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# CUESTIONES POLÍTICAS

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## Counter-majoritarian mechanisms in local self-government: a view from Russia

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### Abstract

Through a documentary methodology, the article analyzes the main theoretical, practical, and problematic legal issues related to the functioning of the counter-majority mechanisms existing in the Russian local self-government system. The study proposes a set of legal measures aimed at improving the content of existing counter-majoritarian legal structures and seeks at the same time to introduce new ones to bring Russian municipal legislation into place to bring Russian municipal legislation into place. It is concluded that the thesis of the system of tyranny of the majority (majority democracy) at the local level cannot be recognized as a democratic and stable legal structure for the application of local self-government. Around the world, there is a fairly long process of replacing the concept of majority democracy with the concept of participatory democracy that involves the interaction of all population groups and the search for compromises between different social communities, through a balance of respect and recognition of memories of all kinds.

**Keywords:** local self-government; counter-majority mechanisms; counter-majoritarian legal constructions; participatory democracy; Russian experience of local government.

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## *Mecanismos contramayoritarios en el autogobierno local: una mirada desde Rusia*

### **Resumen**

Mediante una metodología documental el artículo analiza las principales cuestiones legales teóricas, prácticas y problemáticas relacionadas con el funcionamiento de los mecanismos contramayoritarios existentes en el sistema de autogobierno local ruso. El estudio propone un conjunto de medidas legales destinadas a mejorar el contenido de las estructuras jurídicas contramayoritarias existentes y busca al mismo tiempo introducir nuevas para adecuar la legislación municipal rusa a las principales tendencias mundiales en la protección de los derechos de las minorías municipales. Se concluye que, la tesis del sistema de la tiranía de la mayoría (democracia mayoritaria) a nivel local no puede reconocerse como una estructura jurídica democrática y estable para la aplicación del autogobierno local. En todo el mundo, hay un proceso bastante largo de sustitución del concepto de democracia mayoritaria por el concepto de democracia participativa que implica la interacción de todos los grupos de población y la búsqueda de compromisos entre diferentes comunidades sociales, mediante un equilibrio de respeto y reconocimiento a las memorias de toda índole.

**Palabras Clave:** autogobierno local; mecanismos contramayoritarios; construcciones legales contramayoritarias; democracia participativa; experiencia rusa de gobierno local.

It's enough to lose the election,  
to understand: the majority is not always right.  
Andrew Mackenzie

### **Introduction**

The analysis of the complex of events that had been taking place in the world recently allows concluding that the existing unified global community has passed into a stage of instability and serious transformations, the results of which are quite difficult to predict. Concerning the system of Russian local self-government, it is not difficult to predict the fact that the economic difficulties that are inevitable during the transformation period will objectively cause an increase in protest activity of the population due to the naturally escalating problems with solving local issues that complicate the lives of residents of municipalities daily.

Therewith, the modern institution of Russian local self-government (as a democratic institution) is objectively programmed to prioritize the interests

of the majority of residents over the interests of the territorial residents of local communities. The main forms of implementation of local self-government by the population and participation of the population in the implementation of local self-government are focused on the legitimization of the interests of the majority, most of which are majoritarian (local referendums, municipal elections, voting on the recall of a deputy, citizens' gatherings, public hearings, public discussions, meetings and conferences of citizens, citizens' polls).

However, as the practice of local self-government shows, in the current information age, when solving issues of local significance, serious problems arise related to adequate legal protection of the protest consolidated and formalized will of the population of local territorial communities on issues of compaction development, changes in the number of floors of buildings, changes in the purpose of land, placement of environmentally dirty objects, support for the implementation of industrial and commercial projects, deforestation of municipal forests... Quite often, such projects, which are positively assessed by the majority of the population of the municipality due to the prospects of their implementation from the standpoint of common municipal interests, cause an unambiguously negative consolidated reaction of residents of local territorial communities, whose interests will be infringed to some extent in the event of the implementation of relevant projects entailing the deterioration of the local environmental and the economic situation, a decrease in the comfort of living conditions and several other locally significant circumstances.

This problem conceptually follows from the general democratic attitude, which assumes the priority of the interests of the majority concerning the minority. However, concerning the system of local self-government, which assumes the priority of finding consensus among all residents of the municipality, the lack of effective counter-majoritarian municipal legal institutions is puzzling, and, accordingly, this topic is of undoubted scientific interest.

## **1. Methods**

Based on the analysis of the theoretical foundations and the existing experience of practical implementation of legal structures that regulate counter-majoritarian mechanisms in local self-government in Russia, this study attempts (using dialectical, logical, historical, formal-legal methods of scientific knowledge using reference, value, system, functional and informational approaches) to analyze the main problematic legal aspects of the implementation of counter-majoritarian mechanisms in Russian local self-government and to suggest promising directions for improving the content of the legal structures under consideration.

## **2. Theory and practice of implementing counter-majoritarian mechanisms in local self-government in Russia**

The issue of the legal consequences of the contradiction between the will of local communities and the expression of the will of the majority of the local population has not until now been the subject of close attention of theorists of municipal law. However, concerning the general constitutional and legal issues, the «counter-majoritarian difficulty» is a well-researched political and legal plot, which was first described by A. Bickel (1986), a professor of law at the Yale Law School, and subsequently studied in sufficient detail by such Russian and foreign scholars like I.A. Alebastrova (2018), A. Arutyunyan (2008), N. V. Varlamova, N.B. Pakholenko (1997), S.M. Popova, S.M. Shakhrai (2019), K. Ragnarsson (2019), J. McGarry, B. O'Leary, R. Simeon (2008).

Therewith, it is important to note the fact that, within the framework of the constitutional problem concerning counter-majoritarian mechanisms, the emphasis is on protecting the interests of ethnic and cultural minorities, and not the interests of local territorial communities (houses, streets, neighborhoods) that remain in the minority when making public decisions. In our understanding, when considering the content of municipal counter-majoritarian mechanisms, it is important to understand and take into account these specifics.

When analyzing the content of counter-majoritarian municipal mechanisms, it is important to emphasize that their essence is precisely the protection of the rights and legitimate interests of local territorial communities, and their organizational guarantees should include elements of the municipal mechanism for the exercise of public power that can resist the decisions of institutions formed by the majority of the local population and designed to reflect their interests.

Therewith, the understanding of counter-majoritarian municipal mechanisms solely as tools for protecting the rights of local territorial communities, which enable them to resist the repressive decisions of the democratic majority of municipalities, in our understanding, narrows the significance of these mechanisms. Their purpose should also be to promote the development of consolidating principles in municipalities, the coordination of interests, the search for compromises to smooth out the emerging conflicts of interests of local territorial communities and the majority of the population of municipalities.

Analyzing the legal aspects of counter-majoritarian municipal mechanisms, one should also take into account the fact that they can receive their legal consolidation in the relevant municipal legal institutions, which contain separate counter-majoritarian elements in their content. Therein,

it should be noted that there are no specialized counter-majoritarian municipal legal institutions aimed exclusively at protecting the interests of local territorial communities in the current Russian municipal legislation.

Meanwhile, to date, within the framework of a municipal legal matter, several municipal legal institutions can be distinguished, having in their content separate counter-majoritarian elements that can legitimately adjust both the process itself in the interests of local territorial communities and the result of decision-making directly by the majority of the population of municipalities or indirectly by their representatives.

1. The legal institution of public hearings provided for in Article 28 of the Federal Law No. 131-FZ of June 10, 2003 «On General Principles of the Organization of Local Self-Government in the Russian Federation» allows (when conducting this municipal public procedure in buildings located in the territorial proximity of disputed objects) providing conditions for the preferential presence of representatives of the relevant local territorial community, the expression and formalization of their consolidated will for its subsequent consideration by the relevant local representative body.
2. The legal structure of the institute of public discussions provided for in Article 24 of Federal Law No. 212-FL of July 21, 2014 «On the Foundations of Public Control in the Russian Federation» and paragraph 5 of Article 28 of Federal Law No. 131-FZ of October 6, 2003 «On the General Principles Of Organizing Local Self-Government in the Russian Federation», the legal structure of the institution of public discussions also creates certain conditions for the preferential participation in it of representatives of the relevant local territorial communities, the rights, and legitimate interests of which are affected or may affect the discussed decision. This procedure facilitates the clear expression and formalization of their consolidated opinion to ensure that its content is more fully and adequately taken into account by the relevant municipal authorities and officials.
3. The legal structure of the institution of the Head of a municipality, as the sole highest official of a municipality elected at municipal elections, either by the representative body of the municipality from its composition or by the representative body of the municipality from among the candidates submitted by the competition commission based on the results of the competition, contains counter-majoritarian elements, clearly manifested in its ability (provided for in part 13 of Article 35 of the Federal Law of 06.10.2003 No. 131-FZ «On General Principles of the Organization of Local Self-Government in the Russian Federation») to reject a normative legal act adopted by the representative body of the municipality.

Also, special attention should be paid to the fact that the very procedure for electing the Head of a municipality, which provides for competitive election as one of the options, indicates the desire of the legislator to introduce elements into the content of this legal institution that ensures (along with the level of professionalism) the possibility of carrying out certain counter-majoritarian actions by the Head of the municipality.

4. The existing legal structure of the institution of a deputy of a local representative body, which declares the responsibility of a municipal deputy to the voters, but practically excludes the possibility of his/her recall (Solovev and Titova, 2020), contains a certain counter-majoritarian content, which allows the elected representatives of the majority of the population of the electoral district, if necessary, to carry out actions aimed solely at protecting the interests of local territorial communities that are in the minority on certain issues.

Also, special attention should be paid to the fact that the deputies of the local representative body are representatives of a part of the territory of the municipality, and in the event of a discrepancy between the interests of the population of the entire municipality and its part from which the deputy is elected, this legal figure, representing the interests of its voters (remaining in the minority), acquires a purely counter-majoritarian content in its activities.

5. Among the legal institutions that have counter-majoritarian elements in their content, which make it possible to systematically protect the interests of local territorial communities by legal means, it is also possible to distinguish the institutions of local branches of public associations and political parties, as legal structures by definition focused on defending certain group interests, among which the interests of local territorial communities may well be included.
6. A specific legal institution with a pronounced counter-majoritarian content is the legal institution of judicial appeal of municipal legal acts, provided for in Part 2 of Article 46 of the Constitution of the Russian Federation. Within the framework of this legal procedure, the sole will of an appointed rather than an elected judge, aimed at protecting the legitimate interests of local territorial communities violated by decisions of the majority (or their representatives), may have a purely counter-majority character, implying that a judge cancels a municipal legal act in the interests of a minority of the local population, adopted by the direct expression of the will of citizens or by democratically elected bodies and officials of local self-government, representing the majority of the local population.

### **3. A set of legal measures aimed at developing counter-majoritarian mechanisms in local self-government in Russia**

To avoid the potential for the establishment of a majority dictatorship in the modern Russian system of local self-government, in our understanding it is necessary to introduce into its composition a group of specific legal institutions that have a purely counter-majoritarian content, providing more effective protection of the rights and interests of local territorial communities within the framework of specially stipulated legal procedures. In our understanding, we can offer the following legal constructions as such counter-majoritarian legal institutions.

Firstly, to clarify the prevailing opinion of local territorial communities on issues that cause widespread protest sentiments in them, it makes sense to introduce in Article 28 of the Federal Law of October 6, 2003, No. 131-FZ «On General Principles of the Organization of Local Self-Government in the Russian Federation» norms defining the procedure for holding local public hearings, which are public hearings held exclusively to clarify the prevailing opinion of residents living in a certain part of the territory of a municipality.

Secondly, if there is a negative opinion of local territorial communities on high-profile local issues expressed as a result of local public hearings, it seems appropriate to provide for the mandatory adoption of a formalized decision based on the results of general municipal public hearings held following Article 28 of Federal Law No. 131-FZ of October 6, 2003, adopted by a qualified majority (2/3) of the number of participants in the relevant public hearings.

Thirdly, to establish legal mechanisms that reliably guarantee the protection of the rights and legitimate interests of residents of local territorial communities, it makes sense to provide for an overqualified quorum (3/4 of the established number of the deputy corps) in Art. 35 FL dated October 6, 2003. No. 131-FZ for making decisions by the local representative body on issues in respect of which there is a negative decision based on the results of local public hearings and there is no formalized positive decision based on the results of general municipal public hearings.

Fourthly, the establishment of norms in Article 35 of the Federal Law No. 131-FZ of October 6, 2003, which enshrine the right of a deputy of a local representative body to make decisions on objects located on the territory of his/her electoral district, in the presence of qualified support of residents of the relevant territory, expressed by the results of local public hearings (3/4 of the number of participants in local public hearings), will undoubtedly contribute to the solution of the issue of creating mechanisms for protecting the rights and legitimate interests of residents of local territorial communities.



Fifthly, it is also quite a cardinal measure in the issue of protecting the rights and legitimate interests of residents of local territorial communities can be the consolidation in the Federal Law of October 6, 2003, No. 131-FZ of a legal structure regulating the exercise of the right of a suspensive veto on the decision of a local representative body by a group of residents in the number of 15 percent of residents of the municipality who made the corresponding decision by electronic voting.

### **Conclusion**

In conclusion, we would like to emphasize the thesis that the system of the tyranny of the majority (majority democracy) at the local level cannot be recognized as a democratic and stable legal structure for the implementation of local self-government. Throughout the world, there is a rather long process of replacing the concept of majority democracy with the concept of participatory democracy (Linz and Stepan, 1996; Susan *et al.*, 2012), which involves the interaction of all population groups and the search for compromises between different social communities. This circumstance determines the urgency of developing theoretical constructions and modeling practical mechanisms aimed at introducing a group of counter-majoritarian institutions into the system of Russian local self-government that can legitimately correct the majority decisions taken in a legitimate democratic procedure in the interests of local territorial communities.

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