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Constitutional Rationale of International Standards in Local Self-Government

Sergey Kvach^{a*}, Natalya Frolova^b, Elena Vasilkova^c

* Corresponding author: Sergey Kvach, kvachss@yandex.ru

^a*Nizhnevartovsk Institute of Economics and Law (branch of) Tyumen State University, 13-A Druzhby Narodov St., Nizhnevartovsk, Russia, kvachss@yandex.ru*

^b*Nizhnevartovsk Institute of Economics and Law (branch of) Tyumen State University, 13-A Druzhby Narodov St., Nizhnevartovsk, Russia, nat68366847@yandex.ru*

^c*Nizhnevartovsk Institute of Economics and Law (branch of) Tyumen State University, 13-A Druzhby Narodov St., Nizhnevartovsk, Russia, evstraw@yandex.ru*

Abstract

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The article deals with the issues concerning constitutional rationale of international standards in local self-government in legal systems of different states. The authors suggest that the issues concerning modernization of public and municipal administration bodies should be considered on international experience base. The research shows that a considerable part of constitutions' provisions of different states regulating municipal bodies' activities have similar components. This can be explained by the fact that legal systems of the states are guided by international standards enshrined in international treaties. The authors define six standard elements of constitutions' provisions about local self-government: recognition of local self-government by the state; administrative and territorial structure of the state; the main powers and functions of municipal government; forms of self-government in communities, administrative control of municipalities and guarantees of local government. The authors offer their classification of constitutions based on their unification extent. The conclusion gives the idea of how local self-government in different countries is secured by their constitutions and laws.

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1. Introduction

Now then the Russian society is going through a lot of changes, there is a challenge to develop public administration bodies. The considerable consolidation of municipal administration can be done

by delegating part of state power to municipalities. It will be possible only if there is appropriate legal and economic support.

Globalization is the cause for two objective processes: the process of the European integration in the west of the continent and the process of the Eurasian integration on the territory of the former Soviet Union. In such conditions, it is possible to ensure continuous wellbeing on the continent Eurasia if national traditions of each people are respected. This condition predetermines the need to manage the modern life cycle of people and society according to compromising and mutually satisfying norms and rules.

Such rules are secured in international documents and implemented in national legal systems through various national legal forms: constitutions, laws and regulations.

The issues of interaction and interference of international and national legal ways of public relations regulation traditionally are the most challenging in international law.

International law influences internal law through securing the principle of international law primacy in the Constitution and through transforming the laws from particular international treaties into the norms of national law (Marchenko, 2007).

The issue under discussion is thoroughly studied in the works by I. Lukashuk, V. Butkevich, R. Myullerson, S. Voskanov and some other authors. They consider the peculiar connections between international and national law.

However, the authors mentioned above study just separate aspects of the issue under discussion. While studying the issue how to constitutionally legalize local government in different countries of the world, we would like to pay a very close attention to the aspect of implementing of international municipal standards, and, first of all, those standards being in the European Charter of Local Self-Government (Collection of the Russian legislation, 1998), in constitutions of modern states.

The purpose of this work is studying the requirements and recommendations the European Charter of Local Self-Government and the constitutional norms of modern countries, which legalize local self-government.

2. The priority of a constitution in legalizing self-government

The constitution is the highest legal form which formalizes values, state norms and basis of the constitutional system (Sukharev, 2003).

In the modern legal doctrine the Constitution is traditionally defined as a priority source of any branch of law, and, in our opinion, there are at least two reasons for this:

- the validity of the Constitution comes first in hierarchical system of law sources;
- in a legal system the Constitution is the footing for all state legal institutes and norms.

Of course, when laying down the constitutional principles of a state system, it would be incorrect to bypass the issue how to legalize such an important democratic institution as the institution of local self-government. For this reason, in most modern states constitutions settle municipalities' activity, for example: the Russian Constitution – Chapter 8 "Local Self-Government", the Constitution of Kazakhstan –Section 8 "Local Public Administration and Self-Government", the Constitution of the

Republic of Belarus - the Fifth Part "Local Government and Self-government", the Constitution of Armenia – Chapter 7 "Local Self-Government" (Maklakov, 1999).

Studying provisions of fundamental laws of the modern states it is possible to see many different approaches concerning the issues of how constitutions guarantee local self-government. Some constitutions thoroughly regulate functioning of local authorities; others lay down just the general principles of their formation and activity. Studying thoroughly the constitutional provisions which regulate municipalities' activity, one can see some similar elements:

- validation of local self-government by a state;
- administrative and territorial partition of a country;
- main powers and functions of municipalities;
- forms of self-government in communities;
- administrative supervision of their work;
- local self-government quarantines.

These provisions have been developed through history, while constitutional institution of local self-government was developing. At the same time, it should be noted that the provisions were published orderly in the constitutions which were mainly adopted at the end of the twentieth century. In our opinion, it can be explained by the fact that at that time in the world the doctrinal principles of local self-government foundations were being developed; those principles were later transformed into universally recognized international standards. The norms were fixed in the documents developed within the international intergovernmental institutions (mainly the European Councils) and received the status of the international standards of local self-government.

Therefore, the legislator while developing the provisions of the Basic Law uses international standards, which provides integration of international standards into national constitutions.

So, Article 2 of the European Charter Of Local Self-Government says that the principle of local self-government is validated by the national legislation and, as far as possible, the constitution. Almost all constitutions of the modern states abide by these provisions. Moreover, as we have already seen, in some countries the principle of validation of local self-government is underlain in the Basic Law in a separate article. The Charter also draws attention to the fact that there is a need to secure constitutionally or legislatively the main powers and functions of local governments and that there is also a need for the state to supervise and monitor them. These provisions are advisory, however, they can be found in most modern constitutions. Let us analyse texts of Basic Laws and classify them from the point of view of how they use the provisions secured by the European Charter Of Local Self-Government.

3. Classification of constitutions according to their approach to self-government

Constitutions of some states (let us call them the first group), secure only the fact of formation of self-government institutions, without defining the principles of their functioning and competence, or they just ignore these issues.

For example, Paragraph 121 of the Constitution of Finland says that Finland is divided into communes; their government must be based on self-government of people living in communes. The law lays down general principles of municipal government and rules which communes must follow.

The constitution of Spain guarantees the autonomy of municipalities, they have all the rights of a legal person. The order and conditions of their work are regulated by the law.

The constitution of Moldova says that elective local councils are public governments that work autonomously in villages and towns. All the issues connected with their competence and functions must be settled by the law.

It is possible to put the constitutions of Latvia, Romania, Belgium, Georgia, Bosnia and Herzegovina and some other countries into the same group.

Article 4 of the European Charter of Local Self-Government says that the main powers and functions of local self-governments are defined by the constitution or the law. Considering the complete priority of the Basic Law over other acts of a national legislation, it is possible to say that the constitutional powers are resistant to the powers secured by the law, and in case there is conflict of laws the constitutional powers can't be repealed.

Constitutions which lay down the main powers of municipalities and don't have regulations on administrative supervision of their performance, are put into the second group in our classification.

For example, Paragraph 4 in Article 86 of the constitution of Kazakhstan enlists powers of *maskhilat* (local representative bodies). Decisions made by *maskhilat* can't be repealed by public authorities. If they comply with the constitution or laws, only the court can overrule them. That is, being given the powers by the constitution, they perform them independently without any supervision from the state. The same principle is in provisions of some other constitutions, in particular: of Russia, Ukraine, Hungary.

Speaking about supervising municipalities' work, it is necessary to emphasize that according to the European Charter Of Local Self-Government, local governments can be administratively supervised only according to procedures and only in cases provided by the constitution and the law. Constitutions with such provisions are put into the third group of our classification.

The Constitution of Portugal says that administrative custody over local self-governed units includes supervising the compliance with law by local governments in cases and forms provided by the law. At the same time, if municipalities violate the law the possibility to dissolve them.

The provisions securing the administrative control of local self-governments activity can also be found in constitutions of Greece, Albania, France, Bulgaria, Belarus, Poland and some other countries.

It is necessary say that there are constitutions of some countries which do not say anything about local government organization, for example, the Basic Laws of Denmark and Norway. They can be put into the fourth group.

Other provisions of the European Charter Of Local Self-Government also have great practical value. In particular, Article 9 stipulates the need to provide self-government bodies with financial resources. For this reason it recommends to authorize municipalities to fix the size of local taxes and fees. We can see the constitutional legalization of these provisions in Basic Laws of Germany, Russia, Belarus, Azerbaijan, Albania, Estonia, Finland, France, Ukraine and many other states.

4. Conclusion

The review of the constitutions of the mentioned above states makes us conclude that:

1 constitutions of the vast majority of the states recognize the right of territorial communities to be self-governed; moreover, constitutions which were adopted at the end of the twentieth century and at the beginning of this century have separate parts on how to put into practice local government;

2 similarity of the provisions which are most often used in constitutions can be explained by the fact that legislators while working on the provisions of the Basic Law use international standards fixed in the documents developed within the international intergovernmental institutions;

3 today we cannot find the only approach to how to define the priorities which must be secured by a constitution. Some constitutions secure just the principle of territorial communities' autonomy, others define election procedures, power and local governments funding; some others point out the possibility to their government control.

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