

Comparative Legal Analysis of International Standards In The Field of Local Government and Prospects for Improving National Legislation

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Abstract:

The article is about the comparative legal analysis of international standards in the field of local government and prospects for improving national legislation.

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Although a lot of scientific and practical research has been carried out in the field of local self-government, nevertheless, in these scientific works, international standards related to activities in this area have not been sufficiently and systematically studied. Therefore, a scientific analysis of international standards in this area is advisable. Indeed, today, when each state creates its own national legal system and the optimal legal basis for it, it is impossible not to see the prospects of the chosen path in harmony with the processes of globalization [1].

It should be noted that the importance of international standards in the field of local self-government began to develop, especially at the end of the twentieth century. And most European countries have harmonized this in their legal systems. This is due to the fact that international standards in this area have played an important role in resolving issues of local importance, ensuring cooperation between state bodies and civil society institutions, and transferring some state powers to local authorities.

Since international standards in this area are aimed at representing the interests of the state, society, and individuals, they play a key role in the unification of legislation. In turn, they are also distinguished by their originality. In our opinion, this is a feature:

first, they have strengthened their powers to manage and control essential public works for the benefit of the population and take responsibility;

secondly, the issues of independent decision-making in solving issues of local importance are presented;

thirdly, they solve such issues as the creation of local self-government bodies on the basis of universal, equal, direct suffrage by secret ballot or by ensuring the expression of the will of citizens.

To date, a number of international documents in the field of local self-government have been developed, which, in turn, set standards in this area. Without taking into account the principles and norms of international law enshrined in these documents, the development of the industry is somewhat difficult. Consequently, based on international standards, each country seeks to formulate its legislation based on the principles of international norms in order to determine its global prestige.

Therefore, today relations in this area are reflected in international standards of a universal and regional nature.

In particular, international standards in the field of local self-government are also called universal, since they apply to all countries. In other words, universal standards are documents adopted by international organizations on a global scale. For example, one of these organizations is the UN and its specialized bodies. We see that the international documents adopted by this organization cover some aspects of the activities of local self-government bodies.

One of them is the Universal Declaration of Human Rights. It can be seen that it reflects the electoral part of local self-government bodies. According to article 21 of the Declaration, "everyone has the right to participate in the government of his country, directly or through freely elected representatives" [2].

Another international standard in the area under discussion is the International Covenant on Civil and Political Rights, adopted in 1966 (entered into force in 1976). Since

Article 25 [3] regulates relations in the field of elections, it can also be called an international document of global importance, regulating the sphere of local self-government.

In addition, international documents on elections are adopted not only by the UN, but also by other authoritative international organizations. One of them is the Inter-Parliamentary Union.

This organization has adopted such international documents as the Declaration on the Criteria for Free and Fair Elections (March 26, 1994) and the Universal Declaration of Democracy.

It can be said that the aforementioned international documents in the field of elections also serve as an important international source of experience of foreign states in the field of local self-government, which is formed through elections.

As noted above, documents adopted by specialized UN agencies also serve as universal international standards in the field of local self-government. The main body of the United Nations Educational, Scientific and Cultural Organization (UNESCO) also makes a significant contribution to this area.

It is responsible for the implementation of the recommendations of the General Assembly in its jurisdiction on economic, social, cultural, educational, health issues, as well as on issues related to local government.

For example, article 11 of the UNESCO Universal Declaration on Cultural Diversity [4] focuses on building partnerships between the public sector, the private sector and civil society. [5]

In particular, it is argued that the preservation and promotion of cultural diversity, which is a key factor in the sustainable development of humankind, cannot be achieved solely on the basis of market opportunities and, therefore, again in partnership with the private sector and civil society.

Obviously, these norms also apply to the activities of local self-government bodies. This is because they exercise their powers on the basis of social partnership with government agencies.

In this regard, it is appropriate to focus on regional and international standards in the field of local self-government. International standards in this regard are documents adopted by international organizations established by states in a particular region or continent.

For example, one such international organization is the Council of Europe. The Council of Europe is an international regional organization, the Congress of which deals with local democracy, the development of civil society institutions, the development of local self-government, as well as the development of proposals and recommendations for expanding its powers.

To date, Soviet Europe and the ego of the executive bodies have adopted a number of international instruments, established world standards for human rights and freedoms, non-governmental organizations and civil society institutions, as well as the principle of inadmissibility of verbalism.

In turn, the European Charter of Local Self-Government [6], which regulates the activities of local self-government bodies, plays an important role among these documents. 15 October Adopted at Strasbourg (France) 1985, 1988

Valid from September 1. To date, this international instrument has been signed and ratified by 44 of the 47 member states of the Council of Europe (excluding Andorra, San Marino and Monaco). The last time the document was ratified by Montenegro was in September 2008.

The Charter consists of an introduction, three sections and eighteen articles, which set out the objectives of the member states of the Council of Europe in the field of local self-government. Form is one of the most important foundations.

In other words, this document is the main legal basis for local self-government and serves for the development and promotion of local self-government in all countries.

This international document is also important as a form of implementation of political rights and freedoms of citizens, which ensures the right of the population to independently resolve issues of local importance and sets European standards for the protection of the rights of local self-government, close to life [7].

In his preface, one of the main ways to achieve this goal is to sign an agreement in the field of governance, the right of citizens to participate in public administration is based on democratic principles, these rights are implemented directly at the local level, the basic principles of local self-government in the member states should be based on the principles of decentralization [eight].

The Charter clearly defines the scope of authority of local self-government bodies (Article 4).

In particular, the powers of local governments are reflected in the constitutions or laws of the member states; unless otherwise provided by law, they can independently resolve issues of local importance raised on their own initiative; as a rule, public powers are vested in the bodies closest to citizens; the scope and nature of any powers, as well as their economic impact, should be taken into account before transferring any powers to the appropriate authority; delegirovannye local authorities full and unconditional authority; Prior to the transfer of powers to central or territorial authorities, local authorities should take into account their full compliance with local conditions, and also take their opinion into account when making decisions on issues related to local authorities. such as should be taken.

In a nutshell, in this document:

firstly, the European experience in the field of local self-government;

secondly, the role of local self-government bodies in the life of the state and society;

third, independence in resolving issues of local importance;

fourthly, the idea of a gradual transfer of certain powers of the state to local self-government bodies and other similar features are highlighted.

Therefore, a number of legal scholars in our country recognize that this Charter can and should be used in any country to develop the industry and improve national legislation [9]. In turn, we also support this proposal.

Another regional international organization is the Commonwealth of Independent States, the main task of which, as an independent and equal subject of international law, is to resolve the economic, customs, military-political, border, social, humanitarian, state and social problems of the participating States.

This organization is a statutory body, an executive body and through sectoral cooperation bodies. One of its statutory bodies is the Interparliamentary Assembly.

Its main tasks are to contribute to the development of the social, economic and financial spheres of the member states, to study issues of state building and local self-government, political and international cooperation, ecology and natural resources, defense and security, tourism, sports., culture, etc. consists of involvement. In turn, the Assembly uses the assistance of its special commissions to carry out these tasks.

Among them is the Commission for the Study of State Building and Local Self-Government, which, in addition to studying the activities of the sector, also develops and submits to the Inter-Parliamentary Assembly for consideration international rules that help regulate the sector.

One of such documents is the Model Law "On the Basic Principles of Organization of Local Self-Government" [10], which consists of Chapter 8 of Article 64. It contains general rules (Chapter 1, paragraphs 1-12), the territorial foundations of local self-government bodies (Chapter 2, paragraphs 13-14), organizational foundations (Chapter 3, paragraphs 15-24), methods of local government. Direct expression of the wishes of citizens in the implementation of self-government (Chapter 4, 25-30 m), economic and financial foundations (Chapter 5, 31-45 m), guarantees of local governments (Chapter 6, 46-49), the responsibilities of local governments and their officials, as well as monitoring their activities (chapter 7, paragraphs 50-55) and conclusions (chapter 8, paragraphs 56-64).

Although the norms reflected in this Model Law are exemplary and recommended for the development of the legislative experience of the Member States in this area, a number of Member States (Russia, Ukraine, Belarus, Moldova, Kazakhstan, Armenia, Azerbaijan) have used most of its norms in this area.

In our opinion, although the Model Law is advisory in nature, we can use its relevant provisions to further improve our national legislation.

In particular, if we look at article 1 of the Model Law, entitled "Basic Concepts and Expressions", we can see that this document provides a brief description of the main concepts and expressions encountered. In our opinion, based on this experience, it is advisable to clarify the content of the concepts of "local issue", "neighborhood" and others found in our national legislation.

Another international document related to the activities of the industry, adopted within the CIS, is the Model Law "On the Status of a Person Elected to a Local Self-Government Body" [11].

It includes the powers of state authorities to regulate the status of persons elected to local self-government bodies, the powers of local structures to regulate the status of persons elected to local self-government bodies, a legislative basis for regulating the status of persons elected to local self-government bodies. local self-government bodies, term of office, termination and early termination of powers, methods, procedures and guarantees for the term of office of a person elected to local self-government bodies, responsibility for violation of legislation in this area.

If we pay attention to Article 8 of this Model Law, we can see that as one of the grounds for the early termination of the powers of a person elected to local self-government bodies,

elections are held on the basis of a court decision that has entered into force. the force may be terminated early.

It should be noted that, in our opinion, this positive experience can be directly applied in our national legislation. This is due to the fact that these issues have not been resolved on the basis of the early termination of the powers of the chairman of the meeting of citizens, provided for by the Law "On citizens' self-government bodies.

Also, according to the Model Law, a person elected to local government bodies cannot simultaneously engage in other activities. If such a situation arises for him, it is also determined that this will be the basis for the early termination of his term.

Conclusion.

Based on this experience, we consider it expedient to enshrine in our national legislation the norm according to which the chairman of the citizens' assembly during his tenure cannot engage in any other paid activity, except for scientific and pedagogical.

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For information: According to Article 25 of this international instrument, everyone has the right to vote and stand for election in genuine periodic elections on the basis of universal and equal suffrage, by secret ballot and ensuring the free will of elections.

Note: According to Article 1 of this Declaration, cultural diversity refers to the change of cultural forms in time and space, their expression in the uniqueness and diversity of the groups and communities that make up humanity, exchange, aspiration for innovation. and is a source of creativity. In other words, it is the common wealth of humanity and must be recognized and strengthened in the interests of present and future generations.

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Evropeyskaya Charter of local self-government. Strasbourg, 15.10. 1985 // www.consultant.ru – legal portal of the Russian Federation.

For information: The Charter stipulates the constitutional and legislative basis of the SCO (Article 2), its concept (Article 3), the scope of powers (Article 4), the boundaries of the areas where the SME is implemented (Article 5), the powers at the local level -creation of conditions (Article 7), administrative control over their activities (Article 8), financial bases (Article 9), the right to establish associations (Article 10), their legal protection (Article 11), obligations (12 m), the scope of application (13 m).

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