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**THE PROSECUTOR'S OFFICE AS AN ORGANIZATION PROTECTING
THE INTERESTS OF LOCAL SELF-GOVERNMENT
IN THE RUSSIAN FEDERATION**

SUMMARY. This article considers forms of the Prosecutor's Office's participation in strengthening the autonomy and full functioning of local self-government in the Russian Federation through the protection, based on norms of Russian and international laws, of the rights and legal interests of citizens as well as legal entities, public associations and organizations from illegal activities by bodies of local self-government when conducting law enforcement on the part of supervisory authorities. It is noted that the most common violations made by bodies of local self-government are found in the sphere of municipal law-making as well as in implementing regulative functions on business units, placing orders for municipal needs. In turn, bodies of local self-government are also subject to unfounded prosecution. In such circumstances, human rights work conducted by the Prosecutor's Office is very important.

KEY WORDS. European Charter, local self-government, Prosecutor's Office, control, supervision, legitimacy, protection of interests.

Strengthening Russian statehood is impossible without unassisted, self-sufficient and fully functioning local self-government, which is based on strict adherence to principles of organization of the activity and security of local self-government postulated in articles 12 and 133 of the Constitution of Russian Federation.

According to the preamble to the European charter of local self-government, the existence of organs of local self-government vested with actual power guarantees effective governing [1].

Besides, experience shows that the problem of security of local self-government needs further research on ways for improvement. Current research shows the lack and inefficiency of existing legislative regulation and the practice of judicial protection of local self-government [2].

In this situation, the search for other ways of defending local self-government and modernizing judicial protection is relevant.

Consequently, advocacy of Prosecutor's Office organs in local self-government should be thoroughly researched. This is connected primarily with the modernization of the Prosecutor's Office, which resulted in the optimization of criminal prosecution and differentiated a separate organ of investigative force in the Prosecutor's Office [3]. Recently passed acts have significantly strengthened the supervisory powers of the Prosecutor's Office [4].

Advocacy actively carried out by organs of the Russian Federation Prosecutor's Office's can become more effective and focused in applying, on the level of local self-government, article 8 of the European charter of local self-government dated 15.10.1985, confirmed by The Russian Federation on 11.04.1998 and in since 01.09.1998 [5], which says that any administrative control of organs of local self-government can be carried out as provided for by the Constitution or applicable law. Administrative control of actions of organs of local self-government, as a rule, is aimed to guarantee legitimacy and the fulfillment of the principles of the Constitution only [6].

In compliance with sub-section 1 of article 77 of Russian Federation Act № 131-F3 dated 06.10.2003 'Concerning common principles of organization of local self-government in the Russian Federation' [7] (hereinafter Federal Act №131-F3), the Prosecutor's Office of the Russian Federation and other organs are authorized by Federal law to perform the supervision of administration of the Constitution of the Russian Federation, federal constitution law, federal laws, constitutional charters, laws of the subjects of the Russian Federation, charters of municipal units and municipal regulations by local self-government and office-holders of local self-government. In compliance with sub-section 1 of article 21 of Federal Act № 2202-1 dated 17.01.1992 'Concerning the Prosecutor's Office of the Russian Federation' [8] (hereinafter the Law on the Prosecutor's Office), the subjects of the prosecutor's supervision in the area of local self-government of the Prosecutor's Office are the observation of the Constitution of the Russian Federation and the respect of laws legally enforceable on the territory of the Russian Federation, by the organs of local self-government, organs of supervision, their officials, organs of government and chief executive officers of for-profit and non-profit organizations, the correspondence to the law of legal acts created by these organizations and officials. The object of the prosecutor's supervision is the working practice of the organs of local self-government and its officials when finding solutions to local problems.

The basic form of supervision activities by the Prosecutor's Office of organs of local self-government is the monitoring of the legality of municipal regulations.

The analysis of the prosecutor's examination of these organs exposes the fact that firstly the prosecutor's officials examine the charter of a municipal corporation concerning its correspondence to the legal requirements. According to certain enactments of Federal Act № 131-F3 which came into effect on the 1st of January 2006 and which is connected with the delegation of a large share of responsibility for state-financed legal relations to the organs of local self-government, and in connection with the creation of new municipal formations in the Russian Federation subjects, the amount of regulations created by organs of local self-government dramatically increased. As the prosecutor's examination and publications of practitioners [9] show, the violation of law is more often seen in the sphere of municipal law-making by organs of local-government. Enactments are issued which contain dispositions in violation of the norms of legislation in such spheres as land, housing, tariffs, transport, urban development, privatization of municipal services, or taxation. The basic reason

for this situation is that officials of local self-government do not have extensive knowledge of current law and do not pay sufficient attention to changes and additions to local and federal law. Municipal and district prosecutors investigate projects of municipal enactments to form single legal proposition for an enactment and to exclude the ability to bring illegal enactments into force. Prosecutors on the local level take an active part in meetings of representative bodies, executive organs of local self-government and training workshops, they send comments and suggestions on the elimination of any mismatch of projects of enactments with federal and local laws to the secretary of these organs. As a result of the prosecutor's continuous supervision, the process of tailoring municipal enactments (charters of municipal units first of all) to current law has become substantially active. At the same time, in federal law, a lack of proper regulation of the problem of authorization of municipal and regional prosecutors by the charters of municipal units with the right to legislate constitutes a constant violation of municipal law-making, in our opinion.

In such situations the prosecutors are forced to apply to organs of local self-government for such power. Another sphere of activity where a defensive role for the Prosecutor's Office is seen is connected with the fact that a substantial part of municipal functions is connected with regulating functions. As a regulator of market relations (including the sphere of municipal relations), the State supports an effective policy of economy and competition through the system of corresponding statutes, particularly through the creation of certain preclusions in terms of administrative burdens for certain enterprise entities' actions. However, it is no secret that organs of local self-government interfere in the economic activities of market entities in not always justified and not always lawful ways. The overwhelming majority of them are composed of the representatives of small and medium-sized businesses. As a rule, unlawful interference in business subjects' activities is performed through unlawful legislative enactments which regulate the issues of licensing, quota allocation, groundless privilege, distribution of land and privatization of municipal property. Thus was welcomed the decision of the president of the Russian Federation D.A. Medvedev that supervision activities should be properly regulated. As a result, Federal act № 294-F3 dated 26.12.2008 "Concerning the protection of the rights of legal bodies and business entities under state and municipal supervision" [13] (hereinafter Federal Act № 294-F3) was introduced. According to this Act, prosecutors are entrusted with coordinating planned and unplanned supervision measures concerning small and medium-sized business entities. The adoption of this Act significantly broadened the sphere of the Prosecutor's Office's supervision, and enlarged the possibilities of the Office to activate the legal measures regulating the activity, rights and duties of the supervision bodies. Besides these actions, a legislative package of anti-corruption acts helped significantly to improve the coordination and correlation of supervisory organs and increase the effectiveness of their work. The reform of supervision organization and realization led to a sudden decrease in illegal supervision. As the Prosecutor-General of the Russian Federation J.Y. Chayka said during his speech on the Meeting of the Federation Council FC RF on May 30th 2012, in 2011 the Prosecutor's Office declined

approximately 500 000 supervision actions declared by inspection bodies and approximately 20 000 unplanned examinations! [14] The same situation could be observed in 2010. The compelling stand of the prosecutors strongly promotes decreasing administrative pressure on small and medium-sized businesses, at the municipal level first of all. For small and medium-sized businesses, many administrative procedures were significantly simplified, the supervision organs and the business entities correlated in an organized way. Also, humane local self-government supports this policy. Besides, according to article 24 of Federal Act № 294-F3, organs of local self-government as legal bodies have the legal right to apply to the Prosecutor's Office to object to unlawful statutes which were the legal basis for unlawful supervision. It is known that there was positive experience of correlating the organs of the Prosecutor's Office and supervisory organs regulated by Federal Act № 294-F3. Federal Act № 66-F3 on the functioning of the mechanism of supervision actions was tested on small and medium-sized entities by inspection bodies in correspondence with Prosecutor's Office's organs cover all organizations [15]. It was an important legislative solution for local self-government because the organs of local self-government carry out not only legislation and regulative activity concerning local questions (articles 14-16 of Federal Act № 131-F3) but also financial functions linked with their main duty: they use buildings, workplaces, transport, accountant's offices, pay taxes etc. Supervision of organs of local self-government is carried out by other state organs as well. For instance, in order to provide fire safety in the Russian Federation, the officials of the national fire authority, according to Russian Federation legislation, check the observance of standards of fire safety by the organs and officials of local self-government [10]. Local agencies of the Federal Service for Labour and Employment supervise the legitimacy of acts that regulate employer-employee relations in organs of local self-government [11]. The functions of supervision of obedience of tax law, the proper amount and proper time of tax liabilities by the organs and officials of local self-government in cases provided for in the legislation of the Russian Federation, is carried out by the regional offices of the Federal Revenue Service [12] etc. As it is known, the prosecutor's supervision of the law obedience and of the legitimacy of the acts is wide-ranging and includes acts that regulate the activities, rights and duties of the supervisory agency of the executive. In this situation, the organs of the Prosecutor's Office apply to the law which says that the supervisory power of organs of State power in the area of local self-government is strictly limited by the legislation and statutory requirements of international and federal level (article 8 of the European Charter dated 15.10.1985, article 77 of the Act concerning local self-government etc.). This was good support of humane local self-government. Besides, according to article 24 of Federal Act № 294-F3, the organs of local self-government as legal bodies have the lawful right to apply to the Prosecutor's Office to object to unlawful statutes which were the legal basis for unlawful supervision of local self-government by the supervision bodies. These essential measures of legislative control, providing for the legitimacy of actions by the organs of local self-government and the defence of local self-government, contain other relevant problems. In our opinion, a federal act that

sets out the peculiarities of the creation, carrying out and termination of the right to public property and the accounting procedure of public property must be passed. In this respect, it would be right to toughen the administrative responsibility of officials for the violation of legislative norms in the sphere of the administration and control of public property. Another important problem that demands the constant attention of the Prosecutor's office is the providing for legitimacy in the sphere of statutory and regulatory control of budgetary relations.

Alongside supervision of the permitted use of inherent and acquired finances by organs of local self-government, overseeing the constitutional guarantees as to the autonomy of local self-government is the most important aim of the Prosecutor's Office (article 12, p. 1 article 132 of the Constitution of the Russian Federation). This is seen particularly where local self-government has certain state powers with compulsory devolution of the inventory needed to carry out such duties. Unfortunately, there are numerous cases of violation of this principle. Questions relating to respecting legislation while ordering goods, carrying out work and providing services for municipal needs demand the prosecutor's constant attention [16]. Numerous media publications and prosecutors' own practice attest that this situation is widespread. Selection committees often violate the procedure of adjudication and invitation to tender. Often facts of giving municipal orders to carry out work without a competitive basis take place, proper control of the fulfilling of the provisions of contracts by the organizations that sign them is also rare. As remarks the first Deputy Prosecutor-General of the Russian Federation A.E. Bucksman, the propensity for corruption on the federal and municipal purchasing market is obvious: combined with problems and failures of federal and municipal purchasing legislation, the amount of funds for these purposes has reached the level of 4 trillion rubles and it still growing. [17]. In the Letter from President Dmitry Medvedev to the Federal Assembly of the Russian Federation dated November 30th 2010 it was said that application of Federal Act № 94-F3 dated 21.07.2005 'Concerning ordering goods, delivery, carrying out work, providing services for state and municipal needs' was beyond the realm of reason. The aims stated by this Act stayed mostly as manifests of intention. Based on a conservative estimate, inappropriate expenses, including theft and "shadow payback", compose not less than one trillion rubles. This is why it is time to start work on a new edition of the act on Government procurement, which should be more reasonable and up-to-date [18].

All the above testifies the importance of the Prosecutor's Office's role in assuring the legitimacy of local self-government activities, in its defensive function through participating in local legislation improvement, the prevention of local self-government officials' unlawful actions and unlawful actions by the subjects of instances of supervision; it should provide an effective correlation with business entities on a legislative basis. As a result, currently it would be right to consider working out the project of a federal act on the means of control and supervision in the Russian Federation, taking into account current parameters. Organs controlled by the Prosecutor's Office's for the realization of stated functions should become an effective

measure of defence of the constitutional rights and freedoms of citizens and legal bodies, including organs of local self-government. This would improve the transparency of the mechanism of supervision actions, and have a real impact on possible corrupt tendencies in state and local supervision.

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