

In our opinion, the content and operation of this new constitutional principle (which, with a certain degree of conditionality, can also be designated as the principle of developmentalism) should be carried out not only from the point of view of strengthening the social rights of citizens, which was repeatedly pointed out in the development of this norm, but also can and should be extended to the activities of local self-government bodies. At the same time, its action in the context of issues of effective implementation of local self-government should permeate the activities of public authorities at all levels.

Thus, the federal authorities and, first of all, the federal legislature, in the framework of working to improve federal legislation in the field of local self-government, could be guided directly by Article 75.1 of the Constitution, as a rule of direct action.

From the point of view of the powers of regional authorities, one could talk about adjusting the principles of their activities listed in Article 1 of the Federal Law of 6 October 1999 No. 184-FZ "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation."

We also consider it possible and reasonable to supplement the Federal Law of 6 October 2003 No. 131-FZ "On the General Principles of Organization of Local Self-Government in the Russian Federation" with a new article that fixes the goals of the activities of local self-government bodies and directs their work, including the need to improve the quality of life of citizens, and creating comfortable living conditions.

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[60] Указ Президента Российской Федерации от 7 мая 2018 г. № 204 «О национальных целях и стратегических задачах развития Российской Федерации на период до 2024 года» // СПС «КонсультантПлюс» [Decree of the President of the Russian Federation No. 204 of 7 May 2018. On National Goals and Strategic Objectives of the Development of the Russian Federation for the Period Until 2024, SPS "ConsultantPlus"] (14 Dec. 2020), available at http://www.consultant.ru/document/cons_doc_LAW_297432/.

It is obvious that the legislative consolidation of these ideas and values in Russian legislation is hardly the key to solving the problems existing in Russia and related to the organization and implementation of local self-government. At the same time, it seems that such legislative practice would provide the necessary value-oriented basis for the activities of local self-government bodies.

Conclusion

According to the Concept of the Russian Federation's Participation in the BRICS Association, taking into account the novelty and complex nature of issues related to such participation, an important task is an in-depth study of the economic, domestic and foreign policies of the BRICS partner states with Russia, as well as the formation of an independent research area for this interstate association. Increased awareness of the peoples of the BRICS member states about the history, modern life, culture and traditions of each other's countries contributes to the growth of mutual understanding between them.

These circumstances are due to the interest in comparative legal studies of public administration systems in Russia and South Africa, in identifying the features, similarities and differences in the internal legal order of these countries. Despite the different historical and economic prerequisites for the formation of local self-government systems in Russia and South Africa, it seems possible to note the similarity of modern approaches to determining the legal nature of this institution of public authority, as well as its relationship with public authorities of the federal (national) and regional levels in these countries.

The approach to defining local self-government as an independent, independent and equal type of publicity of power is characteristic of legal regulation and constitutional judicial law enforcement practice in both countries.

From the point of view of researching the issue of guarantees of the independence of local self-government for Russian legal doctrine, it is characteristic to study the independent socio-political principles of this institution of public power and the specifics of its legal nature, which distinguishes it from public authorities (not in the least, such discussions are predetermined by the unsuccessful construction of the constitutional norm on local self-government contained in the chapter on the foundations of the constitutional order). Research interest in South Africa is largely concentrated around purely legal, constitutional, guarantees of independence of local self-government from national and regional authorities.

Despite the use of various legal arguments and an appeal to legal justifications of a different order, the principle of autonomy of local self-government as a separate sphere of public authority that is closest to the population (which bears the main burden in matters of ensuring the welfare of citizens) is a distinctive characteristic of the constitutional system of both states.

The issues of increasing guarantees of the independence of local self-government in the conditions of similar difficulties faced by local governments in Russia and South Africa (low qualification of municipal employees, the need to find new ways to develop the economic basis of local self-government) are given considerable attention in both countries, which additionally actualizes the need for exchange of experience and achievements between them in this direction.

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