

Publicity as a Condition for the Creation of Public Chambers

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Abstract: The aim of the study is the analysis of the bill of the Federal Law “on general principles of organization and activities of the Public Chamber of the Russian Federation”. These public institutions should rely on the principle of transparency at the basis of its organization and activities. It suggests openness and publicity as at the stage of formation of the Public Chamber as in their subsequent work. Various methods were used in the investigation. Among them a system of general scientific methods and special legal methods were used: analysis, synthesis, systematic and structural methods, formal and legal methods. During the study a special importance of public chambers has been revealed as subjects of public control over the activities of state authorities and local self-government. In connection with it specific conditions were proved for their creation, main one of them is the maximum publicity, exception from candidates to the members of public chambers of government officials, judges, state and municipal employees. Bill was also analyzed from the standpoint of legal technique and that reveals significant remarks for its structure. Particular attention was paid to the rights of the Public Chamber which according to the researchers are in need of some additions. Amendments to the law were proposed which will allow it to adapt to the norms of modern challenges in order to solve the identified legal issues to resolve comments on the structure and content of the bill.

Key words: Public Chamber, publicity, public control, attention, self-government

INTRODUCTION

The problem of attracting citizens and civil society institutions to management processes in the country for a closer interaction with the authorities, control over their activity is not only national. Not casually the modern state in its legal regulation is considered publicity as a tool connecting powerful bodies with the population (Mikheev, 2014). Scientists point to the transparency as an essential component of the public authority (Kudryavtsev and Mikheeva, 2015). It creates conditions for the activity of the population at their place of residence (Mikheev *et al.*, 2015a). However, no less important principle of transparency is in the activities of public institutions, starting from the moment of their formation. In this respect it is necessary to address to the question of the establishment of the Public Chamber which are the key structures of civil society today. Their legal regulation is not stable in the subjects of the Russian Federation today. Therefore, the bill of the federal law on the Public Chambers of the subjects of the federation was not accidental, proposed by the public for discussion. Recommendations expressed by the public can influence the final version of the law and significantly improve it in terms of public interest. The aim of the work is the analysis of the bill, identifying positive sides and weaknesses, proposals for improving the regulation.

MATERIALS AND METHODS

The methodological basis for the study is presented with complex methods of scientific cognition. Scientific and specific methods were applied which are used in the legal sciences. The dialectical method was especially popular which allows considering the social and legal phenomena in their logical relationship. Analysis and synthesis, analogy, ascent from the particular to the general one were used. The principle of scientific objectivity was used for a comprehensive and objective assessment of the factual material about the activities of public chambers. The possibility of bringing transparency in the issues of formation of public chambers and fixing these aspects in the bill was made possible by the systematical and structural method. Formal legal method became popular in the study which allows analyzing and evaluating legal provisions of the bill from the standpoint of legal technique, content. Objectively identified legal gaps or provision which does not comply with current needs of the situation have been considered under the angle of the principle of publicity. With this method, the study has been enriched with practical recommendations for improving of the bill. In the work other methods of scientific knowledge have been applied, the totality of which created the basis for study and disclosure of the research term.

RESULTS AND DISCUSSION

Nowadays, an important problem is the increase of effectiveness of interaction between authority and civil society in terms of its various institutions (Belousov *et al.*, 2015a).

The passed laws testify to this, creating a legal basis for their development. It should be noted, for example, the Federal Law of 21 July 2014 “on the foundations of social control in the Russian Federation” (Federal Law No. 212-F.L., 2014) which has regulated relations in the sphere of organization and implementation of public control for the first time and it should become an instrument of the independent public control over the activities of the authorities. In the opinion by Grib (2015) in the Russian Federation system of public control is the foundation of civil society and legal state. Nowadays public control is turning into the priority direction in the mechanism of realization of the publicity principle (Mikheev *et al.*, 2015b).

However, the law not only consolidated a modern public institution but it also laid the legal conditions for the establishment of new elements and development of existing ones of civil society which are subjects to the public control. First of all the public chambers should be referred to them. In the structure of the modern civil society public chambers of the Russian Federation started to play an increasingly prominent role. Thus, though it is possible for citizens, NGOs and special organizational structures to participate in public control the system of public control is concentrated only in public chambers and public councils for they are the only ones who are defined by law as the subjects of public control (Belousov *et al.*, 2015b). At present, these public bodies were established in all regions of Russia.

Analysis of laws of Russian Federation’s subjects on their public chambers shows a wide variety of key issues of their formation, status, material and financial support. It all depends on the discretion of the regional legislators, financial and economic capacity of the region and sometimes on the subjective factor the lack of willingness of the authorities of federation’s subjects to have a strong, effective working public chamber. Although, in the last case the chamber was formed but only the minimum conditions were created to it the space is allocated, tiny cost estimate was approved for the maintenance and support of the chambers often performs some of the fixed bodies of executive power. The need for legislative regulation of the issue is very actual now at the federal level as the role of public chambers is increasing as a unifying force in society (Avakyan, 2015). Thereby federal bill “on general principles of organization and activities of the Public Chamber of Russian Federation”

is represented as actual offered to a broad public discussion. In our opinion we will examine important provisions of the bill.

Public Chamber of the subject of the Russian Federation (hereinafter the Public Chamber) is designed to ensure the coordination of socially significant interests of citizens according to the bill, public associations, public authorities and local self-government of the federation in order to decide the most important issues of economic and social development of the federation and to protect the rights and freedoms of citizens, the development of democratic institutions.

Meanwhile, in our opinion, lack of the bill in the “general provisions” of rules about the presence of the public chambers in all subjects of the Russian Federation should be referred to the problems. Neither in the study “general provisions”, nor in other studies following it, there is no direct obligation to secure the public chamber, so unequivocal conclusions cannot be made that the Public Chamber is a necessary institution of civil society which is created in each region. It would be legally more accurate in paragraph 1 of Article 1 “general provisions” to consolidate “presence of the Public Chamber of Russian Federation’s subjects as compulsory.”

The absence of such a rule does not preclude the regional “autonomy” in a straight liquidation of already existing chambers or blocking of its work by indirect ways (reduction in funding, refusal to provide premises, etc.).

Returning to the discussion of the bill it should be noted that the president of the Russian Federation, members of Federation Council, State Duma deputies, members of the Russian Government, judges, persons holding posts of the federal public service, public office of subjects of federation, other positions of the state civil service of subjects of federation, positions of the municipal service and elected members of local government cannot be members of public chamber.

There are peculiarities connected with political parties they should suspend their membership in political parties for a term of office in the Public Chamber. The number of membership of public chamber cannot be <21 and >102 people. Public associations and other non-profit organizations only have the right to nominate candidates for public chamber; each organization can offer no more than one candidate. The candidate must suit to certain criteria: the age of 18 years, residence in the territory RF subject, the experience of working for the protection of the rights and legal interests of professional and social groups for at least 3 years.

A single procedure for the formation of public chamber should be referred to advantages of the bill. In it the head of the subject of federation, approving one third of the members and the legislative (representative) body

of the subject, constituting two-thirds of members, participate. The formed two-thirds of the members of public chamber determine the composition of rest of one-third. At the same time the head of the region and the regional parliament approve their quota from the nominations represented, respectively structural divisions nationwide (inter) regional public associations and non-profit organizations. As members of public chamber forming the last third part, they are nominated by local community associations.

We do not see defectiveness that the state authorities of the Russian Federation constituent entity are allocated with the right to form two-thirds of public chamber. On the contrary, it raises the authority of the created public authority and to a certain extent; it will simplify its interaction and dialogue with the public authorities of the Russian Federation. The term of office of 3 years in the public chamber also seems to be optimal. The practice of activities of Mari El Republic's Public Chamber has shown that 2 years for which members of chamber are elected in accordance with the Law of the Republic of Mari El on 29 April 2008 "on the Public Chamber of the Republic of Mari El" (Law of the Republic of Mari El No. 26-Z, 2008) are insufficient. Not less than a year is spent for Chamber's members to master new their status and to gain experience in conducting "round tables", public hearings, public discussions and examinations. Therefore, in 2012 in the Mari law amendments were made in the part of the extension of the term of office up to 3 years.

There are obvious advantages and a number of evident significant shortcomings of the bill. The Article 11 on the organization of activity of public chamber should be referred to them. In its parts (1-8, 10-12) organizational relationships are regulated quite logically with conducting Chamber meetings, the main forms of activities, decision-making, the organization of the Chamber's sites, etc.

However, it is impossible to agree with the inclusion of part 9 in this article, containing the public chamber's the rights with which it is vested in order to implement its tasks. Chamber's rights are an independent institution which determines its efficiency, the authority and importance of the public authority, i.e., this is another group of legal relations which are different from the organization of the activity. Consolidation into a single article of two different groups of legal relations contradicts the legal technique and complicates law enforcement (try to find quickly the right of the chamber by title of articles). But the main thing is not even in the violation of the legal and technical requirements but in that there is no worthy place for central provisions of the future law in its pages.

However, for unknown reasons, among the first articles Article 5, devoted to the regulations of public chamber and in fact regulating procedural and organizational issues is included but that would be just logical to place it after the issues of organization of Chamber's activities. In our opinion, also Article 6 of the bill, devoted to the Code of Ethics of public chamber's members, should not be taken a key place, ahead of the rules governing the rights of public chamber.

In this regard, it would be appropriate to make some structural changes in the bill. It is necessary to select the rules governing the right of public chamber and characterizing its status as an independent article and to give them more appropriate place in the initial articles. Provisions, devoted to the regulations and the Code of Ethics are subject to moving into the second part of the bill.

As to context of the law of Russian federation subject's public chamber they need in essential additions at least in two ways.

Firstly, granting the right of examining bill of federation's subjects to the chamber means competence of members of public chamber to evaluate the bills prepared by the executive or legislative power of the subjects' federation. As there is no doubt about their professionalism, the ability to work with the legislative acts, the question becomes regular about the possibility of granting the Public Chamber of the right of legislative initiative in the legislative body of the federation subject. Social activists are able to offer bills to local legislator, if it is necessary, developed on their own initiative. In this case, the actual conditions are created for the promotion of the public interest through the legislative initiative. In addition, the realization of legislative initiative's right raises the status and authority of the Public Chamber.

The second significant addition of Public Chamber's powers should become its right to participate in the formation of public councils under the executive, the legislative power of the federation subject, public chambers (Councils) of municipalities. Their importance, relevance raises incorporation of these bodies in the subjects of social control repeatedly. But today public councils' membership does not withstand criticism in some organs. As it is noted fairly in the Annual Report on the activities of the Public Chamber of the Republic of Mari El in 2015 (Annual Report, 2016), public discussion of candidates, members of the public councils are not always conducted, there is a lack of alternative in choosing the members of such boards in the membership of some of them there is a significant number of former employees of institutions, few young people and representatives of public institutions can be seen there that it is typical for other subjects of the

federation. Dorovskih (2015) generally questioned the independence of the public councils which one way or another are interconnected with the state or other municipal bodies.

The situation will not change for the better until there are at least general legal outlines regulating the formation of public councils under the public authorities of the subject of federation, local self-government.

In range of compulsory subjects, involved in the formation of these public councils, it is necessary to include the public chamber of subject of federation, respectively, adding to it the right to the following paragraph: "to take part in the formation of public councils under the executive authorities and the government of the Russian Federation, public chambers (councils) of the municipalities." Such addition as excluding bodies from the process of the public councils' formation in which they are formed and this will create conditions for their independence and objectivity.

The bill provides that the organizational, legal, analytical, informational, documentary, financial and logistical support is made by its staff. The staff of the Public Chamber is a state-owned institution of subject of federation and its head is appointed and dismissed by the supreme executive authority of subject of Federation Council on the proposal of the Public Chamber.

This question is difficult for many regional public chambers. As it is noted, today in regions of Russia very variegated palette is observed in the public chambers' staff. In some of them under the sonorous name "staff" one person works. Specialists, serving the public chamber, often do not stand out in an independent structure but they are included to staff of various regional institutions. We believe that an end will be put to this "variegation" with the adoption of the bill under discussion and the order will come in the status of persons serving for regional public chambers. However, questions are still left.

First of all in the article at least the minimum number of the staff is absent in which it seems to us, 3 persons are represented. Otherwise a state-owned institution "the staff of the Public Chamber" will be created and in it there will still be one full-time employee with the minimum wages. All members of the Chamber operate on a voluntary basis but the staff is intended to contribute to making this work of high quality and effectiveness. It would be desirable to see not random people but an experienced, competent professional, for example with legal profile and with decent wages.

The last question of salary is closely connected with article of the bill on the financing of the Public Chamber

under which it is the expenditure commitments of the Russian Federation subject. Financial support of the public chamber's staff is carried out within the costs assured with the budget of the federation subject to provide the activities of the chamber. The bill does not establish any minimum size of chamber's financing, leaving them at the discretion of federation subject. Thus, in regions financially disadvantaged chambers are unlikely to be given the necessary amount of funds. It is believed that the bill should contain more specific rules in this part.

CONCLUSION

In general, the debated bill should be evaluated as a positive as it sets a single legal vector of regional public chambers' development what should become a condition for their strengthening and give a new impetus to further activities. However summing up, it is necessary to make the conclusions and proposals. For what: in order to introduce the institute of Public Chambers in all subjects of the Russian Federation and to avoid the elimination of the existing chambers, it is proposed that the norm of the bill about the existence of the public chamber of the Russian Federation's subject is compulsory.

It should eliminate 11 part 9 from the article and form a separate article on its basis: "the rights of the public chamber", fixing the position of priority in the structure of the law. It should add the rights of public chamber with two important powers. To give it the right of legislative initiative to the regional parliament. To secure the right to participate in the formation of public councils under the authorities of federation subject and municipal public chambers (councils) for it.

Articles, devoted to the regulations of public chamber and the code of ethics of its members will be placed in the final part of the bill because they have organizational character.

The implementation of the proposed recommendations will allow not only to modify the bill to adapt to the public interest but also to facilitate its law enforcement greatly.

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REFERENCES

- Avakyan, S.A., 2015. Civil Society as a Guarantee of Political Dialogue and the Fight Against Extremism: The Key Constitutional and Legal Issues. Yustitsinform Publisher, Russia, Pages: 103.
- Belousov, E.I., R.V. Gornev and T.N. Mikheeva, 2015a. About participation of institutes of civil society in public control over the activities of local authorities. *Rev. Eur. Stud.*, 7: 59-64.
- Belousov, E.I., R.V. Gornev and T.N. Miheeva, 2015b. Problems of interaction between civil society institutions and local authorities. *Mediterranean J. Soc. Sci.*, 6: 307-310.
- Dorovskih, L.V., 2015. Public control in the Russian federation: The legal basis. *Government Local Self Government*, 6: 14-18.
- Grib, V.V., 2015. Place and role of public chambers in the system of public control in the Russian federation. *Constitutional Munic. Law*, 5: 33-38.
- Kudryavtsev, V.V. and T.N. Mikheeva, 2015. Publicity at the formation of municipal authorities of European States. *Med. J. Soc. Sci.*, 6: 419-424.
- Mikheev, D.S., 2014. Legal analysis of the European charter of the local self government in the light of the principle of publicity. *Life Sci. J.*, 11: 619-622.
- Mikheev, D.S., T.N. Mikheeva and M.A. Mokoseeva, 2015a. On the experience of legal regulation of the principle of local authorities in German law. *Rev. Eur. Stud.*, 7: 23-27.
- Mikheev, D.S., I.G. Dudko and T.N. Mikheeva, 2015b. Public control in the mechanism of realization of the principle of local authority publicity. *Med. J. Soc. Sci.*, 6: 41-46.