

N.S. Ternovaya

*Ye.A. Buketov Karaganda State University, Kazakhstan
(E-mail: ternovayans@mail.ru)*

General characteristics of representative bodies of local self-government in the Republic of Kazakhstan and the Russian Federation

In this article, the author conducts a comparative legal analysis of the system of local self-government in the two largest countries of the post-Soviet space - the Republic of Kazakhstan and the Russian Federation. Having many similarities and differences, local government systems have one common feature - the primacy of the representative body and its top priority in matters of local importance. Taking into account the conditions in which the system of local self-government developed in both countries, the author of the article, by means of a comparative legal method, determines the criteria that occupy the dominant position when taking into account the construction, organization, functioning and prospects for the development of the local government system through the prism of local representative bodies of the Russian Federation and the Republic Kazakhstan. The urgency of this issue has both scientific and practical significance for the purpose of increasing the effectiveness of the work of the representative body in the framework of local self-government.

Keywords: local government, representative body, municipal entity, maslikhat, apparatus of the representative body, local government system, territorial subdivision of the central state body, maslikhat session, local state administration, akim, akim machinery, local issues.

The successful functioning of the local government system directly depends on the local government, namely how they are structured in the local government system, what powers they have and how they interact with each other. The definition of these basic characteristics must begin, first, with the device of local self-government enshrined in legislation, and secondly with an analysis of the mechanisms by which these bodies function separately and among themselves. According to A.Kostyukov the system of local government can be seen in two senses - narrow and broad, depending on the scale. In a narrow sense, the system of local self-government bodies is a system of bodies with an independent legal status, through which the functions and powers of local governments are exercised in the respective territory. In a broad sense, these are internal divisions of the created bodies of local self-government. In addition to these definitions, the structure of the local self-government bodies is also understood as the structure of the system of the main local self-government bodies, endowed with their own competence, and the internal structure of each of these bodies [1; 199].

Bases of local government in the Republic of Kazakhstan is the 1995 Constitution, namely Article 86 Section 8. It says that dominant bodies in the structure of local government are municipal representative bodies - maslikhats. They express the will of the population of the relevant administrative-territorial units and, taking into account national interests, determine the measures necessary for its implementation, control their implementation [2]. In the Russian Federation, however, the Constitution defines the following provisions for a representative body: through it, citizens exercise their political rights and exercise local government within the boundaries of the municipal entity [3].

As a rule, some bodies of executive power, as well as representative bodies, are included in the system of local self-government bodies. In the Republic of Kazakhstan, the number of bodies of local self-government is covered by all bodies for which, in accordance with the Law «On Local Government Management and Self-Government», functions are assigned to address issues of local importance. Such bodies are primarily the local executive collegial bodies, headed by the akim of the region, the city of the republican significance and the capital, the district (the city of regional importance) that carries out within its competence local state administration and self-government in the corresponding territory. It should be noted that in addition to the local executive body, the central executive body is also actively involved in the work of the local government system, which, in accordance with the legislation, is authorized to develop a system of local government in the regions. However, territorial subdivisions of the central state body were created to fully cover the territories controlled by the central executive body and to strengthen the effectiveness of work on the development and strengthening of settlements. They are a structural subdivision of the central executive body that performs the functions of the central executive body within the respective administrative-territorial unit [4].

In the legislation of the Russian Federation for securing the legal status of local self-government bodies, a separate section is allocated, which allows a much more detailed disclosure of the structure of the local government. Its basis, as in the Republic of Kazakhstan, is the representative body of the municipal formation and the local executive and administrative body of the municipal entity, that is, the local administration. The work of local government necessarily involves the head of the municipal formation, as well as a separately established control and accounting body of the municipal formation. The above-mentioned bodies are mandatory for each municipal entity, since they are called upon to ensure full exercise of the functions of local self-government. However, considering the vast territory and numerous ethnic composition of the Russian Federation, municipal entities are given the right to independently create the internal structure of representative bodies of local self-government. The procedure and organizational forms of their activities are determined by the municipal entity independently, by introducing the relevant provisions in the statutes, regulations, as well as other legal acts adopted by these bodies [5]. Such a provision in the Law «On General Principles of Local Self-Government in the Russian Federation» allows municipal entities to have the authority to establish special bodies necessary for a particular local government unit that facilitate more effective resolution of issues of local importance.

In the Republic of Kazakhstan maslikhats occupy a dominant position in the implementation of local self-government within certain administrative-territorial units, as they represent a representative body that embodies the democratic foundations of local self-government and democracy. Maslikhat is an elected body elected by the population of the region, the city of the republican significance and the capital or district (city of regional significance) expressing the will of the population and in accordance with the legislation of the Republic of Kazakhstan, determining the measures necessary for its implementation and supervising their implementation [4].

As well as it is necessary to the countries with democratic way of development, maslikhats are selected by the population of corresponding administrative-territorial units on the basis of universal, equal, direct suffrage by secret ballot for the period of five years. Maslikhats are formed from deputies who, on the basis of the Law of the Republic of Kazakhstan «On Local Government Administration and the Administration of the Republic of Kazakhstan», may be a citizen of the Republic of Kazakhstan who has reached the age of twenty. Depending on the scale of the administration in the no-territorial unit where local self-government is exercised, the Central Election Commission of the Republic of Kazakhstan establishes the limits of the number of deputies of the Maslikhat. Thus, in the regional maslikhat, as well as the maslikhats of the capital of Astana and the city of the republican significance of Almaty, their number can not exceed fifty people. In the city maslikhats there are no more than thirty deputies, in the district no more than twenty-five. Maslikhat is considered eligible subject to the election of at least three-fourths of the total number of its deputies, determined by the Central Election Commission of the Republic of Kazakhstan [4].

In the Russian Federation, in the system of local self-government bodies, a representative body also occupies a dominant position. The representative body of the municipal formation is an elected collegial body of local self-government, consisting of deputies and vested with the power to represent interests and act on behalf of the population of the municipality. The dominant position of the representative body in the structure of local self-government is determined by the right to form other bodies of local self-government within the territorial boundaries of the municipality, to take decisions on behalf of the population of the municipality within their competence that are legally binding for all legal and physical persons in the territory falling under jurisdiction of the representative body of the municipal territory [5].

The representative body of the municipal formation, as in the Republic of Kazakhstan, is formed by equal, direct, universal expression of will of the citizens of the Russian Federation residing on the territory of the municipality within whose borders elections are held. However, as A.N. Kostyukov, in accordance with Federal Law No. 131-F3 «On general principles of the organization of local government in the Russian Federation», there are certain exceptions to the rules for the formation of representative bodies in municipal areas. In addition to direct suffrage, direct indirect election of members of a representative body of local self-government is already practiced from among the heads of settlements elected by the population as part of a municipal formation, as well as from deputies of representative bodies of these settlements, elected by the representative bodies of settlements from their composition in accordance with the norm of representation, regardless of the population of the settlement.

As in the Republic of Kazakhstan and the Russian Federation, the legislator established the procedure for the formation of a representative body and the limit of the number of deputies who make up its membership. The expediency of this activity consists in the need to find a balance in the optimal number of deputies

required to solve the tasks falling within the competence of local self-government. The number of deputies should not be too large, or rather inadequate for effective work of the collegial body. In contrast, and by the Republic of Kazakhstan, which establishes a limit on the number of deputies, the Russian legislator sets the minimum number of deputies of a certain population. The specific number of deputies of the representative body is established by the charter of the municipal formation, but it can not be less than the requirement established in the law. This minimum depends directly on the population of the municipality.

Such distinctive differences in the formation of deputies in the two countries are connected with the need for universal coverage by the local government of the population and territories on which it lives. This distribution occurred in order to maximize the effectiveness of the work of deputy groups with a certain number of people. In the Republic of Kazakhstan, the limit on the number of deputies in the representative body is dictated by the lack of the need for a large number of representatives for a relatively small number of people. However, domestic legislator nevertheless found that maslihat is not entitled thereto if its composition will be elected at least two thirds of the total number of seats [4].

Also, the fulfillment of the direct responsibilities of local self-government also depends on the number of deputies involved in the work of the representative body. The Law of the Republic of Kazakhstan «On Local Government Management and Self-Management» singles out sessions as the main form of activity of the bodies of maslikhat. Authority of making any decisions and accomplishing tasks that fall within the competence of the representative body of local self-government are determined by the number of deputies present at the session. Maslikhat session is qualified if at least two thirds of the total number of Maslikhat deputies are present at the session. Maslikhat session is held in the form of plenary sessions. The first session of the newly elected maslikhat shall be convened by the chairman of the relevant territorial election commission no later than within thirty days after the registration of the deputies of the maslikhat. The next session of the maslikhat is convened at least four times a year and is conducted by the chairman of the maslikhat session. An extraordinary session of the maslikhat is convened and chaired by the chairman of the maslikhat session on the proposal of at least one third of the number of deputies elected to this maslikhat, as well as akim. An extraordinary session shall be convened no later than within five days from the date of adoption of the resolution on holding an extraordinary session [4].

In the Russian Federation, the activities of the representative body are conducted in the form of sessional meetings, for which a quorum is mandatory. A quorum is a normatively established minimum required number of deputies for consideration and resolution of issues within the competence of the representative body. However, for the initial meeting and for the next meeting there are two different types of quorums, as in the Republic of Kazakhstan. The first meeting calls for a mandatory, statutory number of elected deputies in the amount of two thirds of the total number of seats. Regular sessions are held in accordance with the charter of each individual municipal entity, or according to the rules of the representative body.

In the Republic of Kazakhstan, due to the unitary nature of the state, the procedure for holding sessions is strictly regulated by law, and has little difference from the order in the Russian Federation. However, when convening an extraordinary session of a representative body, namely a maslikhat, the presence of a complete or even dominant majority of the composition of deputies is not necessary, in view of the urgency and the urgency of the meeting. One-third of the total number of deputies is sufficient for holding an extraordinary meeting, but it is true that in such a small convocation the powers will be very limited: when convening an extraordinary session, deputies have the right to consider only those issues that caused the convocation of an extraordinary session. The proper functioning of the sessional body of maslikhat is extremely important for the work of all local bodies of local self-government, since it is the maslikhat session that is the main form of activity of local self-government in the person of deputies. When this session organ necessarily present maslihat chairman. The maslikhat chairman is a maslikhat official, elected from among his deputies, who performs organizational and managerial functions at a maslikhat session [4]. However, in addition to regulating the activities of the representative body directly at the session, it seems necessary to carry out organizational and managerial work both at the maslikhat session and with its other bodies. This role is performed by the Secretary of Maslikhat, who is an official working on an ongoing basis. He is elected from among the deputies by open or secret ballot by a majority of votes of the total number of deputies and dismissed from office by the maslikhat at the session. Secretary of Maslikhat elected for a term of office of maslikhat Candidates for the post of Secretary of maslikhat deputies nominated o maslikhat maslikhat session. In addition to the fact that this official acts with the deputies of the maslikhat in the exercise of their powers, provides them with the necessary information, considers the issues, it also coordinates the interac-

tion of the maslikhat with the rest of the local self-government bodies, and also is the head of the maslikhat apparatus [2].

Being by their nature a compound and rather complex body, maslikhats have their own apparatus and secondary bodies, facilitating the work of deputies of local representative bodies. Such bodies include not only the maslikhat session, but also the maslikhat apparatus. The maslikhat apparatus is a kind of service for the work of the maslikhat organ, ensuring the normal functioning of its other bodies, deputies, as well as sessions held in the executive body. This body also carries out organizational, legal, logistical and other support of the maslikhat and its bodies, assists the deputies in the exercise of their powers. The maslikhat apparatus is a state institution, which is maintained at the expense of the local budget. In the Russian Federation, there is also the apparatus of a representative body that bears the status of a legal entity, it performs all the functions characteristic for it, as well as the Maslikhat apparatus in the Republic of Kazakhstan. Financing of this body is also carried out from the local budget, which, in the opinion of A.N. Kostyukov allows local self-government bodies to exercise more independence in carrying out their activities, and also makes it possible to take into account all costs and other financial aspects of the body's activities, which certainly affects the effectiveness of the whole process of local self-government [1].

Thus, having analyzed the structure of the representative body in the two countries, it can be concluded that the local government system in the two countries is adjusted in accordance with the needs for exercising power over the administrative-territorial units of the two countries. Taking into account all the peculiarities of local self-government of the Russian Federation and the Republic of Kazakhstan, it can be unequivocally asserted that the account of the area, density and number of people living on the territory plays a leading role in determining the structure of local self-government: the larger the scale of the territory covered by the system of local self-government, the more complex and ornate will be there is a power over it.

Referenses

- 1 Муниципальное право: учебник для студентов вузов, обучающихся по специальности «Юриспруденция», «Государственное и муниципальное управление» / под ред. А.Н. Костюкова. — 2-е изд., перераб. и доп. — М.: ЮНИТИ-ДАНА: Закон и право, 2011. — 791 с.
- 2 Конституция Республики Казахстан от 30 августа 1995 года [Электронный ресурс]. — Режим доступа: <http://www.constitution.kz>.
- 3 Конституция Российской Федерации 1993 г. [Электронный ресурс]. — Режим доступа: <http://www.constitution.ru>.
- 4 Закон Республики Казахстан «О местном государственном управлении и самоуправлении в Республике Казахстан» от 23 января 2001 года № 148 [Электронный ресурс]. — Режим доступа: <http://adilet.zan.kz>.
- 5 Федеральный закон «Об общих принципах организации местного самоуправления в Российской Федерации» от 06.10.2003 N 131-ФЗ (последняя редакция) [Электронный ресурс]. — Режим доступа: <http://www.consultant.ru>.

Н.С. Терновая

Қазақстан Республикасында және Ресей Федерациясында жергілікті өзін-өзі басқару құрылымындағы өкілді органның жалпы сипаттамасы

Мақалада посткеңестік аумақтағы ең ірі екі мемлекеттің — Қазақстан Республикасы мен Ресей Федерациясының жергілікті өзін-өзі басқару жүйелерінің салыстырмалы құқықтық талдамасы жасалып отыр. Жергілікті өзін-өзі басқару жүйесі көптеген ұқсастықтар мен ерекшеліктерге ие бола отырып, ең басты жалпы ерекшелікке тән болып отыр — жергілікті мәселелерді шешуде өкілді органның басымдылығы. Екі мемлекеттегі жергілікті өзін-өзі басқару органдары жүйелерінің даму ерекшеліктерін ескере отырып, мақала авторы құқықтық-талдама тәсіл арқылы Ресей Федерациясы мен Қазақстан Республикасында жергілікті өкілді органдардың өкілеттіліктеріне назар аударып, жергілікті өзін-өзі басқару органдарының жүйесін құру, қалыптастыру және даму болашағының ерешеліктерін анықтап отыр. Жергілікті өзін-өзі басқаруды жүзеге асыру аясында өкілді орган жұмысының тиімділігін арттыру мақсатында бұл мәселенің ғылыми және тәжірибелік өзектілігі анықталып отыр.

Кілт сөздер: жергілікті өзін-өзі басқару, өкілді орган, муниципалдық мекеме, мәслихат, өкілді орган аппараты, жергілікті өзін-өзі басқару жүйесі, орталық мемлекеттік органның аумақтық бөлімшесі, мәслихат сессиясы, жергілікті мемлекеттік басқару, әкім, әкім аппараты, жергілікті мәселелер сұрақтары.

Общая характеристика представительного органа в структуре местного самоуправления в Республике Казахстан и Российской Федерации

В данной статье автор проводит сравнительно-правовой анализ системы местного самоуправления в двух крупнейших странах постсоветского пространства — Республике Казахстан и Российской Федерации. Имея множество сходств и различий, системы местного самоуправления имеют общую особенность — главенство представительного органа и его первоочередная значимость в вопросах местного значения. Учитывая те условия, в которых система местного самоуправления развивалась в обеих странах, автор статьи путём сравнительно-правового метода определяет критерии, занимающее доминирующее положение при учете построения, организации, функционирования и перспектив развития системы местного самоуправления, через призму местных представительных органов Российской Федерации и Республики Казахстан. Актуальность данного вопроса имеет как научное, так и практическое значение, так как цель исследования — повышение эффективности работы представительного органа в рамках осуществления местного самоуправления.

Ключевые слова: местное самоуправление, представительный орган, муниципальное образование, маслихат, аппарат представительного органа, система местного самоуправления, территориальное подразделение центрального государственного органа, сессия маслихата, местное государственное управление, аким, аппарат акима, вопросы местного значения.

Referenses

- 1 Kostiukova, A.N. (Ed.). (2011). *Munitsipalnoe pravo* [Municipal law]. Moscow: YuNITI-DANA: Zakon i pravo [in Russian].
- 2 Konstitutsiia Respubliki Kazakhstan ot 30 avhusta 1995 h. [The Constitution of the Republic of Kazakhstan of August 30, 1995]. *constitution.kz*. Retrieved from // <http://www.constitution.kz> [in Russian].
- 3 Konstitutsiia Rossiiskoi Federatsii 1993 h. [The Constitution of the Russian Federation, 1993]. *constitution.kz*. Retrieved from <http://www.constitution.kz> [in Russian].
- 4 Zakon Respubliki Kazakhstan «O mestnom hosudarstvennom upravlenii i samoupravlenii v Respublike Kazakhstan» ot 23 yanvaria 2001 hoda № 148 [Law of the Republic of Kazakhstan «On local government and self-government in the Republic of Kazakhstan» of January 23, 2001 No. 148]. *adilet.zan.kz*. Retrieved from <http://adilet.zan.kz> [in Russian].
- 5 Federalnyi zakon «Ob obshchikh printsipakh orhanizatsii mestnoho samoupravleniia v Rossiiskoi Federatsii» ot 06.10.2003 N 131-FZ [Federal Law «On General Principles of Organization of Local Self-Government in the Russian Federation» of October 6, 2003 N 131-FZ]. *consultant.ru*. Retrieved from // <http://www.consultant.ru> [in Russian].